Local Government Council

Wednesday, March 22, 2006
1:00 p.m.
404 House Office Building

REVISED

Addendum A (3/21/2006 6:09 PM)

Addendum B (3/21/2006 6:18 PM)

Allan G. Bense
Speaker

Ken Sorensen
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Local Government Council

Start Date and Time:	Wednesday, March 22, 2006 01:00 pm
End Date and Time:	Wednesday, March 22, 2006 04:00 pm
Location:	404 HOB
Duration:	3.00 hrs

Consideration of the following bill(s):

HJR 33 CS Newly Established Homestead Property Assessments by Domino
HB 675 CS Public Records and Public Meetings by Pickens
HB 753 CS Deferral of Ad Valorem Property Taxes by Rivera
HB 793 City of Orlando, Orange County by Adams
HB 821 CS Community Contribution Tax Credit Program by Goodlette
HB 951 Palm Beach County by Vana
HB 973 South Broward Drainage District, Broward County by Sobel
HB 979 Property Tax Administration by Seiler
HB 1023 Playgrounds by Planas
HB 1137 Rupert J. Smith Law Library, St. Lucie County by Harrell
HB 1187 Florida Building Code by Murzin
HB 1189 Pasco County by Legg
HB 1203 St. Johns Water Control District, Indian River County by Poppell
HB 1205 Indian River Farms Water Control District, Indian River County by Poppell
HB 1207 Indian River Mosquito Control District, Indian River County by Poppell
HB 1219 City of Tampa, Hillsborough County by Joyner
HB 1253 Broward County, Florida by Sobel
HB 1299 Areas of Critical State Concern by Sorensen
HB 1303 Hardee County Economic Development Authority, Hardee County by Troutman
HB 1335 Monroe County by Sorensen
HB 1357 Growth Management by Altman
HB 1567 Eminent Domain by Rubio
HJR 1569 Eminent Domain by Rubio
HJR 1571 Assessment of Newly Established Homestead Property after Eminent Domain Taking of Previous Homestead Property by Rubio
HB 1609 Collection of Delinquent Property Taxes by Goldstein

NOTICE FINALIZED on 03/20/2006 16:08 by ADEYEMO.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 33 CS Homestead Property Assessments
SPONSOR(S): Domino and others
TIED BILLS: **IDEN./SIM. BILLS:** SJR 138, SJR 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	10 Y, 3 N, w/CS	Hogge	Hogge
2) Local Government Council		Camechis	Hamby
3) Finance & Tax Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

In 1992, Florida voters approved the popularly-named "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership.

This joint resolution proposes to amend Article VII, s. 4, of the State Constitution to authorize the Legislature to require or authorize counties, subject to the conditions specified therein, to provide by ordinance for the assessment of newly established homestead property at less than just value if purchased within one year of the sale of property previously designated as homestead property. The difference between the just value and the assessed value of the newly established homestead property in the first year could not exceed the difference between the just value and the assessed value of the previous homestead property in the year sold. This proposed constitutional amendment would not apply with respect to the value of homestead property taxed for school purposes.

Staff has requested an updated revenue impact since the committee substitute differs substantially from the original bill as filed. However, if the Legislature were to require counties to implement this joint resolution and to provide the maximum limit on the difference between assessment and just value, or if all counties chose to do so, the estimated fiscal impact on counties, assuming no change in millage rates, as determined by the Special Impact Session of the Revenue Estimating Conference for each of the following years would be: FY 2008-09 ($447.5m), FY 2009-10 ($931.4m), FY 2010-11 ($1,430.6m), FY 2011-12 ($1,923.7m), and FY 2012-13 ($2,417.6m).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes -- If the Legislature requires counties to implement this joint resolution, or if all counties chose to do so, then this proposal would reduce the amount of growth in total assessed property values and without off-setting millage rate changes, would result in property tax savings by homeowners. Many sparsely populated rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for resulting revenue losses if the Legislature requires these counties to implement this option.[1]

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Ad valorem property taxes are the single largest source of tax revenues for general purpose local governments in Florida. In FY 2002-03 (the last year for which published fiscal information is available), property taxes accounted for 31 percent of county governmental revenue (i.e., $6.3 billion), and almost 20 percent of municipal government revenue (i.e., $2.4 billion). Ad valorem property tax revenues also are the primary local revenue source for school districts. For FY 2003-03, school districts levied $8.4 billion in property taxes.

Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards, by the taxable value of property within that jurisdiction. Each entity may levy up to 10 mills and, in most cases, the real property must be assessed at just value.[2] Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property.

In 1992, Florida voters approved the popularly-named "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership.[3] The "Save Our Homes" constitutional amendment, originally proposed as a way to protect homeowners from being forced to sell their homes because of escalating property taxes caused by assessment increases, is now seen by some as keeping people from selling their homes and buying another home because of substantially higher property taxes resulting from the constitutionally required reassessment upon change in ownership.

Largely due to the recent surge in housing values[4] and lack of corresponding millage rate reductions by local officials to offset double-digit increases in taxable values, ad valorem property tax revenues have

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[1] For 2004 (the latest published information available), 14 of the 67 county governments levied the full 10 mills, the constitutional maximum, and, therefore, have no available millage capacity. These counties include Calhoun, Dixie, Gadsden, Gilchrist, Glades, Hamilton, Holmes, Jefferson, Lafayette, Liberty, Madison, Suwannee, Union, and Washington. An additional 8 counties levied at least 9 mills. These counties include Bradford, Duval, Hendry, Highlands, Levy, Putnam, Sumter, and Wakulla. *Florida Property Valuation & Tax Data,* Department of Revenue, State of Florida (Dec. 2004).

[2] "Just value" is the estimated market value of the property. "Assessed value" is generally synonymous with "just value" unless a constitutional exception such as Save Our Homes applies to reduce the value of the property. "Taxable value" is the assessed value minus any applicable exemptions such as the $25,000 homestead exemption.

[3] Fla. Const. art. VII, s. 4(c)(3).

[4] The boom in housing values does not translate into an identical increase in "just values" or "assessed values" since not all property is taxed at "just value." "Just values" have experienced double-digit increases since 2001: 10.6% in 2001; 11.3% in 2002; 12.4% in 2003; and 14.0% in 2004. For the period 1990-2000, the largest increase was 8.3%, with two years, 1992 and 1993, experiencing an increase of only 2.0%. Although not as large, the growth in "taxable values" resulted in a similar experience.

increased substantially in recent years: 9.2 percent in 2002, 11.5 percent in 2003, and 10.4 percent in 2004.[5] These annual property tax increases are twice as high as the 5 percent average increase experienced between 1991 and 2000, but comparable to the 12.5 percent average annual increase from 1981 to 1990.[6] Despite the growth in total taxable values, the statewide average actual millage rates have remained relatively unchanged, although on a generally downward trend.[7] However, the differential between the actual millage rate and the so-called "roll back rate" (i.e., the millage rate necessary to generate the same amount of revenue as the prior year excluding new construction and boundary changes) is substantially more pronounced since 2000, than it was from 1990 to 1999. The taxable value of all real property has increased 53 percent over the past four years.

The amount of value removed from the tax rolls by the "Save Our Homes" provision is growing at a much faster rate than the amount of value removed by the homestead exemption. For example, in 2005, the amount of value excluded from the tax rolls as a result of the Save Our Homes provision grew by $81 billion over the previous year compared to $1.7 billion removed as a result of the homestead exemption.

Effect of Proposed Changes

This joint resolution proposes to amend Article VII, s. 4, of the State Constitution to authorize the Legislature to require or authorize counties, subject to the conditions specified therein, to provide by ordinance for the assessment of newly established homestead property at less than just value if purchased within one year of the sale of property previously designated as homestead property. The difference between the just value and the assessed value of the newly established homestead property in the first year could not exceed the difference between the just value and the assessed value of the previous homestead property in the year sold. This proposed constitutional amendment would not apply with respect to the value of homestead property taxed for school purposes.

Under the joint resolution, the lowest possible assessment for the newly acquired homestead as provided in the following example would be:

Previous homestead —	
Just value when sold	$200,000
Assessed value when sold	$100,000
Difference	$100,000
New homestead —	
Just value at purchase	$250,000
Assessed value (originally)	$125,000
Difference	$125,000
Minimum new assessed value under proposal	$150,000 ($250,000-$100,000)

Note that the initial assessed value for purposes of this example could wind up being anywhere between a low of $150,000 and just under $250,000, since the joint resolution sets only the maximum limit on the degree of departure from just value.

C. SECTION DIRECTORY: Not applicable.

[5] "Taxes Levied and Millage Rates 1974-2004," from *2006 Property Tax Roll Estimates* prepared by the Revenue Estimating Conference, November 8, 2005. The amount of ad valorem property tax levied for 2005 is not yet available, but the value of property subject to the tax increased by approximately 20%.
[6] Id.
[7] Actual average millage rates for all jurisdictions for 2004: 20.18; for 2003: 20.60; for 2002: 20.57. Excluding public school levies for 2004: 11.96; for 2003: 12.06; for 2002: 11.93.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: Publication costs incurred by the Department of State in informing the public of this proposed committee amendment would be an estimated $50,000, assuming the ballot summary contains 75 or less words.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Staff has requested an updated revenue impact since the committee substitute differs substantially from the original bill as filed. However, if the Legislature were to require counties to implement this joint resolution and to provide the maximum limit on the difference between assessment and just value, or if all counties chose to do so, the estimated fiscal impact on counties, assuming no change in millage rates, as determined by the Special Impact Session of the Revenue Estimating Conference for each of the following years would be: FY 2008-09 ($447.5m), FY 2009-10 ($931.4m), FY 2010-11 ($1,430.6m), FY 2011-12 ($1,923.7m), and FY 2012-13 ($2,417.6m).

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The potential negative fiscal impact experienced by counties could translate into maximum property tax savings for homeowners of up to an amount corresponding to the estimated reduction in the growth of property tax revenues, assuming no off-setting changes in millage rates.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to House Joint Resolutions.

2. Other:

Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Judiciary Committee adopted an amendment that effectively converts the original bill as filed into one requiring general law to implement. The Legislature would be authorized to require or permit counties to provide for assessments of homestead property at less than just value subject to certain limits and conditions. This authority would not extend to county determination of value of homestead property for school purposes.

CHAMBER ACTION

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1 The Judiciary Committee recommends the following:
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3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 House Joint Resolution
6 A joint resolution proposing an amendment to Section 4 of
7 Article VII of the State Constitution to authorize the
8 Legislature to require or authorize counties to provide by
9 ordinance for assessing certain newly established
10 homestead property at less than just value, excluding
11 determinations of value of homestead property taxed for
12 school purposes.
13
14 Be It Resolved by the Legislature of the State of Florida:
15
16 That the following amendment to Section 4 of Article VII of
17 the State Constitution is agreed to and shall be submitted to
18 the electors of this state for approval or rejection at the next
19 general election or at an earlier special election specifically
20 authorized by law for that purpose:
21 ARTICLE VII
22 FINANCE AND TAXATION

23 SECTION 4. Taxation; assessments.--By general law
24 regulations shall be prescribed which shall secure a just
25 valuation of all property for ad valorem taxation, provided:
26 (a) Agricultural land, land producing high water recharge
27 to Florida's aquifers, or land used exclusively for
28 noncommercial recreational purposes may be classified by general
29 law and assessed solely on the basis of character or use.
30 (b) Pursuant to general law tangible personal property
31 held for sale as stock in trade and livestock may be valued for
32 taxation at a specified percentage of its value, may be
33 classified for tax purposes, or may be exempted from taxation.
34 (c) All persons entitled to a homestead exemption under
35 Section 6 of this Article shall have their homestead assessed at
36 just value as of January 1 of the year following the effective
37 date of this amendment. This assessment shall change only as
38 provided herein.
39 (1) Assessments subject to this provision shall be changed
40 annually on January 1st of each year; but those changes in
41 assessments shall not exceed the lower of the following:
42 a. Three percent (3%) of the assessment for the prior
43 year.
44 b. The percent change in the Consumer Price Index for all
45 urban consumers, U.S. City Average, all items 1967=100, or
46 successor reports for the preceding calendar year as initially
47 reported by the United States Department of Labor, Bureau of
48 Labor Statistics.
49 (2) No assessment shall exceed just value.

50 (3) After any change of ownership, as provided by general
51 law, homestead property shall be assessed at just value as of
52 January 1 of the following year, unless the provisions of
53 paragraph (8) apply. Thereafter, the homestead shall be assessed
54 as provided herein.
55 (4) New homestead property shall be assessed at just value
56 as of January 1st of the year following the establishment of the
57 homestead, unless the provisions of paragraph (8) apply. That
58 assessment shall only change as provided herein.
59 (5) Changes, additions, reductions, or improvements to
60 homestead property shall be assessed as provided for by general
61 law; provided, however, after the adjustment for any change,
62 addition, reduction, or improvement, the property shall be
63 assessed as provided herein.
64 (6) In the event of a termination of homestead status, the
65 property shall be assessed as provided by general law.
66 (7) The provisions of this amendment are severable. If any
67 of the provisions of this amendment shall be held
68 unconstitutional by any court of competent jurisdiction, the
69 decision of such court shall not affect or impair any remaining
70 provisions of this amendment.
71 (8) By general law and subject to conditions specified
72 therein, the legislature may require or authorize counties to
73 provide by ordinance for the assessment of newly established
74 homestead property at less than just value if purchased within
75 one year after the sale of property previously designated as
76 homestead property. The difference between the just value and
77 the assessed value of the newly established homestead property

78 in the first year may not exceed the difference between the just
79 value and the assessed value of the previous homestead property
80 in the year sold. This paragraph shall not apply with respect to
81 determinations of the value of homestead property taxed for
82 school purposes.
83 (d) The legislature may, by general law, for assessment
84 purposes and subject to the provisions of this subsection, allow
85 counties and municipalities to authorize by ordinance that
86 historic property may be assessed solely on the basis of
87 character or use. Such character or use assessment shall apply
88 only to the jurisdiction adopting the ordinance. The
89 requirements for eligible properties must be specified by
90 general law.
91 (e) A county may, in the manner prescribed by general law,
92 provide for a reduction in the assessed value of homestead
93 property to the extent of any increase in the assessed value of
94 that property which results from the construction or
95 reconstruction of the property for the purpose of providing
96 living quarters for one or more natural or adoptive grandparents
97 or parents of the owner of the property or of the owner's spouse
98 if at least one of the grandparents or parents for whom the
99 living quarters are provided is 62 years of age or older. Such a
100 reduction may not exceed the lesser of the following:
101 (1) The increase in assessed value resulting from
102 construction or reconstruction of the property.
103 (2) Twenty percent of the total assessed value of the
104 property as improved.

105 BE IT FURTHER RESOLVED that the following statement be
106 placed on the ballot:
107 CONSTITUTIONAL AMENDMENT
108 ARTICLE VII, SECTION 4
109 NEWLY ESTABLISHED HOMESTEAD PROPERTY
110 ASSESSMENTS.--Proposing an amendment to the State Constitution
111 to authorize the Legislature, by general law, to require or
112 authorize counties to provide for assessing newly established
113 homestead property at less than just value if purchased within
114 one year after the sale of property previously designated as
115 homestead property, subject to certain limitations, and specify
116 that the amendment does not apply to determinations of the value
117 of homestead property taxed for school purposes.

HB 675 CS

HB 0675

ANALYSIS WILL BE AVAILABLE LATER

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 753 CS Homestead Tax Deferral
SPONSOR(S): Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council		Camechis	Hamby
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

Section 197.252, F.S. allows qualified persons to defer payment of property taxes on homestead property until ownership of the property has changed. The amount of taxes which can be deferred depends on the age and household income of the person deferring the taxes. Under current law:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 70 or older whose household income is $12,000 or under may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

Under this bill, a person 65 or older whose household income qualifies them for the additional homestead exemption under s. 196.075, F.S. may defer their entire tax bill. In 2006, the maximum qualified income under this statute is $23,463.

In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

The Revenue Estimating Conference has not yet determined the official estimate of the impact of this bill. However, staff anticipates that the bill will have a small indeterminate negative impact to local revenues.

This bill has an effective date of January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the house principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 197.252, F.S., allows people to defer payment of property taxes on homestead property until ownership of the property has changed. Under current law:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 70 or older whose household income is $12,000 or under may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

Under this program, payment of both ad valorem taxes and some non ad-valorem assessments may be deferred. Taxes cannot be deferred if the value of the primary mortgage is greater than 70 percent of the just value of the property or if all unsatisfied debt on the property, including deferred taxes, exceeds 85 percent of the just value of the homestead.

A tax certificate is issued to the county for any taxes deferred under this statute. The county then holds these certificates until such time as the taxes become due and payable. These taxes become due and payable if ownership or use of the homesteaded property changes or if all unsatisfied liens on the property grow to an amount which exceeds 85% of the property's just value.

During the time the county holds the certificates, interest is accrued at a rate of "0.5 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates; however, the interest rate may not exceed 9.5 percent."[1] In 2005 this interest rate was 5.59 percent.

Proposed Changes

Under this bill, the payment of the entire tax bill could be deferred by individuals who are 65 or older and have a household income that would qualify them for the additional homestead exemption for low income seniors, governed by s. 196.075, F.S., which reads:

> (2) . . . .any person . . . who has attained age 65, and whose household income does not exceed $20,000.
>
> (3) Beginning January 1, 2001, the $20,000 income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1, through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the

[1] s. 197.262(2), F.S.

average of the monthly consumer-price-index figures for the state 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

In 2006, the maximum qualified income under this statute is $23,463.

Thus, if this bill passes, the amount of taxes which may be deferred by an individual would change so that:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 65 or older whose household income qualifies them for the additional homestead exemption under s. 196.075, F.S., may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

C. SECTION DIRECTORY:

Section 1. Amends s. 197.252, F.S., changing the eligibility criteria for participating in the tax deferral program.

Section 2. Provides that the bill shall take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill will allow qualified seniors to defer payment of their property taxes until such time as their property experiences a change in ownership. As such, it may delay the collection of some taxes. However, it will not reduce local revenue raising capacity on the whole and the amount of taxes deferred under this program should be minimal.

   In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will allow qualified low income seniors to defer the payment of their property taxes allowing them another option in managing their financial needs.

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision of the State Constitution is not applicable because: this bill does not require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 10, 2006, the Finance and Tax Committee adopted a strike everything amendment to the bill. The amendment reworded the bill to conform to the language of its Senate companion. In addition, the amendment lowered the maximum interest rate which can be charged on a tax certificate for deferred taxes from 9.5 percent to 7 percent.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the deferral of ad valorem property taxes; amending s. 197.252, F.S.; decreasing the age and increasing the income threshold required for eligibility to defer ad valorem property taxes; decreasing the maximum interest rate that may be charged on deferred ad valorem taxes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) and subsection (4) of section 197.252, Florida Statutes, are amended to read:

197.252 Homestead tax deferral.--

(2)

(b) <u>If</u> ~~In the event~~ the applicant is entitled to claim the increased exemption by reason of age and residency as provided in s. 196.031(3)(a), approval of such application shall defer that portion of such ad valorem taxes plus non-ad valorem assessments which exceeds 3 percent of the applicant's

24 household's income for the prior calendar year. If any such
25 applicant's household income for the prior calendar year is less
26 than $10,000, or is less than the amount of the household income
27 designated for the additional homestead exemption pursuant to s.
28 196.075 and the ~~$12,000 if such~~ applicant is 65 ~~70~~ years of age
29 or older, approval of the ~~such~~ application shall defer such ad
30 valorem taxes plus non-ad valorem assessments in their entirety.
31 (4) The amount of taxes, non-ad valorem assessments, and
32 interest deferred pursuant to this act shall accrue interest at
33 a rate equal to the semiannually compounded rate of one-half of
34 1 percent plus the average yield to maturity of the long-term
35 fixed-income portion of the Florida Retirement System
36 investments as of the end of the quarter preceding the date of
37 the sale of the deferred payment tax certificates; however, the
38 interest rate may not exceed 7 ~~9.5~~ percent.
39 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 793 City of Orlando, Orange County
SPONSOR(S): Adams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	14 Y, 0 N	Watson	Liepshutz
2) Local Government Council		Nelson	Hamby
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a three-year pilot program authorizing the City of Orlando to adopt an ordinance establishing procedures for public food service establishments to apply for a limited exemption from existing Department of Business and Professional Regulation rules. The exemption would allow patrons' dogs in designated outdoor sections of public food service establishments.

The bill provides minimum requirements for permit applications and safety and sanitation regulations to be implemented by the City of Orlando; provides for state assistance in the development of enforcement procedures and regulations; provides an effective date of July 1, 2006, and for automatic repeal if not renewed by July 1, 2009.

The City of Orlando estimates that any ordinance it may choose to adopt under this bill would be implemented within existing staff resources. The Department of Business and Professional Regulation also estimates this bill can be implemented within its existing resources. The Department of Health estimates an annual recurring cost of $1,798 relating to increased food borne illness complaints.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Less Government: This bill increases the number of governmental bodies that have regulatory authority over health guidelines for public food service establishments in the City of Orlando.

Individual Liberty: This bill increases commercial and individual liberty by allowing public food service establishments and individuals the ability to choose to bring dogs into outdoor areas of such establishments if the City of Orlando passes the appropriate ordinance.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The legislature requires the Division of Hotels and Restaurants (H &R) to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare. Pursuant to its rulemaking authority, the Division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration. The Food Code is a reference document that "provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause food borne illness."[1] Section 6-501.115 of the Code generally prohibits live animals on the premises of food service establishments. The term "premises" is defined to mean "[t]he physical facility, its contents, and the contiguous land or property...."[2] There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.[3]

Effect of Proposed Changes

This bill creates a three-year pilot program that would permit patrons' dogs within designated outdoor areas of food service establishments in the City of Orlando. The bill grants the City the authority to adopt an ordinance that provides for a local exemption procedure to current H & R rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the City. Minimum requirements for the information supplied in the application process are outlined in the bill.

The bill also sets forth specific regulations that must be included in all permits issued by the City of Orlando. The regulations include various restrictions on the dogs' mobility, sanitation measures to reduce health risks posed by dogs, and signs notifying guests and employees of applicable rules and procedures. The bill also allows the City to include additional regulations and limitations in the permits to protect the health, safety and general welfare of the public. The City is granted powers reasonably necessary to regulate and enforce this bill. The Division of Hotels and Restaurants is required to provide reasonable assistance to the City in the development of enforcement procedures and regulations.

This bill will not affect those establishments regulated by the Department of Health which include: detention facilities, child care facilities, schools, institutions, civic or fraternal organizations, bars and lounges, facilities used at temporary food events, and mobile food units.

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[1] See, the FDA's introduction to the Food Code at http://www.cfsan.fda.gov/~dms/fc05-int.html.
[2] See, s. 1-201.10(b)(67) at http://www.cfsan.fda.gov/~dms/fc01-1.html#1-2.
[3] See, section 6-501.115 at http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5.

The act has an effective date of July 1, 2006, and expires on July 1, 2009, unless reenacted by the legislature.

Fiscal Impacts

The Department of Business and Professional Regulation estimates this bill will have a small fiscal impact by increasing workload to help the City of Orlando develop rules and by increasing the number of calls to the Department's Customer Contact Center. The Department maintains that this impact can be absorbed within existing resources.

The Department of Health believes there could be increased complaints of restaurant-associated illnesses resulting from this bill, which would cause an increase in workload for DOH food borne illness epidemiologists. This would result in a small additional financial burden on DOH estimated at $1,798 annually.

C. SECTION DIRECTORY:

Section 1: Provides legislative findings and intent.

Section 2: Authorizes a local exemption for the City of Orlando.

Section 3: Provides for local discretion; requires codification of local exemption.

Section 4: Limits exemptions and provides permit requirements.

Section 5: Provides enforcement powers.

Section 6: Provides for state assistance.

Section 7: Provides an expiration date.

Section 8: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? November 22, 2005.

WHERE? *The Orlando Sentinel*, a daily newspaper distributed in Orange County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill specifically references the 2001 FDA Food Code. The Sponsor may want to amend the bill in anticipation of the DBPR adopting the recently published 2005 Food Code or some other guideline.

The Sponsor also may want to amend the bill to address additional issues which were raised by the DBPR, and subsequently remedied in the CS for HB 333 (2006), a similar bill, such as the need to:

- specify that dogs will not be permitted to travel through indoor or non-designated outdoor sections of a food service establishment; and
- provide that permits may not be transferred upon the sale of a food service establishment.

Other Comments

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill because the bill grants an exemption to general law which expressly limits the home rule powers of local governments in the regulation of public food service establishments.[4]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[4] Section 509.032(7), F.S.

Orlando Sentinel

Published Daily

Adams - HB793 OC-01-06 "A"

State of Florida } S.S.
COUNTY OF ORANGE

Before the undersigned authority personally appeared Doris J. Horton, who on oath says that he/she is the Legal Advertising Representative of Orlando Sentinel, a daily newspaper published at ORLANDO in ORANGE County, Florida; that the attached copy of advertisement, being a NOTICE OF INTENT T in the matter of ********** LEGISLATION in the ORANGE Court, was published in said newspaper in the issue; of 11/22/05

Affiant further says that the said Orlando Sentinel is a newspaper published at ORLANDO, in said ORANGE County, Florida, and that the said newspaper has heretofore been continuously published in said ORANGE County, Florida, each Week Day and has been entered as second-class mail matter at the post office in ORLANDO in said ORANGE County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Doris J. Horton

The foregoing instrument was acknowledged before me this 23rd day of NOVEMBER, 20 05, by DORIS J. HORTON, who is personally known to me and who did take an oath.

Beverly C. Simmons

(SEAL)

BEVERLY C. SIMMONS
Comm# DD0387737
Expires 3/10/2009
Bonded thru (800)432-4254
Florida Notary Assn., Inc

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Florida Legislature for passage of a special act relating to the City of Orlando, Florida, providing for authorization to adopt an ordinance establishing a local exemption to certain provisions of general law and agency rules relating to public food service establishments in order to permit patrons' dogs at certain designated outdoor portions of public food service establishments; providing for implementation and enforcement provisions; providing an effective date.
COR6492026 NOV.22,2005

#2603

OC-01-06 - "A"

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: _____

SPONSOR(S): ORANGE COUNTY LEGISLATIVE DELEGATION - REP. S. ADAMS, ET AL

RELATING TO: ORANGE COUNTY, CITY OF ORLANDO: AUTHORIZING DOG-FRIENDLY OUT-DOOR DINING ORDINANCE
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: ORANGE COUNTY

CONTACT PERSON: CORY SKEATES, L.A. TO REP. S. ADAMS 488-0468

PHONE # and E-Mail: DISTRICT: 407-977-4020

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: NOVEMBER 14, 2005

Location: ORANGE COUNTY COMMISSION CHAMBERS, 201 S. ROSALIND AVE., ~~ORL~~ ORLANDO

(3) Was this bill formally approved by a majority of the delegation members?
YES [X] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [11/22/05 **]**

Where? ORLANDO SENTINEL **County** ORANGE COUNTY

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

PLEASE SEE ATTACHED STATEMENT

Sandra Adams 1-18-06
Delegation Chair (*Original Signature*) **Date**

REPRESENTATIVE SANDY ADAMS
HOUSE DISTRICT 33
CHAIRMAN

OC-01-06 "A"

HOUSE OF REPRESENTATIVES

2005 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #:

SPONSOR(S): ORANGE COUNTY LEGISLATIVE DELEGATION; REP. S. ADAMS, ET AL

RELATING TO: City of Orlando; Authorizing dog-friendly outdoor dining ordinance.

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 05-06	FY 06-07
Expenditures:	None	None

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 05-06	FY 06-07
Federal:	None	None
State:	None	None
Local:	None	None

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 05-06	FY 06-07
Revenues:	None	None

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: None; if adopted the ordinance would be implemented with existing staff resources.

Disadvantages: None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Staff analysis only.

PREPARED BY: _____ 28 Sept. 2005
[Must be signed by Preparer] Date

TITLE: Assistant City Attorney

REPRESENTING: City of Orlando

PHONE: (407-246-2295)

E-Mail Address: kyle.shephard@cityoforlando.net

1 A bill to be entitled
2 An act relating to the City of Orlando, Orange County;
3 providing legislative findings; creating a pilot program;
4 authorizing the City of Orlando to adopt an ordinance
5 establishing a local exemption to certain provisions of
6 general law and agency rules relating to public food
7 service establishments in order to permit patrons' dogs at
8 certain designated outdoor portions of public food service
9 establishments; providing for implementation and
10 enforcement procedures; providing for future review and
11 repeal; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Public food service establishment requirements;
16 local exemption for dogs in designated outdoor portions;
17 findings and intent; pilot program.--The Legislature finds and
18 declares the following:
19 (1) This act shall apply only to the City of Orlando.
20 (2) Chapter 509, Florida Statutes, requires that the
21 Division of Hotels and Restaurants of the Department of Business
22 and Professional Regulation carry out all laws and rules
23 relating to the inspection and regulation of public food service
24 establishments for the purpose of safeguarding the public
25 health, safety, and welfare.
26 (3) Section 509.013(5), Florida Statutes, defines a public
27 food service establishment as "any building, vehicle, place, or
28 structure, or any room or division of a building, vehicle,

29 place, or structure, or any room or division in a building,
30 vehicle, place, or structure where food is prepared, served, or
31 sold for immediate consumption on or in the vicinity of the
32 premises; called for or taken out by customers; or prepared
33 prior to being delivered to another location for consumption."
34 (4) Section 509.032, Florida Statutes, requires that the
35 Division of Hotels and Restaurants adopt and enforce such rules
36 as are necessary to ensure the protection of the public from
37 food-borne illness in public food service establishments.
38 (5) Section 509.032, Florida Statutes, further requires
39 that the Division of Hotels and Restaurants adopt such rules in
40 order to "provide the standards and requirements for obtaining,
41 storing, preparing, processing, serving, or displaying food in
42 public food service establishments, approving the public food
43 service establishment facility plans, conducting necessary
44 public food service establishment inspections for compliance
45 with sanitation regulations, cooperating and coordinating with
46 the Department of Health in epidemiological investigations, and
47 initiating enforcement actions, and for other such
48 responsibilities deemed necessary by the division."
49 (6) Pursuant to the grant of rulemaking authority cited in
50 subsection (5), the Division of Hotels and Restaurants has
51 adopted chapter 61C-4, Florida Administrative Code, concerning
52 public food service establishments.
53 (7) Section 61C-4.010, Florida Administrative Code,
54 concerning the sanitation and safety requirements of public food
55 service establishments, includes section 61C-4.010(6), relating
56 to physical facilities, which adopts by reference chapter 6 of

57 the 2001 FDA Food Code as developed by the Food and Drug
58 Administration of the United States Department of Health and
59 Human Services.
60 (8) Section 6-501.115, 2001 FDA Food Code, generally
61 prohibits live animals from public food service establishments.
62 (9) Section 509.032(7), Florida Statutes, expressly
63 preempts to the state regulation of public lodging
64 establishments and public food service establishments for
65 compliance with the sanitation standards adopted by the
66 division.
67 (10) Section 509.032(7), Florida Statutes, expressly
68 limits the general home rule powers of local governments as it
69 relates to the regulation of public food service establishments.
70 (11) The purpose of this act is to allow the City of
71 Orlando to enact an ordinance establishing procedures by which
72 public food service establishments could exempt their
73 establishments from section 6-501.115, 2001 FDA Food Code, and
74 allow patrons' dogs within certain designated outdoor portions
75 of their respective establishments.
76 (12) It is therefore the intent of the Legislature by this
77 act to establish a 3-year pilot program in the City of Orlando
78 to allow patrons' dogs within certain designated outdoor
79 portions of participating public food service establishments.
80 Section 2. Local exemption authorized.--The governing
81 board of the City of Orlando is authorized to establish, by
82 ordinance, a local exemption procedure to section 6-501.115,
83 2001 FDA Food Code, as adopted and incorporated by the Division

84 of Hotels and Restaurants at chapter 61C-4.010(6), Florida
85 Administrative Code.
86 Section 3. Local discretion; codification.--
87 (1) The adoption of the local exemption procedure shall be
88 at the sole discretion of the governing board of the City of
89 Orlando. Nothing in this act shall be construed to require or
90 compel the governing board of the City of Orlando to adopt an
91 ordinance pursuant to this act.
92 (2) Any ordinance adopted pursuant to this act shall
93 provide for codification within the land development code of the
94 City of Orlando.
95 Section 4. Limitations on exemption; permit
96 requirements.--
97 (1) Any local exemption procedure adopted pursuant to this
98 act shall only provide a variance to section 6-501.115, 2001 FDA
99 Food Code, to allow patrons' dogs within certain designated
100 outdoor portions of public food service establishments.
101 (2) In order to protect the health, safety, and general
102 welfare of the public, the local exemption procedure shall
103 require participating public food service establishments to
104 apply for and receive a permit from the City of Orlando before
105 allowing patrons' dogs on their premises. The city shall require
106 such information from the applicant as the city deems reasonably
107 necessary to enforce the provisions of this act, but shall
108 require, at a minimum, the following information:
109 (a) Name, location, and mailing address of the public food
110 service establishment.

111 (b) Name, mailing address, and telephone contact
112 information of the permit applicant.
113 (c) A diagram and description of the outdoor area to be
114 designated as available to patrons' dogs, including dimensions
115 of the designated area; a depiction of the number and placement
116 of tables, chairs, and restaurant equipment, if any; the
117 entryways and exits to the designated outdoor area; the
118 boundaries of the designated area and of other areas of outdoor
119 dining not available for patrons' dogs; any fences or other
120 barriers; surrounding property lines and public rights-of-way,
121 including sidewalks and common pathways; and such other
122 information reasonably required by the permitting authority. The
123 diagram or plan shall be accurate and to scale but need not be
124 prepared by a licensed design professional.
125 (d) A description of the days of the week and hours of
126 operation that patrons' dogs will be permitted in the designated
127 outdoor area.
128 (3) In order to protect the health, safety, and general
129 welfare of the public, the local exemption ordinance shall
130 include such regulations and limitations as deemed necessary by
131 the City of Orlando and shall include, but not be limited to,
132 the following requirements:
133 (a) All public food service establishment employees shall
134 wash their hands promptly after touching, petting, or otherwise
135 handling dogs. Employees shall be prohibited from touching,
136 petting, or otherwise handling dogs while serving food or
137 beverages or handling tableware or before entering other parts
138 of the food service establishment.

139 (b) Patrons in a designated outdoor area shall be advised
140 that they should wash their hands before eating. Waterless hand
141 sanitizer shall be provided at all tables in the designated
142 outdoor area.
143 (c) Employees and patrons shall be instructed that they
144 shall not allow dogs to come into contact with serving dishes,
145 utensils, tableware, linens, paper products, or any other items
146 involved with food service operations.
147 (d) Patrons shall keep their dogs on a leash at all times
148 and shall keep their dogs under reasonable control.
149 (e) Dogs shall not be allowed on chairs, tables, or other
150 furnishings.
151 (f) All table and chair surfaces shall be cleaned and
152 sanitized with an approved product between seatings of patrons.
153 Spilled food and drink shall be removed from the floor or ground
154 between seatings of patrons.
155 (g) Accidents involving dog waste shall be cleaned
156 immediately and the area sanitized with an approved product. A
157 kit with the appropriate materials for this purpose shall be
158 kept near the designated outdoor area.
159 (h) A sign or signs reminding employees of the applicable
160 rules shall be posted on premises in a manner and place as
161 determined by the local permitting authority.
162 (i) A sign or signs reminding patrons of the applicable
163 rules shall be posted on premises in a manner and place as
164 determined by the local permitting authority.
165 (j) A sign or signs shall be posted in a manner and place
166 as determined by the local permitting authority that places the

167 public on notice that the designated outdoor area is available
168 for the use of patrons and patrons' dogs.
169 Section 5. Powers; enforcement.--The City of Orlando shall
170 have such powers as are reasonably necessary to regulate and
171 enforce the provisions of this act.
172 Section 6. State assistance.--The Division of Hotels and
173 Restaurants shall provide reasonable assistance to the City of
174 Orlando in the development of enforcement procedures and
175 regulations.
176 Section 7. This act shall expire July 1, 2009, unless
177 reviewed and saved from repeal through reenactment by the
178 Legislature.
179 Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821 CS Homeownership Assistance Contribution Tax Credit Program
SPONSOR(S): Goodlette
TIED BILLS: **IDEN./SIM. BILLS:** 784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	13 Y, 0 N, w/CS	Olmedillo	Carlson
2) Local Government Council		Nelson	Hamby
3) Finance & Tax Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

This bill increases the allocations authorized for the Community Contribution Tax Credit Program from $12 million to $13 million. It provides separate annual limitations for tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households, and for donations made to eligible sponsors for all other projects. The bill establishes the annual limitation for homeownership projects at $10 million (whereas current law reserves $9.4 million for such projects during the first six months of the state fiscal year), and the annual limitation for all other projects located in enterprise zones or Front Porch Florida Communities at $3 million (whereas the current law reserves $2.6 million for such projects during the first six months of the state fiscal year). This bill also eliminates the requirement that the Office of Tourism, Trade and Economic Development reserve specified percentages of annual tax credits for particular projects. Changes made by this bill reflect the recommendations contained in Senate Interim Project Report 2006-148.

Increasing the amount of community contribution tax credits annually by $1 million will result in a loss of $.9 million in state revenues and $ .1 million in local revenues.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill will provide increased tax incentives for persons who donate to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income households and for donations made to eligible sponsors for all other projects that qualify under the Community Contribution Tax Credit Program.

B. EFFECT OF PROPOSED CHANGES

Present Situation

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program to encourage private sector participation in revitalization and housing projects.[1] The program offers a tax incentive (a corporate income tax credit, insurance premium tax credit or a sales tax refund) equal to 50 percent of the amount donated up to $200,000 annually to sponsors who have been approved to participate in the program. Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.[2] Eligible projects include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons.

The Office of Tourism, Trade and Economic Development (OTTED) is responsible for administering the program by reviewing sponsor project proposals and tax credit applications. To date, 167 sponsors/projects have been approved to participate in the program. After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue (DOR). Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years. Unused credits against sales taxes may be carried forward for three years.

The Florida Legislature has amended the dollar cap and the expiration date of the program on numerous occasions. The program began with a $3 million dollar per year cap that currently is designated at $12 million. The expiration of the program has been extended from 2005 to June 30, 2015.

According to the OTTED, Habitat for Humanity is the primary recipient of donations for housing projects under the Community Contribution Tax Credit Program..

Effect of Proposed Changes

The bill increases the total amount of community contribution tax credits which may be granted all programs approved under ss. 212.08, 220.183 and 624.5105, F.S., by $1 million. It amends ss. 212.08, 220.183 and 624.5105, F.S., respectively, in a substantially identical fashion, to provide new allocations of the available $13 million in tax credits: (1) an annual allocation of $10 million of tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities

[1] See, ss. 212.08(5)(q), 220.183 and 624.5105, F.S.
[2] OTTED maintains a list of approved sponsors.

opportunities for low-income or very-low-income households as defined in s. 420.9071(19)[3] and (28),[4] F.S., and (2) a $3 million annual allocation for all other projects.

The bill also eliminates the requirement that the OTTED reserve specific percentages of certain annual tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for certain households and for other projects. These sections of the bill also eliminate provisions that allow tax credits that are unused for home ownership or all other projects to be used for any approved project after the first six months of the state fiscal year.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to increase amount of available tax credits, provide separate annual limitations for sales tax credits, eliminate the reservation of available tax credits, and renumber sub-paragraphs.

Section 2: Amends s. 220.183, F.S., to increase amount of available tax credits, provide separate annual limitations for corporate tax credits, and eliminate the reservation of available tax credits.

Section 3: Amends s. 624.5105, F.S., to increase availability of tax credits, provide separate annual limitations for insurance premium tax credits, and eliminate the reservation of available tax credits.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference has determined that increasing the amount of community contribution tax credits annually from $12 million to $13 million will result in a loss of $.9 million in state revenues during FY 2006-2007 and FY 2007-2006.

	FY 2006-07	FY 2007-2008
General Revenue		
Corporate	(.1)	(.1)
Sales	(.8)	(.8)
State Trust	(Indeterminate)	(Indeterminate)
Total State Impact	(.9)	(.9)

2. Expenditures: It is anticipated that administration of the increase in tax credits by OTTED will be implemented within existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

---

[3] Section 420.9071(19), F.S., defines "low-income person" or "low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever amount is greatest. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

[4] Section 420.9071(28), F.S., defines "Very-low-income person" or "very-low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever is greatest. With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the area's median income adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the area's median income adjusted for family size.

1. Revenues: The Revenue Estimating Conference has determined that increasing the amount of community contribution tax credits annually from $12 million to $13 million will result in a loss of $ .1 million in local revenues during FY 2006-2007 and FY 2007-2006.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the amount of tax credits available to persons for homeownership projects from $9.4 million to $10 million, and for non-housing projects from $2.6 million to $3 million. This may have a positive but indeterminate impact on the number of low-income homes that are built each year and the projects sponsored in enterprise zones and Front Porch Florida Communities as they are likely to receive more contributions.

D. FISCAL COMMENTS:

The table below shows the tax credits granted for housing projects and for other community development projects during the past 10 years. There were significant tax credits unused for the first two years after the cap was increased to $10 million. Subsequently, the entire allocation has been used.

COMMUNITY CONTRIBUTION TAX CREDIT PROGRAM
TAX CREDIT SUMMARY FY 1995/96 – FY 2005/06

FISCAL YEAR	APPROVED apps.	HOUSING TAX CREDITS	COMMUNITY DEVELOPMENT TAX CREDITS	TOTAL CREDITS APPROVED	CREDITS REMAINING	ANNUAL ALLOCATION
1995/96	75	$465,542	$1,472,255	$1,937,797	$62,203	$2,000,000
1996/97	69	$1,043,256	$1,018,947	$2,062,203	$-62,203	$2,000,000
1997/98	81	$1,348,500	$651,500	$2,000,000	$0	$2,000,000
1998/99	75	$2,720,441	$2,279,559	$5,000,000	$0	$5,000,000
1999/00	198	$3,764,283	$1,302,178	$5,066,461	$4,933,539	$10,000,000
2000/01	223	$5,320,890	$744,365	$6,065,255	$3,934,745	$10,000,000
2001/02	322	$9,484,489	$515,464	$9,999,953	$47	$10,000,000
2002/03	359	$8,914,456	$1,085,544	$10,000,000	$0	$10,000,000
2003/04	285	$8,622,769	$1,377,231	$10,000,000	$0	$10,000,000
2004/05	251	$8,051,618	$1,948,382	$10,000,000	$0	$10,000,000
2005/06	285	$9,558,883	$2,441,117	$12,000,000	$0	$12,000,000
10 YEAR TOTALS	**2,223**	**$59,295,127**	**$14,836,542**	**$74,131,669**	**$8,868,331**	**$83,000,000**

Source: Created from data provided by OTTED.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill may reduce the authority of municipalities and counties to raise revenues: the estimated reduction in Local Option Sales tax is $. 1 million in FY 2006–2007 and $.1 million in FY 2007–2008. However, this impact is considered to be insignificant, and the bill is therefore exempt from the provisions of s. 18(b) of Art. VII of the State Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Section 624.05(3), F.S., defines the term "office" to mean the Office of Insurance Regulation (OIR) of the Financial Services Commission for purposes of the Insurance Code. By striking s. 624.5105(2)(e)1., F.S., the reference to the Office of Tourism, Trade and Economic Development has been deleted so that the subsequent use of the term "office" in that section would refer to the OIR. Accordingly, the term "office" should be amended to read the "Office of Tourism, Trade and Economic Development."

Other Comments

Representatives of Habitat for Humanity have indicated their support of this legislation.[5]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment that:

- conforms the House bill to the Senate bill, correcting technical errors in the House bill and restoring current law applicable to credit applications and review processes;
- provides for two separate funding pools: one for projects that provide homeownership opportunities for low-income and very-low-income Floridians, capped at $10 million; and another for projects that provide enhance community development, capped at $3 million (a $1 million total increase from current law); and
- removes language the requires OTTED to reserve a portion of available credits in each pool for the first six months of the year and allow leftover credits to be transferred between pools.

[5] Correspondence from Steve Metz of Metz, Husband & Daughton, P.A., dated 3/10/2006, on file with the Local Government Council.

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to the community contribution tax credit
8 program; amending ss. 212.08, 220.183, and 624.5105, F.S.;
9 increasing the amount of available tax credits against the
10 sales tax, corporate income tax, and insurance premium
11 tax, respectively, for projects under the community
12 contribution tax credit program and providing separate
13 annual limitations for certain projects; revising
14 requirements and procedures for the Office of Tourism,
15 Trade, and Economic Development in granting tax credits
16 under the program; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Paragraph (q) of subsection (5) of section
21 212.08, Florida Statutes, is amended to read:
22 212.08 Sales, rental, use, consumption, distribution, and
23 storage tax; specified exemptions.--The sale at retail, the

24 rental, the use, the consumption, the distribution, and the
25 storage to be used or consumed in this state of the following
26 are hereby specifically exempt from the tax imposed by this
27 chapter.
28 (5) EXEMPTIONS; ACCOUNT OF USE.--
29 (q) Community contribution tax credit for donations.--
30 1. Authorization.--~~Beginning July 1, 2001,~~ Persons who are
31 registered with the department under s. 212.18 to collect or
32 remit sales or use tax and who make donations to eligible
33 sponsors are eligible for tax credits against their state sales
34 and use tax liabilities as provided in this paragraph:
35 a. The credit shall be computed as 50 percent of the
36 person's approved annual community contribution.~~;~~
37 b. The credit shall be granted as a refund against state
38 sales and use taxes reported on returns and remitted in the 12
39 months preceding the date of application to the department for
40 the credit as required in sub-subparagraph 3.c. If the annual
41 credit is not fully used through such refund because of
42 insufficient tax payments during the applicable 12-month period,
43 the unused amount may be included in an application for a refund
44 made pursuant to sub-subparagraph 3.c. in subsequent years
45 against the total tax payments made for such year. Carryover
46 credits may be applied for a 3-year period without regard to any
47 time limitation that would otherwise apply under s. 215.26.~~;~~
48 c. A person may not receive more than $200,000 in annual
49 tax credits for all approved community contributions made in any
50 one year.~~;~~

51 d. All proposals for the granting of the tax credit
52 require the prior approval of the Office of Tourism, Trade, and
53 Economic Development.~~,~~
54 e. The total amount of tax credits which may be granted
55 for all programs approved under this paragraph, s. 220.183, and
56 s. 624.5105 is $10 ~~$12~~ million annually for projects that
57 provide homeownership opportunities for low-income or very-low-
58 income households as defined in s. 420.9071(19) and (28) and $3
59 million annually for all other projects.~~; and~~
60 f. A person who is eligible to receive the credit provided
61 for in this paragraph, s. 220.183, or s. 624.5105 may receive
62 the credit only under the one section of the person's choice.
63 2. Eligibility requirements.--
64 a. A community contribution by a person must be in the
65 following form:
66 (I) Cash or other liquid assets;
67 (II) Real property;
68 (III) Goods or inventory; or
69 (IV) Other physical resources as identified by the Office
70 of Tourism, Trade, and Economic Development.
71 b. All community contributions must be reserved
72 exclusively for use in a project. As used in this sub-
73 subparagraph, the term "project" means any activity undertaken
74 by an eligible sponsor which is designed to construct, improve,
75 or substantially rehabilitate housing that is affordable to low-
76 income or very-low-income households as defined in s.
77 420.9071(19) and (28); designed to provide commercial,
78 industrial, or public resources and facilities; or designed to

79 improve entrepreneurial and job-development opportunities for
80 low-income persons. A project may be the investment necessary to
81 increase access to high-speed broadband capability in rural
82 communities with enterprise zones, including projects that
83 result in improvements to communications assets that are owned
84 by a business. A project may include the provision of museum
85 educational programs and materials that are directly related to
86 any project approved between January 1, 1996, and December 31,
87 1999, and located in an enterprise zone designated pursuant to
88 s. 290.0065. This paragraph does not preclude projects that
89 propose to construct or rehabilitate housing for low-income or
90 very-low-income households on scattered sites. With respect to
91 housing, contributions may be used to pay the following eligible
92 low-income and very-low-income housing-related activities:
93 (I) Project development impact and management fees for
94 low-income or very-low-income housing projects;
95 (II) Down payment and closing costs for eligible persons,
96 as defined in s. 420.9071(19) and (28);
97 (III) Administrative costs, including housing counseling
98 and marketing fees, not to exceed 10 percent of the community
99 contribution, directly related to low-income or very-low-income
100 projects; and
101 (IV) Removal of liens recorded against residential
102 property by municipal, county, or special district local
103 governments when satisfaction of the lien is a necessary
104 precedent to the transfer of the property to an eligible person,
105 as defined in s. 420.9071(19) and (28), for the purpose of

106 promoting home ownership. Contributions for lien removal must be
107 received from a nonrelated third party.
108 c. The project must be undertaken by an "eligible
109 sponsor," which includes:
110 (I) A community action program;
111 (II) A nonprofit community-based development organization
112 whose mission is the provision of housing for low-income or
113 very-low-income households or increasing entrepreneurial and
114 job-development opportunities for low-income persons;
115 (III) A neighborhood housing services corporation;
116 (IV) A local housing authority created under chapter 421;
117 (V) A community redevelopment agency created under s.
118 163.356;
119 (VI) The Florida Industrial Development Corporation;
120 (VII) A historic preservation district agency or
121 organization;
122 (VIII) A regional workforce board;
123 (IX) A direct-support organization as provided in s.
124 1009.983;
125 (X) An enterprise zone development agency created under s.
126 290.0056;
127 (XI) A community-based organization incorporated under
128 chapter 617 which is recognized as educational, charitable, or
129 scientific pursuant to s. 501(c)(3) of the Internal Revenue Code
130 and whose bylaws and articles of incorporation include
131 affordable housing, economic development~~,~~ or community
132 development as the primary mission of the corporation;
133 (XII) Units of local government;

134 (XIII) Units of state government; or
135 (XIV) Any other agency that the Office of Tourism, Trade,
136 and Economic Development designates by rule.
137
138 In no event may a contributing person have a financial interest
139 in the eligible sponsor.
140 d. The project must be located in an area designated an
141 enterprise zone or a Front Porch Florida Community pursuant to
142 s. 20.18(6), unless the project increases access to high-speed
143 broadband capability for rural communities with enterprise zones
144 but is physically located outside the designated rural zone
145 boundaries. Any project designed to construct or rehabilitate
146 housing for low-income or very-low-income households as defined
147 in s. 420.0971(19) and (28) is exempt from the area requirement
148 of this sub-subparagraph.
149 e.~~(I) For the first 6 months of the fiscal year, the~~
150 ~~Office of Tourism, Trade, and Economic Development shall reserve~~
151 ~~80 percent of the first $10 million in available annual tax~~
152 ~~credits and 70 percent of any available annual tax credits in~~
153 ~~excess of $10 million for donations made to eligible sponsors~~
154 ~~for projects that provide homeownership opportunities for low-~~
155 ~~income or very low income households as defined in s.~~
156 ~~420.9071(19) and (28). If any such reserved annual tax credits~~
157 ~~remain after the first 6 months of the fiscal year, the office~~
158 ~~may approve the balance of these available credits for donations~~
159 ~~made to eligible sponsors for projects other than those that~~
160 ~~provide homeownership opportunities for low income or very low-~~
161 ~~income households.~~

162 ~~(II) For the first 6 months of the fiscal year, the office~~
163 ~~shall reserve 20 percent of the first $10 million in available~~
164 ~~annual tax credits and 30 percent of any available annual tax~~
165 ~~credits in excess of $10 million for donations made to eligible~~
166 ~~sponsors for projects other than those that provide~~
167 ~~homeownership opportunities for low-income or very-low-income~~
168 ~~households as defined in s. 420.9071(19) and (28). If any~~
169 ~~reserved annual tax credits remain after the first 6 months of~~
170 ~~the fiscal year, the office may approve the balance of these~~
171 ~~available credits for donations made to eligible sponsors for~~
172 ~~projects that provide homeownership opportunities for low-income~~
173 ~~or very-low-income households.~~
174 (I) ~~(III)~~ If, during the first 10 business days of the
175 state fiscal year, eligible tax credit applications for projects
176 that provide homeownership opportunities for low-income or very-
177 low-income households as defined in s. 420.9071(19) and (28) are
178 received for less than the ~~available~~ annual tax credits
179 available for those projects ~~reserved under sub-sub-subparagraph~~
180 ~~(I)~~, the office shall grant tax credits for those applications
181 and shall grant remaining tax credits on a first-come, first-
182 served basis for any subsequent eligible applications received
183 before the end of the ~~first 6 months of the~~ state fiscal year.
184 If, during the first 10 business days of the state fiscal year,
185 eligible tax credit applications for projects that provide
186 homeownership opportunities for low-income or very-low-income
187 households as defined in s. 420.9071(19) and (28) are received
188 for more than the ~~available~~ annual tax credits available for
189 those projects ~~reserved under sub-sub-subparagraph (I)~~, the

190 office shall grant the tax credits for those ~~the~~ applications as
191 follows:
192 (A) If tax credit applications submitted for approved
193 projects of an eligible sponsor do not exceed $200,000 in total,
194 the credits shall be granted in full if the tax credit
195 applications are approved~~, subject to sub-sub-subparagraph (I)~~.
196 (B) If tax credit applications submitted for approved
197 projects of an eligible sponsor exceed $200,000 in total, the
198 amount of tax credits granted pursuant to sub-sub-sub-
199 subparagraph (A) shall be subtracted from the amount of
200 available tax credits ~~under sub-sub-subparagraph (I)~~, and the
201 remaining credits shall be granted to each approved tax credit
202 application on a pro rata basis.
203 ~~(C) If, after the first 6 months of the fiscal year,~~
204 ~~additional credits become available under sub-sub-subparagraph~~
205 ~~(II), the office shall grant the tax credits by first granting~~
206 ~~to those who received a pro rata reduction up to the full amount~~
207 ~~of their request and, if there are remaining credits, granting~~
208 ~~credits to those who applied on or after the 11th business day~~
209 ~~of the state fiscal year on a first-come, first-served basis.~~
210 (II)~~(IV)~~ If, during the first 10 business days of the
211 state fiscal year, eligible tax credit applications for projects
212 other than those that provide homeownership opportunities for
213 low-income or very-low-income households as defined in s.
214 420.9071(19) and (28) are received for less than the ~~available~~
215 annual tax credits available for those projects ~~reserved under~~
216 ~~sub-sub-subparagraph (II)~~, the office shall grant tax credits
217 for those applications and shall grant remaining tax credits on

218 a first-come, first-served basis for any subsequent eligible
219 applications received before the end of ~~the first 6 months of~~
220 the state fiscal year. If, during the first 10 business days of
221 the state fiscal year, eligible tax credit applications for
222 projects other than those that provide homeownership
223 opportunities for low-income or very-low-income households as
224 defined in s. 420.9071(19) and (28) are received for more than
225 the ~~available~~ annual tax credits available for those projects
226 ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant
227 the tax credits for those ~~the~~ applications on a pro rata basis.
228 ~~If, after the first 6 months of the fiscal year, additional~~
229 ~~credits become available under sub-sub-subparagraph (I), the~~
230 ~~office shall grant the tax credits by first granting to those~~
231 ~~who received a pro rata reduction up to the full amount of their~~
232 ~~request and, if there are remaining credits, granting credits to~~
233 ~~those who applied on or after the 11th business day of the state~~
234 ~~fiscal year on a first-come, first-served basis.~~
235 3. Application requirements.--
236 a. Any eligible sponsor seeking to participate in this
237 program must submit a proposal to the Office of Tourism, Trade,
238 and Economic Development which sets forth the name of the
239 sponsor, a description of the project, and the area in which the
240 project is located, together with such supporting information as
241 is prescribed by rule. The proposal must also contain a
242 resolution from the local governmental unit in which the project
243 is located certifying that the project is consistent with local
244 plans and regulations.

245 b. Any person seeking to participate in this program must
246 submit an application for tax credit to the office ~~of Tourism,~~
247 ~~Trade, and Economic Development~~ which sets forth the name of the
248 sponsor, a description of the project, and the type, value, and
249 purpose of the contribution. The sponsor shall verify the terms
250 of the application and indicate its receipt of the contribution,
251 which verification must be in writing and accompany the
252 application for tax credit. The person must submit a separate
253 tax credit application to the office for each individual
254 contribution that it makes to each individual project.
255 c. Any person who has received notification from the
256 office ~~of Tourism, Trade, and Economic Development~~ that a tax
257 credit has been approved must apply to the department to receive
258 the refund. Application must be made on the form prescribed for
259 claiming refunds of sales and use taxes and be accompanied by a
260 copy of the notification. A person may submit only one
261 application for refund to the department within any 12-month
262 period.
263 4. Administration.--
264 a. The Office of Tourism, Trade, and Economic Development
265 may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary
266 to administer this paragraph, including rules for the approval
267 or disapproval of proposals by a person.
268 b. The decision of the office ~~of Tourism, Trade, and~~
269 ~~Economic Development~~ must be in writing, and, if approved, the
270 notification shall state the maximum credit allowable to the
271 person. Upon approval, the office shall transmit a copy of the
272 decision to the Department of Revenue.

273 c. The office ~~of Tourism, Trade, and Economic Development~~
274 shall periodically monitor all projects in a manner consistent
275 with available resources to ensure that resources are used in
276 accordance with this paragraph; however, each project must be
277 reviewed at least once every 2 years.
278 d. The office ~~of Tourism, Trade, and Economic Development~~
279 shall, in consultation with the Department of Community Affairs~~,~~
280 ~~the Florida Housing Finance Corporation,~~ and the statewide and
281 regional housing and financial intermediaries, market the
282 availability of the community contribution tax credit program to
283 community-based organizations.
284 5. Expiration.--This paragraph expires June 30, 2015;
285 however, any accrued credit carryover that is unused on that
286 date may be used until the expiration of the 3-year carryover
287 period for such credit.
288 Section 2. Paragraph (c) of subsection (1) and paragraph
289 (b) of subsection (2) of section 220.183, Florida Statutes, are
290 amended to read:
291 220.183 Community contribution tax credit.--
292 (1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX
293 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM
294 SPENDING.--
295 (c) The total amount of tax credit which may be granted
296 for all programs approved under this section, s. 212.08(5)(q),
297 and s. 624.5105 is <u>$10</u> ~~$12~~ million annually <u>for projects that</u>
298 <u>provide homeownership opportunities for low-income or very-low-</u>
299 <u>income households as defined in s. 420.9071(19) and (28) and $3</u>
300 <u>million annually for all other projects</u>.

301 (2) ELIGIBILITY REQUIREMENTS.--
302 (b)1. All community contributions must be reserved
303 exclusively for use in projects as defined in s. 220.03(1)(t).
304 ~~2. For the first 6 months of the fiscal year, the Office~~
305 ~~of Tourism, Trade, and Economic Development shall reserve 80~~
306 ~~percent of the first $10 million in available annual tax~~
307 ~~credits, and 70 percent of any available annual tax credits in~~
308 ~~excess of $10 million, for donations made to eligible sponsors~~
309 ~~for projects that provide homeownership opportunities for low-~~
310 ~~income or very low income households as defined in s.~~
311 ~~420.9071(19) and (28). If any reserved annual tax credits remain~~
312 ~~after the first 6 months of the fiscal year, the office may~~
313 ~~approve the balance of these available credits for donations~~
314 ~~made to eligible sponsors for projects other than those that~~
315 ~~provide homeownership opportunities for low income or very low-~~
316 ~~income households.~~
317 ~~3. For the first 6 months of the fiscal year, the office~~
318 ~~shall reserve 20 percent of the first $10 million in available~~
319 ~~annual tax credits, and 30 percent of any available annual tax~~
320 ~~credits in excess of $10 million, for donations made to eligible~~
321 ~~sponsors for projects other than those that provide~~
322 ~~homeownership opportunities for low income or very low income~~
323 ~~households as defined in s. 420.9071(19) and (28). If any~~
324 ~~reserved annual tax credits remain after the first 6 months of~~
325 ~~the fiscal year, the office may approve the balance of these~~
326 ~~available credits for donations made to eligible sponsors for~~
327 ~~projects that provide homeownership opportunities for low income~~
328 ~~or very low income households.~~

329 2.~~4.~~ If, during the first 10 business days of the state
330 fiscal year, eligible tax credit applications for projects that
331 provide homeownership opportunities for low-income or very-low-
332 income households as defined in s. 420.9071(19) and (28) are
333 received for less than the ~~available~~ annual tax credits
334 available for those projects ~~reserved under subparagraph 2.~~, the
335 office shall grant tax credits for those applications and shall
336 grant remaining tax credits on a first-come, first-served basis
337 for any subsequent eligible applications received before the end
338 of the ~~first 6 months of the~~ state fiscal year. If, during the
339 first 10 business days of the state fiscal year, eligible tax
340 credit applications for projects that provide homeownership
341 opportunities for low-income or very-low-income households as
342 defined in s. 420.9071(19) and (28) are received for more than
343 the ~~available~~ annual tax credits available for those projects
344 ~~reserved under subparagraph 2.~~, the office shall grant the tax
345 credits for those ~~such~~ applications as follows:
346 a. If tax credit applications submitted for approved
347 projects of an eligible sponsor do not exceed $200,000 in total,
348 the credit shall be granted in full if the tax credit
349 applications are approved~~, subject to the provisions of~~
350 ~~subparagraph 2~~.
351 b. If tax credit applications submitted for approved
352 projects of an eligible sponsor exceed $200,000 in total, the
353 amount of tax credits granted under sub-subparagraph a. shall be
354 subtracted from the amount of available tax credits ~~under~~
355 ~~subparagraph 2.~~, and the remaining credits shall be granted to
356 each approved tax credit application on a pro rata basis.

357 ~~c. If, after the first 6 months of the fiscal year,~~
358 ~~additional credits become available pursuant to subparagraph 3.,~~
359 ~~the office shall grant the tax credits by first granting to~~
360 ~~those who received a pro rata reduction up to the full amount of~~
361 ~~their request and, if there are remaining credits, granting~~
362 ~~credits to those who applied on or after the 11th business day~~
363 ~~of the state fiscal year on a first-come, first-served basis.~~
364 3.~~5.~~ If, during the first 10 business days of the state
365 fiscal year, eligible tax credit applications for projects other
366 than those that provide homeownership opportunities for low-
367 income or very-low-income households as defined in s.
368 420.9071(19) and (28) are received for less than the ~~available~~
369 annual tax credits available for those projects ~~reserved under~~
370 ~~subparagraph 3.~~, the office shall grant tax credits for those
371 applications and shall grant remaining tax credits on a first-
372 come, first-served basis for any subsequent eligible
373 applications received before the end of the ~~first 6 months of~~
374 ~~the~~ state fiscal year. If, during the first 10 business days of
375 the state fiscal year, eligible tax credit applications for
376 projects other than those that provide homeownership
377 opportunities for low-income or very-low-income households as
378 defined in s. 420.9071(19) and (28) are received for more than
379 the ~~available~~ annual tax credits available for those projects
380 ~~reserved under subparagraph 3.~~, the office shall grant the tax
381 credits for those ~~such~~ applications on a pro rata basis. ~~If,~~
382 ~~after the first 6 months of the fiscal year, additional credits~~
383 ~~become available under subparagraph 2., the office shall grant~~
384 ~~the tax credits by first granting to those who received a pro~~

385 ~~rata reduction up to the full amount of their request and, if~~
386 ~~there are remaining credits, granting credits to those who~~
387 ~~applied on or after the 11th business day of the state fiscal~~
388 ~~year on a first-come, first-served basis.~~
389 Section 3. Paragraph (c) of subsection (1) and paragraph
390 (e) of subsection (2) of section 624.5105, Florida Statutes, are
391 amended to read:
392 624.5105 Community contribution tax credit; authorization;
393 limitations; eligibility and application requirements;
394 administration; definitions; expiration.--
395 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--
396 (c) The total amount of tax credit which may be granted
397 for all programs approved under this section and ss.
398 212.08(5)(q) and 220.183 is <u>$10</u> ~~$12~~ million annually <u>for</u>
399 <u>projects that provide homeownership opportunities for low-income</u>
400 <u>or very-low-income households as defined in s. 420.9071(19) and</u>
401 <u>(28) and $3 million annually for all other projects</u>.
402 (2) ELIGIBILITY REQUIREMENTS.--
403 (e)~~1. For the first 6 months of the fiscal year, the~~
404 ~~Office of Tourism, Trade, and Economic Development shall reserve~~
405 ~~80 percent of the first $10 million in available annual tax~~
406 ~~credits, and 70 percent of any available annual tax credits in~~
407 ~~excess of $10 million, for donations made to eligible sponsors~~
408 ~~for projects that provide homeownership opportunities for low-~~
409 ~~income or very-low income households as defined in s.~~
410 ~~420.9071(19) and (28). If any such reserved annual tax credits~~
411 ~~remain after the first 6 months of the fiscal year, the office~~
412 ~~may approve the balance of these available credits for donations~~

413 ~~made to eligible sponsors for projects other than those that~~
414 ~~provide homeownership opportunities for low-income or very-low-~~
415 ~~income households.~~
416 ~~2. For the first 6 months of the fiscal year, the office~~
417 ~~shall reserve 20 percent of the first $10 million in available~~
418 ~~annual tax credits, and 30 percent of any available annual tax~~
419 ~~credits in excess of $10 million, for donations made to eligible~~
420 ~~sponsors for projects other than those that provide~~
421 ~~homeownership opportunities for low-income or very-low-income~~
422 ~~households as defined in s. 420.9071(19) and (28). If any~~
423 ~~reserved annual tax credits remain after the first 6 months of~~
424 ~~the fiscal year, the office may approve the balance of these~~
425 ~~available credits for donations made to eligible sponsors for~~
426 ~~projects that provide homeownership opportunities for low-income~~
427 ~~or very-low-income households.~~
428 1.~~3.~~ If, during the first 10 business days of the state
429 fiscal year, eligible tax credit applications for projects that
430 provide homeownership opportunities for low-income or very-low-
431 income households as defined in s. 420.9071(19) and (28) are
432 received for less than the ~~available~~ annual tax credits
433 available for those projects ~~reserved under subparagraph 1.~~, the
434 office shall grant tax credits for those applications and shall
435 grant remaining tax credits on a first-come, first-served basis
436 for any subsequent eligible applications received before the end
437 of the ~~first 6 months of the~~ state fiscal year. If, during the
438 first 10 business days of the state fiscal year, eligible tax
439 credit applications for projects that provide homeownership
440 opportunities for low-income or very-low-income households as

441 defined in s. 420.9071(19) and (28) are received for more than
442 the ~~available~~ annual tax credits available for those projects
443 ~~reserved under subparagraph 1.~~, the office shall grant the tax
444 credits for those ~~the~~ applications as follows:
445 a. If tax credit applications submitted for approved
446 projects of an eligible sponsor do not exceed $200,000 in total,
447 the credits shall be granted in full if the tax credit
448 applications are approved~~, subject to subparagraph 1~~.
449 b. If tax credit applications submitted for approved
450 projects of an eligible sponsor exceed $200,000 in total, the
451 amount of tax credits granted under sub-subparagraph a. shall be
452 subtracted from the amount of available tax credits ~~under~~
453 ~~subparagraph 1.~~, and the remaining credits shall be granted to
454 each approved tax credit application on a pro rata basis.
455 ~~c. If, after the first 6 months of the fiscal year,~~
456 ~~additional credits become available under subparagraph 2., the~~
457 ~~office shall grant the tax credits by first granting to those~~
458 ~~who received a pro rata reduction up to the full amount of their~~
459 ~~request and, if there are remaining credits, granting credits to~~
460 ~~those who applied on or after the 11th business day of the state~~
461 ~~fiscal year on a first come, first served basis.~~
462 2.~~4.~~ If, during the first 10 business days of the state
463 fiscal year, eligible tax credit applications for projects other
464 than those that provide homeownership opportunities for low-
465 income or very-low-income households as defined in s.
466 420.9071(19) and (28) are received for less than the ~~available~~
467 annual tax credits available for those projects ~~reserved under~~
468 ~~subparagraph 2.~~, the office shall grant tax credits for those

469 applications and shall grant remaining tax credits on a first-
470 come, first-served basis for any subsequent eligible
471 applications received before the end of the ~~first 6 months of~~
472 ~~the~~ state fiscal year. If, during the first 10 business days of
473 the state fiscal year, eligible tax credit applications for
474 projects other than those that provide homeownership
475 opportunities for low-income or very-low-income households as
476 defined in s. 420.9071(19) and (28) are received for more than
477 the ~~available~~ annual tax credits available for those projects
478 ~~reserved under subparagraph 2.~~, the office shall grant the tax
479 credits for those ~~the~~ applications on a pro rata basis. ~~If,~~
480 ~~after the first 6 months of the fiscal year, additional credits~~
481 ~~become available under subparagraph 1., the office shall grant~~
482 ~~the tax credits by first granting to those who received a pro~~
483 ~~rata reduction up to the full amount of their request and, if~~
484 ~~there are remaining credits, granting credits to those who~~
485 ~~applied on or after the 11th business day of the state fiscal~~
486 ~~year on a first-come, first-served basis.~~
487 Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 951 Palm Beach County
SPONSOR(S): Vana
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Nelson	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 951 provides for the creation and establishment of the Town of Loxahatchee Groves in Palm Beach County. The bill provides a charter for the municipality which describes:

- the town boundaries;
- a council-manager form of government; municipal powers; the duties of the mayor and vice mayor;
- vacancies in office; grounds for forfeiture, suspension and removal; filling of vacancies;
- compensation and expenses; standards of conduct in office;
- appointment of charter officers, including a town manager and attorney;
- meetings; the fiscal year; annual budget and appropriations, and financial audits;
- adoption, distribution and recording of technical codes;
- nonpartisan elections;
- future charter amendments;
- a transitional schedule and procedures for the first election; first-year expenses; adoption of transitional ordinances, resolutions, comprehensive plan and local development regulations; an accelerated entitlement to state-shared revenues; gas tax revenues;
- continuation of the Palm Beach County Fire Rescue Municipal Service Taxing Unit;
- continuation of the Palm Beach County Library District;
- dissolution of the Palm Beach County Municipal Service Taxing Unit B;
- dissolution of the Palm Beach County Municipal Service Taxing Unit F;
- continuation of the Loxahatchee Groves Water Control District and Loxahatchee Groves Park;
- the repeal of a restriction on annexation within the Loxahatchee Groves Water Control District;
- waivers from certain statutory requirements; and
- that the act takes effect only upon a referendum.

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is $1,085,673 in FY 07-08, and $1,171,369 in FY 08-09. There will be an increase in property taxes of 1.5 mils for the incorporated area.

Pursuant to House Rule 5.5(b), a local bill providing an exception from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

If incorporation of the proposed municipality is approved, it will create an additional local government entity.

Ensure Lower Taxes

According to the Economic Impact Statement, there will be an increase in property taxes of 1.5 mils for the incorporated area.

B. EFFECT OF PROPOSED CHANGES:

Background

Constitutional Provisions

Section 2, Art. VII of the State Constitution provides that municipalities[1] may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The only specific constitutional requirement concerning municipal government is that its legislative body be elected.

Statutory Provisions

Florida law governing the formation and dissolution of municipal governments is found in ch. 165, F.S., the "Formation of Municipalities Act." The stated purpose of the Act is to provide standards, direction and procedures for the incorporation, merger and dissolution of municipalities so as to:

- allow orderly patterns of urban growth and land use;
- assure adequate quality and quantity of local public services;
- ensure financial integrity of municipalities;
- eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- promote equity in the financing of municipal services.

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met. [2]

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[1] A municipality is a local government entity, located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term "municipality" can be used interchangeably with the terms "city," "town" and "village."

[2] An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. In addition, the new municipality must meet the following conditions in the area proposed for incorporation pursuant to s. 165.061(1), F.S.:

1. It must be compact, contiguous and amenable to separate municipal government.
2. It must have a total population, as determined in the latest official state census, special census or estimate of population, of at least 1,500 persons in counties with a population of less than 75,000, and of at least 5,000 persons in counties with a population of more than 75,000.
3. It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
4. It must be a minimum distance of at least two miles from the boundaries of an existing municipality within the county or have an extraordinary natural boundary that requires separate municipal government.
5. It must have a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.
6. In accordance with s. 10, Art. I of the State Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

Feasibility Study

The feasibility study is a survey of the proposed area to be incorporated. The purpose of the study is to enable the Legislature to determine whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. The feasibility study must be completed and submitted to the Legislature at least 90[3] days prior to the first day of the regular legislative session during which the municipal charter would be enacted.

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

1. The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
2. The major reasons for proposing the boundary change.
3. The following characteristics of the area:
   - a list of the current land use designations applied to the subject area in the county comprehensive plan;
   - a list of the current county zoning designations applied to the subject area;
   - a general statement of present land use characteristics of the area;
   - a description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
4. A list of all public agencies, such as local governments, school districts and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
5. A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each service.

[3] Section 165.041(1)(b), F.S.

6. A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
7. The names and addresses of three officers or persons submitting the proposal.
8. Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
   - existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate; and
   - a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance and budgets.
9. Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations and an explanation concerning methodologies used for such analysis.
10. Evaluation of the alternatives available to the area to address its policy concerns.
11. Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S.

Section 165,081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiori if the appeal is brought before the effective date of the incorporation.

Formation Activity In Florida

Municipal Incorporations and Mergers

From 1972 to the present, 25 municipalities have been incorporated, with 17 municipalities created by special act (Bonita Springs, DeBary, Deltona, Destin, Ft. Myers Beach, Islamorada, Jacob City, Lake Mary, Marathon, Marco Island, Midway, Palm Coast, Sanibel, Southwest Ranches, Wellington, West Park and Weston). During this time, one municipality was recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Pinecrest, Aventura, Sunny Isles Beach, Miami Lakes, Palmetto Bay, Doral and Cutler Bay were created under the charter provisions of Miami-Dade County's Charter. The following table indicates recent municipal incorporations by year, county and enabling law.

YEAR	MUNICIPALITY	COUNTY	ENABLING LAW
1973	LAKE MARY	Seminole County	ch. 73-522, L.0.F.
1974	SANIBEL	Lee County	ch. 74-606, L.O.F.
1983	JACOB CITY	Jackson County	ch. 83-434, L.O.F. ch. 84-456, L.O.F.
1984	DESTIN	Okaloosa County	ch. 84-422, L.O.F. ch. 85-471, L.O.F.
1986	MIDWAY	Gadsden County	ch. 86-471, L.O.F.
1991	KEY BISCAYNE	Miami-Dade County	by authority of the Miami-Dade County Charter
1993	DEBARY	Volusia County	ch. 93-351, L.O.F. ch. 93-363, L.O.F.
1995	AVENTURA	Miami-Dade County	by authority of the Miami-Dade County Charter

1995	PINECREST	Miami-Dade County	by authority of the Miami-Dade County Charter
1995	FT. MYERS BEACH	Lee County	ch. 95-494, L.O.F.
1995	DELTONA	Volusia County	ch. 95-498, L.O.F.
1995	WELLINGTON	Palm Beach County	ch. 95-496, L.O.F.
1996	WESTON	Broward County	ch. 96-472, L.O.F.
1997	ISLAMORADA	Monroe County	ch. 97-348, L.O.F.
1997	MARCO ISLAND	Collier County	ch. 97-367, L.O.F.
1997	SUNNY ISLES BEACH	Miami-Dade County	by authority of the Miami-Dade County Charter
1999	BONITA SPRINGS	Lee County	ch. 99-428, L.O.F.
1999	MARATHON	Monroe County	ch. 99-427, L.O.F.
1999	PALM COAST	Flagler County	ch. 99-448, L.O.F.
2000	SOUTHWEST RANCHES	Broward County	ch. 2000-475, L.O.F.
2000	MIAMI LAKES	Miami-Dade County	by authority of the Miami-Dade County Charter
2002	PALMETTO BAY	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	DORAL	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	MIAMI GARDENS	Miami-Dade County	by authority of the Miami-Dade County Charter
2004	WEST PARK	Broward	ch. 2004-454, L.O.F.
2005	CUTLER BAY	Miami-Dade County	by authority of the Miami-Dade County Charter

Failed Attempts at Municipal Incorporation

Over the years, a number of incorporation attempts have failed. Since 1980, Floridians have rejected the formation of municipal governments by voting down the incorporation efforts of:

- A city in the Halifax area of Volusia County (1985) (ch. 85-504, L.O.F.)

- The City of Fort Myers Beach (1982/1986)
  (chs. 82-295 and 86-413, L.O.F.)

- The City of Spring Hill (1986)
  (ch. 86-463, L.O.F.)

- The City of Deltona Lakes (1987)
  (ch. 87-449, L.O.F.)

- The City of Deltona (1990)
  (ch. 90-410, L.O.F.)

- The City of Marco Island (1980/1982/1986/1990/1993)
  (chs. 80-541, 82-330, 86-434, 90-457 and 93-384, L.0.F.)

- The City of Port LaBelle (1994)
  (ch. 94-480, L.O.F.)

- The City of Destin (1995)
  (by authority of the Miami-Dade County Charter)

- The City of Ponte Vedra (1998)
  (ch. 98-534, L.O.F.)

- The Village of Key Largo (1999)
  (ch. 99-430, L.O.F.)

- The City of Southport (1999)
  (ch. 99-444, L.O.F.)

- The Village of the Lower Keys (2000)
  (ch. 2000-383, L.O.F.)

- The Village of Paradise Islands (2000)
  (ch. 2000-382, L.O.F.)

Municipal Mergers

A few previously existing cities have been incorporated through mergers with other cities. Examples include:

- In Brevard County, the merger of Eau Gallie with Melbourne (chs. 67-1156, 69-879 and 70-807, L.O.F.) and the merger of the Town of Whispering Hills Golf Estates with the City of Titusville (chs. 59-1991 and 63-2001, L.O.F.).
- In Pinellas County, the merger of Pass-A-Grille Beach with the City of St. Petersburg Beach (ch. 57-1814, L.O.F.).
- In Bay County, the merger of Longbeach Resort and Edgewater Gulf Beach with the City of Panama City Beach (chs.67-2174 and 70-874, L.O.F.).

Municipal Dissolutions

During the last several decades, numerous cities have been dissolved:

- Bithlo in Orange County by authority of the Secretary of State in January 1977;

- Bayview in Bay County by ch. 77-501, L.O.F.;
- Munson Island in Monroe County by ch. 81-438, L.O.F.;
- Painters Hill in Flagler County by ch. 81-453, L.O.F.;
- Hacienda Village in Broward County by ch. 84-420, L.O.F.;
- Pennsuco in Miami-Dade County under authority of the Miami-Dade County Charter;
- Golfview in Palm Beach County by ch. 97-329, L.O.F.; and
- North Key Largo by ch. 2003-318, L.O.F.

HB 951

HB 951 provides for the creation and establishment of the Town of Loxahatchee Groves, contingent upon approval by a majority vote of qualified electors residing within the corporate limits of the proposed city. Loxahatchee Groves is a rural community in Palm Beach County. Its boundaries are established by the Loxahatchee Groves Water Control District, and total 8,148 acres. There are approximately 3,122 residents of the area.

The bill provides that these residents are experiencing certain impacts, such as the destruction of rural habitats and threats to their equestrian, farming and nursery businesses, resulting from urbanization in the surrounding areas. Subsequently, through the incorporation of the town, the residents seek to control the effects of those impacts and to preserve the character of the area.

This proposed incorporation was the subject of HB 1339 in the 2005 Legislative Session. The bill favorably passed the Local Government Council as a Committee Substitute, which died in the Committee on Finance & Tax.

Feasibility Study

A feasibility study on the creation of the Town of Loxahatchee Groves was submitted to the Florida House of Representatives on October 19, 2005. The Local Government Council requested a review of this study from the:

- Legislative Committee on Intergovernmental Relations;
- Office of Economic & Demographic Research;
- Department of Revenue; and
- Department of Community Affairs.

The responses of these reviewers are noted in "Comments" in Section III C. of this analysis.

Town Charter

The proposed charter for the Town of Loxahatchee Groves is included in the bill, and provides as follows:

Section 1: Charter; creation; form of government; boundary and powers.

(1) Charter; creation:
   a. Provides that the act, together with future amendments, is the charter for the Town of Loxahatchee Groves, and creates the municipality.
   b. States that the area includes a compact and contiguous rural community of approximately 3,120 persons.
   c. Provides that it is in the best interests of the public health, safety and welfare of the residents of the area to form a separate municipality.
   d. Provides that it is intended that the charter and incorporation will serve to preserve and protect the distinctive rural characteristics of the community.

e. Provides that it is the intent of the charter and incorporation to secure the benefits of self-determination, and affirm the values of representative democracy, citizen participation, strong community leadership, professional management and regional cooperation.

(2) Form of government: Provides that the town will have a "council-manager" form of government.

(3) Corporate boundaries: Provides a legal description of the town's boundaries. Provides that the town will not annex the area known as "Callery-Judge Groves."

(4) Municipal powers: Provides that the town will be a body corporate and politic and will have all governmental, corporate and proprietary powers of a municipality under the State Constitution and laws of the state; provides that the charter and powers of the town will be construed liberally in favor of the town; provides a statement of recognition that certain services within the proposed municipal boundaries are provided by independent special districts and by Palm Beach County.

Section 2: Council; mayor and vice mayor.

(1) Town council: Provides for a five-member town council elected at large who are vested with all legislative and charter powers of the town, unless otherwise provided by the charter.

(2) The mayor; powers and duties: Provides for the election of a mayor by the council at its first regular meeting after the fourth Tuesday of each March who will serve a one-year term; provides that the mayor will preside at council meetings and be recognized as the head of town government for service of process, ceremonial matters and the signature or execution of ordinances, contracts, deeds, bonds and other instruments, and for purposes of military law; provides that the mayor also will serve as the ceremonial head of the town and the town official designated to represent the town.

(3) The vice mayor: Provides for the election of a vice mayor by the council at its first regular meeting after the fourth Tuesday of each March who will serve a one-year term; provides that the vice mayor serve as acting mayor during the absence or disability of the mayor; provides that in the absence of the mayor and the vice mayor, the remaining council members will select an acting mayor.

Section 3: Election and terms of office.

(1) Term of office: Provides that each council member will serve three-year terms; provides that council members will be sworn into office at the first regularly scheduled meeting following their election; provides that each council member will remain in office until his or her successor is elected and assumes the position.

(2) Seats: Provides that the town council will be divided into five separate council seats, with each qualified elector entitled to vote for one candidate for each seat.

(3) Qualification: Provides that candidates for council seats must qualify for election in accordance with applicable general law; provides that to qualify for office, each candidate must:

- file a written notice of candidacy with the town clerk and submit payment of any fees required by general law;
- be a registered elector in the state;
- have maintained domicile within the boundaries of the town for a period of one year prior to qualifying for election and, if elected, maintain such residency throughout the term of office; and
- qualify with the town clerk no sooner than noon on the last Tuesday in January nor later than noon on the first Tuesday in February in the year of the election.

(4) Vacancies in office; forfeiture; suspension; filling of vacancies: Provides that vacancies in office will occur upon the death of an incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, a judicial determination of incompetence or forfeiture of office; provides that any council member will

forfeit his or her office upon determination by the council at a public meeting that the member: lacks any qualification for office, has been convicted of a felony or entered a plea of guilty or nolo contendere, is found to have violated the Code of Ethics for Public Officers and Employees and has been suspended from office by the Governor, or has been absent from three consecutive regular council meetings without good cause; provides that the council will be the sole judge of the qualifications of its members, and that a member whose qualifications are in question will be entitled to a public hearing; provides that any council member will be suspended from office upon return of an indictment or issuance of any information charging the council member with a felony or any crime arising out of his or her official duties which is a misdemeanor; provides that during suspension, a council member may not perform any official acts or receive any payment; provides that if the suspension is lifted the council member is entitled to full back pay; provides that if any vacancy occurs and the remainder of the member's unexpired term is less than one year and 81 days, the council members will appoint a person by majority vote to fill the term within 30 days; provides that if a vacancy occurs and the remainder of the unexpired term is equal to or exceeds one year and 81 days, the remaining members will appoint a person to fill the vacancy by majority vote until the next regularly scheduled town election; provides that if a vacancy occurs in the office of the mayor and less than 120 days remain in the term of the member that the vice mayor will serve as mayor until a new mayor is elected; provides that if a vacancy occurs in the office of mayor and 120 days or more remain in the term that the vice mayor will serve as mayor until a new council member is elected, and the council elects a new mayor and vice mayor; provides that persons appointed to fill vacant seats meet the required qualifications of that seat; provides that if at any time the full membership of the council is reduced to less than a quorum, the remaining members may appoint additional members by majority vote; provides that in the event that all council members are removed, the Governor shall appoint interim council members who will call a special election not less than 30 days or more than 60 days after such appointment; provides that if there are fewer than six months remaining in the unexpired terms, the interim appointed council will serve out the unexpired terms; provides that council members are entitled to receive reimbursement in accordance with general law for authorized travel and per diem expenses incurred in the performance of their official duties; provides that the council may elect for compensation and an increase in compensation by ordinance, but that any such ordinance will not take effect until the commencement of the terms of council members elected at the next regular election.

Section 4: Administrative.

(1) Designation of charter officers: Provides that the town manager and attorney are designated as charter officers, and that the office of town attorney may be contracted to an attorney or law firm.

(2) Appointment; removal; compensation; filling of vacancies: Provides that charter officers are appointed by a majority vote of the full council and serve at their pleasure; provides that charter officers can be removed from office only by a super majority vote of the full council; provides that the compensation of charter officers shall be fixed by the town council by contract; provides that the town council begin the process to fill a vacancy in a charter office within 90 days after such vacancy; provides for the appointment of an acting town manager or attorney during a vacancy; provides that a charter officer may not be a member of or candidate for the town council.

(3) Town manager: Provides that the town manager will be the chief administrative officer of the town under the direction of the town council, and that he or she be appointed by a resolution approving an employment contract; provides for minimum qualifications for the town manager; provides for the designation of an "acting town manager" to execute the functions of the town manager in his or her absence; provides for the powers and duties of the town manager.

(4) Town attorney: Provides for a town attorney to be employed under the terms and conditions deemed advisable by the council; provides for the qualifications for the town attorney; provides that the town attorney may appoint assistant town attorneys; provides for functions to be performed by the town attorney.

(5) Town clerk: Provides for the appointment of a town clerk by the town manager, and provides for his or her duties.

(6) Expenditure of town funds: Provides that no funds of the town be expended except pursuant to duly approved appropriations, or for the payment of debts authorized by the council and from authorized funds.

(7) Town boards and agencies: Provides that the council may establish or abolish any boards and agencies as it deems advisable, and appoint members by resolution.

Section 5: Legislative.

(1) Regular meetings: Provides that the council conduct regular, public meetings at such times and places as it prescribes by resolution.

(2) Special meetings: Provides that special meetings may be held at the call of the mayor or the request of a majority of council members; provides for at least 72 hours notice of the meeting, unless an emergency exists.

(3) Commencement: Provides that meetings are to start no earlier than 7 a.m. or later than 10 p.m.

(4) Rules; order of business: Provides that the council determine its own rules and order of business.

(5) Quorum: Provides that a majority of the full council constitutes a quorum.

(6) Validity of action: Provides that actions of the council be adopted by a majority of the full council to be valid.

(7) Legislative powers: Provides that the legislative powers of the town be vested in the council.

(8) Departments: Provides that the council may establish departments, offices or agencies by ordinance.

(9) Code: Provides that the council may adopt any standard code of technical regulations by reference in an ordinance.

(10) Emergency ordinances: Provides that the council may adopt one or more emergency ordinances in the manner provided by general law to meet a public emergency affecting life, health, property or the public peace; provides that an emergency ordinance may be adopted by the affirmative vote of four council members; provides that emergency ordinances become effective upon adoption; provides that every emergency ordinance is automatically repealed 61 days following its effective date.

(11) Emergency appropriations: Provides that the council may make emergency appropriations by resolution to meet a public emergency affecting life, health, property or the public peace.

(12) Recordkeeping: Provides that the council provide for the recording of all minutes or meetings and all ordinances and resolutions adopted by the council.

(13) Dual office holding: Provides that no elected town official hold any compensated appointive office or employment of the town while in office; provides that former council members may not be employed by the town until a year after leaving office.

(14) Noninterference by town council: Provides that council members are prohibited from interfering with the performance of the duties of any town employee who is under the supervision of the town manger or attorney, and that such action constitutes malfeasance within the meaning of s. 112.51, F.S.

Section 6: Budget and appropriations.

(1) Fiscal year: Provides that the town's fiscal year is from October 1-September 30 unless otherwise defined by general law.

(2) Budget adoption: Provides that the council adopt a budget in accordance with general law, following a minimum of two public hearings; provides that a resolution adopting the budget constitute appropriation of the amounts specified therein as expenditures from the indicated funds.

(3) Expenditures: Provides that the budget shall not provide for expenditures in an amount greater than the budgeted revenues.

(4) Appropriations: Provides that if excess revenues become available the council may make supplemental appropriations; provides for remedial action, if revenues appear to be insufficient; provides that no appropriation for debt service may be reduced or transferred.

(5) Bonds; indebtedness: Provides that the town may borrow money and issue bonds; provides that bonds may be issued pursuant to resolutions adopted by a majority of the council; provides that the town may assume all outstanding indebtedness relating to facilities it acquires from other units of local government.

(6) Revenue bonds; lease-purchase contracts: Provides that the council shall not authorize the issuance of revenue bonds or enter into lease-purchase contracts or any other unfunded multiyear contracts for the purchase of real property or a capital improvement which would take in excess of 36 months to repay, unless authorized by the electors, or mandated by state or federal governing agencies.

(7) Annual audit: Requires that the council provide for an independent annual financial audit of all town accounts.

Section 7: Elections.

(1) Electors: Provides that a town elector is a resident who has qualified as an elector of the state, and registers.

(2) Nonpartisan elections: Provides that town council member elections be nonpartisan.

(3) Election dates: Provides that a special election will be held on the second Tuesday in March 2007, and regular elections will be held on the second Tuesday in March of each election year; provides for staggered offices based on the number of votes a member receives when first elected; provides that such town elections are general town elections.

(4) Runoff Elections: Provides that if no candidate receives a majority of votes, the person receiving the largest number of votes cast will be elected; provides that if two candidates receive an equal number of votes, a runoff election is held on the fourth Tuesday in March.

(5) Town canvassing board: Provides for a town canvassing board composed of those members of the town council who are not candidates for reelection, and the town clerk.

(6) Special elections: Provides for special municipal elections to be held in the same manner as regular elections.

(7) General elections: Provides that the ballot for general elections will contain the names of all qualified candidates for each seat, and that the candidate for each seat receiving the most votes will be elected; provides that no election will be required if there is only one qualified candidate for a seat; provides that if more than one candidate receives an equal and highest number of votes, there will be a runoff election; provides that the candidate receiving the highest number of votes in the runoff election will be elected to the seat; provides that if the runoff election results in a tie, the outcome will be determined by lot; provides that terms of office commence immediately after the election; provides for an oath to be taken by all elected officers; provides that the election laws of the state will apply to all elections; provides that any member of the town council may be removed from office by the town electors following the procedures for recall established by general law.

Section 8: Initiative and referendum.

(1) Power to initiate and reconsider ordinances: Provides that the electors of the town have the power to propose ordinances to the town council, and to adopt such an ordinance at a town election if the council fails to adopt the ordinance, as long as the ordinance does not apply to the budget, capital program, the levy of taxes or the setting of salaries; provides that the council has the power to call for a referendum by resolution at any time provided that the purpose of the referendum is presented to the town at a public hearing at least 60 days prior to the adoption of the resolution; provides that the electors of the town have the power to require the town council to reconsider any adopted ordinance as long as the ordinance does not apply to the budget, capital program, the levy of taxes or the setting of salaries.

(2) Commencement of proceedings: Provides that any 10 electors may commence initiative or referendum proceedings by filing an affidavit with the town clerk, who will issue appropriate petition blanks.

(3) Petitions: Provides that initiative and referendum petitions must be signed by at least 10 percent of the total number of electors registered to vote in the last regular town election; provides that each signature on a petition be in ink and followed by the printed name and address of the person signing; provides that the circulator of petitions certify the authenticity of signatures; provides that initiative and referendum petitions be filed within 60 days of the date on which proceedings with respect to such initiative or referendum are commenced, and that the submission of signatures be completed no later than 90 days following the date of filing such petition.

(4) Procedure for filing: Provides that within 20 days after a petition is filed that the town clerk complete a certificate as to its sufficiency or insufficiency; provides that a petition certified insufficient for lack of the required number of valid signatures may be amended once if certain conditions are met; provides that the town council will review insufficient petitions if certain conditions are met.

(5) Action on petitions: Provides that when a petition is sufficient, the town council will consider the ordinance at issue; provides for the submission of the ordinance to the electors of the town if the council fails to act in a specified number of days; provides for the submission of the ordinance to the electors; provides for the withdrawal of petitions any time prior to the 15th day preceding the day the election is scheduled.

(6) Results of elections: Provides that, if a majority of the electors vote in favor of an ordinance, it will be considered adopted upon certification of election results; provides that if a majority of the electors vote against an ordinance that it will be considered repealed upon certification of election results.

Section 9: General provisions.

(1) Severability: Provides for severability of provisions.

(2) Town personnel system: Provides that all new employments, appointments and promotions of town officers and employees be made pursuant to personnel procedures to be established by the town manager.

(3) Charitable contributions: Prohibits the town from making any charitable contributions unless authorized by the council.

(4) Variation of pronouns: Provides for the use of pronouns within the charter.

(5) Calendar day: Provides that for purposes of the charter, the term "day" means a calendar day.

(6) Charter review committee: Provides that the town council appoint a charter review committee (consisting of 15 individuals who are not members of the town council) to serve in an advisory capacity to the town council at its first regular meeting in March 2012 and every 10th year thereafter.

(7) Charter amendments: Provides that the charter may be amended in accordance with general law.

(8) Initiation by petition: Provides that the electors of the town may propose amendments to the charter by petition.

(9) Standards of conduct: Provides that all elected officials and employees of the town are subject to the Code of Ethics for Public Officers and Employees; provides that the council will establish its own code of ethics by ordinance no later than six months from the effective date of the corporation; provides that the intent of the subsection is to require more stringent standards than those provided under general law.

(10) Land use, rezoning: Provides that changes to the town's future land use map or any change to the zoning designation for any parcel within the town shall require the affirmative vote of no less than four members of the town council.

Section 10: Transition schedule.

(1) Referendum: Provides that the Palm Beach County Commission will hold the referendum election for considering the incorporation of the Town of Loxahatchee Groves on October 10, 2006.

(2) Initial election of council members; dates: Provides that following the adoption of the charter, the Palm Beach County Commission will call a special election for the election of the town council members to be held on March 13, 2007; provides for, if necessary, a runoff election to be held on March 27, 2007; provides that any individual who wants to run for the council must qualify as a candidate with the Palm Beach County Supervisor of Elections; provides for the Palm Beach County Commission to appoint a canvassing board to certify the results of the election; provides that those individuals who are elected will take office at the initial town meeting to be held at 7 p.m. on March 29, 2007.

(3) Creation and establishment of the town: Provides that for the purpose of compliance with s. 200.066, F.S., relating to assessment and collection of ad valorem taxes, the town is created effective November 1, 2006, although it will not be operational until March 30, 2007.

(4) First year expenses: Provides that the town council will have the power to borrow the money necessary for the operation of the town until a budget is adopted and revenues are raised.

(5) Transitional ordinances and resolutions: Provides that all applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced herein, will remain in place until and unless rescinded by action of the town council, except that a county ordinance, rule or regulation which is in conflict with an ordinance, rule or regulation of the town shall not be effective to the extent of such conflict; provides that any existing county ordinances, rules and regulations as of October 12, 2006, shall not be altered, changed, rescinded or added to, nor shall any variance be granted insofar as such action would affect the town without the approval of the town council.

(6) Temporary emergency ordinances: Requires the town council to adopt transitional ordinances and resolutions; provides that ordinances adopted within 60 days after the first council meeting may be passed as emergency ordinances; provides that these ordinances shall be effective for no longer than 90 days after adoption and thereafter may be readopted, renewed or otherwise continued only in the manner normally prescribed for ordinances.

(7) Transitional comprehensive plan and land development regulations: Provides that until the town adopts a comprehensive plan, all applicable provisions of the Comprehensive Plan and Land Development Regulations of the county will remain in effect; provides that all planning functions, duties and authority will rest in the town council; provides that the council will be deemed the local planning agency until it establishes a separate local planning agency; provides that after the passage of the act, no amendment of the comprehensive plan or land development regulations enacted by the Palm Beach County Commission will take effect within the town's

corporate limits; provides that the owner or assigns of the 97+/- acre property located at the northwest corner of B-Road and Southern Boulevard, commonly known as the "Simon property," have applied for a land use change through the Palm Beach County comprehensive plan amendment process (LGA 2004-00037), and that this parcel and it owners and assigns will remain subject to the county comprehensive plan and approval process until such time as the town adopts its own comprehensive plan; provides that in the event that the town initiates a review and approval process in a timeframe that is faster than presently expected, the owner or assigns of the Simon property may elect to go through the town's zoning approval process.

(8) State shared revenues: Provides that the town will be entitled to participate in all shared revenue programs of the state available to municipalities effective immediately on the date of incorporation; provides that the provisions of s. 218.23(1), F.S, will be waived for the purpose of eligibility to receive revenue sharing funds from the date of the incorporation through the state fiscal year 2009-2010; provides that initial population estimates for calculating eligibility for shared revenue be determined by the University of Florida Bureau of Economic and Business Research; provides for the Palm Beach County Planning Division estimate to be used if the bureau is unable to provide an appropriate population estimate; provides that for the purposes of qualifying for revenue sharing, the following revenue sources be considered: municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communication services tax and franchise fees.

(9) Gas tax revenues: Provides that the town will be entitled to receive local gas tax revenues beginning October 1, 2007.

(10) Waiver: Provides that the provisions of s. 218.23(1), F.S., be waived for the purpose of conducting audits and financial reporting through fiscal year 2007-2008

Section 11: Continuation, merger, and dissolution of existing districts and service providers.

(1) Palm Beach County Fire Rescue Municipal Service Taxing Unit; continuation: Provides that the Palm Beach County Fire Rescue Municipal Service Taxing Unit, a special taxing district, is authorized to continue in existence within the boundaries of the town until the town adopts an ordinance to the contrary; provides that the town will not establish a fire department without a referendum.

(2) Law Enforcement: Provides that law enforcement services will be provided by contract with the Palm Beach County Sheriff's Office, or contracted with other law enforcement agencies, until the town adopts an ordinance to the contrary; provides that the town will not establish a police department without a referendum.

(3) Palm Beach County Library District: Provides that that portion of the Palm Beach County Library District, a dependent district of Palm Beach County that lies within the town, is authorized but not required to continue in existence; provides that, in order to be excluded from the library district, the town must establish a municipal tax-funded library.

(4) Palm Beach County Municipal Service Taxing Unit B: Provides that the portion of the Palm Beach County Municipal Service Taxing Unit B, a dependent district of Palm Beach County that lies within the boundaries of the town, will cease to exist within the municipal boundaries of the town on October 10, 2006.

(5) Palm Beach County Municipal Service Taxing Unit F: Provides that the portion of the Palm Beach County Municipal Service Taxing Unit F, a dependent district of Palm Beach County that lies within the boundaries of the town, will cease to exist within the municipal boundaries of the town on October 10, 2006.

(6) Loxahatchee Groves Water Control District; continuation: Provides that the Loxahatchee Groves Water Control District is authorized to continue in existence.

(7) Loxahatchee Groves Park: Provides that the Loxahatchee Groves Park will continue to be operated by the Palm Beach County Department of Parks and Recreation; provides that all planned improvements to the park be subject to the approval to the town, but remain the responsibility of Palm Beach County.

Section 12: Repeal.

Provides that section 6 of s. 2 of ch. 99-425, L.O.F., is repealed. Chapter 99-425, L.O.F., is the codification of the Loxahatchee Groves Water Control District, and the section that the incorporators seek to repeal provides that no land within the boundaries of the district, except for certain property which is legally described, may be annexed by any municipality unless the municipality agrees to annex all of the real property composing the district.

Section 13: Waivers.

Provides that waivers to the following thresholds for municipal incorporation established by s. 165.061, F.S., are granted:

(1) A minimum population of 5,000 as required by s.165.061(1)(b), F.S.;

(2) A minimum density of 1.5 persons per acre as required by s.165.061(1)(c), F.S.; and

(3) A minimum distance of two miles from an existing municipality as required by s.165.061(1)(d), F.S.

Section 14: Effective date.

Provides that the act take effect upon approval of a majority of qualified electors residing within the proposed corporate limits of the proposed town voting in a referendum to be called by the Board of County Commissioners of Palm Beach County to be held on October 10, 2006, except that s. 10(1) and this section will take effect upon the act becoming law.

D. SECTION DIRECTORY:

Section 1: Provides for corporate existence; form of government; boundary and powers.

Section 2: Provides for town; mayor and vice mayor.

Section 3: Provides for council members, elections and terms of office.

Section 4: Provides for town manager and attorney; appointment; removal; compensation; filling of vacancies; expenditure of town funds; town boards and agencies.

Section 5: Provides for town council meetings and powers.

Section 6: Provides for town budget and appropriations.

Section 7: Provides for town elections.

Section 8: Provides for initiative petitions and referendum.

Section 9: Provides general provisions.

Section 10: Provides a transition schedule.

Section 11: Provides for continuation, merger and dissolution of existing districts and service providers.

Section 12: Provides for repeal of section 6 of s. 2 of ch. 99-425, L.O.F.

Section 13: Provides for waivers from s. 165.061, F.S.

Section 14: Provides for effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [] No [x]

IF YES, WHEN?

WHERE?

Note: Section 10 of Art. III, of the State Constitution provides: No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. **Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.**

B. REFERENDUM(S) REQUIRED? Yes [x] No []

IF YES, WHEN? October 10, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is $1,085,673 in FY 07-08, and $1,171,369 in FY 07-09. The anticipated sources of funding are as follows:

		FY 07-08	FY 08-09
State:	Revenue Sharing	$71,915	$79,106
	Half Cent Sales Tax	$238,350	$250,268
Local:	Ad Valorem Taxes	$505,749	$558,853

The EIS also states that the incorporation will have little impact on Palm Beach County because current county services will be kept at the same level of service and the area at issue accounts for less than .2 percent of the population of the county. There will be an increase in property taxes of 1.5 mils for the incorporated area.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, C. DRAFTING ISSUES OR OTHER COMMENTS, on the following page.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Lines 479 and 482 mention recognition and certification by an "International City Manager Association." This should read "International City/County Management Association."

Lines 1122-1133 of the bill relate to transitional ordinances and resolutions. This section contemplates the rescinding of county ordinances by the town council, and provides that county ordinances will not be effective in the town to the extent of any conflict. This section should be amended to recognize that the Charter of Palm County[4] provides at Sec. 1.3, Scope of County Ordinances, that municipal ordinances shall prevail over county ordinances to the extent of any conflict, regardless of the time of passage of the municipal ordinances, except that county ordinances shall prevail over conflicting municipal ordinances:

> 1. In matters relating to the protection of wells and well fields within the parameters set forth in Section 3.3 of the Charter.
>
> 2. In matters relating to school, County-owned beaches, district parks and regional parks, solid waste disposal, County law enforcement, and impact fees collected for County road programs and public buildings; and in matters related to County fire-rescue impact fees and County library impact fees in those municipalities whose properties are taxed by the County for library and/or fire-rescue services, respectively.
>
> 3. For the adoption and amendment of the countywide land use element adopted in accordance with Article VII of the Charter, "Countywide Planning Council."
>
> 4. In matters relating to the establishment of levels of service for collector and arterial roads which are not the responsibility of any municipality, and the restriction of the issuance of development orders which would add traffic to such roads which have traffic exceeding the adopted level of service, provided that such ordinance is adopted and amended by a majority of the Board of County Commissioners.
>
> (Ord. No. 86-28, § 2, 8-26-86; Ord. No. 86-29, § 2, 8-26-86; Ord. No. 86-30, § 2, 9-9-86; Ord. No. 88-21, § 2, 9-20-88; Ord. No. 88-25, § 2, 9-20-88)

Exceptions to General Law

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create exemptions to the following general laws:

1) Section 171.0413, F.S., which provides for annexation of contiguous, compact unincorporated territory by municipalities subject to specified procedures, in that s. 1(3)(b) of the bill prohibits the town from annexing the area known as Callery-Judge Groves.
2) Section 165,061(1)(b), F.S., which requires that a proposed municipality have a minimum population of 5,000 in counties with a population of more than 75,000;
3) Section 165.061(1)(c), F.S., which requires that a proposed municipality have a minimum density of 1.5 persons per acre, or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density;
4) Section 165.01(1)(d), F.S., which requires that the boundaries of a proposed municipality be a minimum distance of two miles from an existing municipality, or have an extraordinary natural boundary which requires separate municipal government.
5) Section 125.01, F.S., which gives counties the authority to prepare and enforce comprehensive plans, and establish and enforce zoning ordinances, in that s. 10 (7)(b) of

[4] Section 1(g), Art. VIII of the State Constitution provides: "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances."

the act prohibits changes in the land use map or zoning districts within the boundaries of the town once the act becomes law.

6) Part II of ch. 163, F.S., which contains the "Local Government Comprehensive Planning and Land Development Regulation Act," in that s.10 (7)(d) of the bill provides that after the passage of the act, no amendment of the comprehensive plan or land development regulations enacted by the Palm Beach County Commission will take effect within the town's corporate limits.
7) Section 218.23(1), F.S., which provides eligibility requirements for revenue sharing, that s. 10 (8) of the bill seeks to waive through FY 2009-2010, and s. 10(10) of the bill seeks to waive for the purpose of conducting audits and financial reporting through FY 2007-2008.
8) Section 200.066, F.S., which provides that ad valorem taxes of newly created municipalities be initially imposed no earlier than the January 1 subsequent to the creation of the municipality.

Feasibility Study Reviews

The Legislative Committee on Intergovernmental Relations (LCIR)

The following includes selected comments from the Legislative Committee on Intergovernmental Relations regarding the proposed incorporation of the Town of Loxahatchee Groves.

The LCIR indicated that its review determined that the proposed incorporation met state standards for municipal incorporations specified in s. 165.061, F.S., (see, "Requirements and Standards for Municipal Incorporation" on page 3 of this analysis) with the following exceptions:

Based on the 2003 estimated population of 3,122 provided in the *Study* (page 1), the area proposed for incorporation does not meet the population requirements found in s. 165.061(1)(b), F.S. The *Study* (pages 2 and 7) report the number of acres proposed for incorporation at 8,148 acres and the estimated population at 3,122. Based on these data, the density of the area proposed for incorporation is 0.38 persons per acre, rather than the .65 persons per acre reported (page 7). The density of Loxahatchee Groves is approximately one-quarter of the required minimum under s. 165.061(1)(c), F.S., of 1.5 persons per acre. **Alternatively, the statutes provide that the area have extraordinary conditions requiring the establishment of a municipal incorporation with less existing density. The *Study* (pages 1 and 7) suggest that the unique rural character of Loxahatchee Groves and its standing as a readily identified community meet this statutory condition. As such, it cannot be ascertained whether the unique characteristics of Loxahatchee Groves serve as extraordinary conditions as required by law. However, Palm Beach County government staff report that the county created ordinances for the Loxahatchee Groves community which recognize its unique and historic nature.**

Information in the *Study* acknowledges that the area to be incorporated does not maintain a distance of at least two miles from a boundary of two existing municipalities, Royal Palm Beach and Wellington, nor does it suggest the presence of any extraordinary natural boundary that requires separate municipal government as required by s. 165.061(1)(d), F.S. The area proposed for incorporation does not meet the minimum two-mile limit requirement. **The *Study* suggests that the aggressive annexation policies of its Royal Palm Beach and Wellington have brought them within the two-mile limit of Loxahatchee Groves and have contributed to its wish to incorporate as a means to protect the community from further expansion by these neighboring municipalities.**

The LCIR indicated that its review determined that the proposed incorporation met state standards for a municipal incorporation feasibility study pursuant to s. 165.041(1)(b), F.S., (see, "Feasibility Study" on pages 3 and 4 of this analysis) with the following exceptions:

The *Study* does not appear to propose any development for the area, rather it supports maintaining current characteristics and opposing higher density developments. As such, it cannot be ascertained

whether the *Study* meets the requirement to describe proposed development. The *Study* (page 9) does provide for the formation of a citizen's commission to develop a comprehensive plan that would address this issue.

The *Study* appears to meet the requirement that it identify proposed services (pages 11-13). Based on information contained in the *Study*, and the Study Addendum we cannot ascertain whether it meets the requirement to identify estimated costs for the proposed services. **Supplemental information provided by the Committee to Incorporate Loxahatchee Groves, Inc., Palm Beach County Department of Planning, Zoning, and Building, and the Solid Waste Authority of Palm Beach County indicate some agreement that the county will continue to provide certain services to the residents upon incorporation such as solid waste and recycling, fire and rescue, law enforcement, maintenance of certain roadways, and maintenance of parks and recreation, and continuation of library services. However, it remains unclear how other services including future water utilities, and planning, zoning, permitting, and inspections will be provided.** It is assumed that such services would develop through interlocal agreements with the Palm Beach County government.

The *Study* appears to meet some but not all elements of the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:

The *Study* addresses the majority of tax bases and revenue sources available to a municipality, but provides revenue estimates for only a few of them: ad valorem property tax, Municipal Revenue Sharing Program, the Local Government Half-Cent Sales Tax (pages 12 and 22), and a non-ad valorem assessment to fund the water control district (page 11). The Study Addendum provides revenue estimates for franchise fees and the Communications Service Tax. These and other revenue sources included in the study require some clarification:

- The *Study* notes that Palm Beach County will continue to provide a range of services to the community with revenues from existing taxes. It is somewhat unclear which services are to be provided by Palm Beach County government through existing county millage, under contract, or through interlocal agreement and which services would be provided by Loxahatchee Groves. **As noted above, the supplemental letters provided by The Committee to Incorporate Loxahatchee Groves, Inc., and the Palm Beach County Department of Planning, Zoning, and Building, indicate a willingness for the County to continue providing some services: law enforcement, library, parks and recreation (with certain stipulations), but it is unclear whether it would provide all of the identified services for the amount specified in the *Study* (pages 10-13, Appendices A and D, and the Study Addendum).**

- State shared revenues (SSR) are identified as revenue sources for Loxahatchee Groves. In order to be eligible to participate in these programs, a municipality is required to meet certain criteria. These requirements include, among others, certain financial and audit reports and a minimum local taxing effort equal to the amount that would be generated by three mils of ad valorem property taxes. The Study Addendum projects the 2006 taxable value of property within the Loxahatchee Groves at $305,127,735. Based on this projected taxable value, the three-mil equivalency for Loxahatchee Groves is equal to approximately $915,383,205. Current budget projections include an ad valorem tax rate of 1.5 mils. **The requirements regarding financial reports have been temporarily waived in the past until such reports are available. However, the Legislature, in most instances, has required that a proposed incorporation show a minimum local taxing effort in order to qualify for SSR programs. It may be appropriate to credit non-ad valorem assessments from the Loxahatchee Water Control District and/or millage levied by Palm Beach County for other municipal type services toward this three-mil requirement.**

- The *Study* does not identify local option fuel taxes as a revenue source or provide revenue estimates, although the Charter includes a provision that entitles Loxahatchee Groves to receive local option gas tax revenues beginning October 1, 2007. It is unknown whether the county and Loxahatchee Groves have an interlocal agreement proposal for distribution of the fuel tax revenues. Florida Statutes provide a default formula for distribution of fuel tax revenue for newly incorporated municipalities in the absence of such an interlocal agreement.

Consequently, we cannot ascertain whether the *Study* and Study Addendum adequately address these tax bases. However, it appears that revenues for Loxahatchee Groves would exceed those projected in the *Study* and Study Addendum.

The *Study* does include a five-year operational plan and budget (pages 12-15, Appendix A, and Study Addendum). **The revenue totals include funds projected from sources for which the proposed municipality may not be eligible to receive and, as noted above, include provisions for other entities to continue providing services or provide under contract or through interlocal agreement without providing evidence that these entities are willing to provide all such services for the amount identified in the budget. In addition, the five-year operational plan in the Study Addendum allocates less than $52,000 during this five-year period for the development of a comprehensive plan and contract planning services with the county government.**

Also, although the *Charter* includes numerous provisions for council member elections, referenda, and initiatives, neither the *Charter* nor the five-year plan specify how such elections will be administered or funded. The Palm Beach County Supervisor of Elections Office has a standard interlocal agreement or fee schedule for conducting municipal elections which would cost approximately $4,500 - $6,000 per election for a municipality the size of Loxahatchee Groves. Given this list of concerns, we cannot ascertain whether the requirement for the five-year operational plan and budget is adequately addressed.

As noted above, the *Study* does not provide evidence that the proposed municipality meets the requirements for incorporation pursuant to s. 165.061, F.S. It does acknowledge, however, that certain criteria will need to be waived.

The LCIR also evaluated whether the proposed revenues and expenditures contained in the Study are consistent with revenues and expenditures of municipalities of similar size.

This section of the analysis compared the revenue and expenditure estimates for the proposed municipality of Loxahatchee Groves with "similarly sized" municipalities in Florida. As presented in the following table, all comparison municipalities reported FY 2002-03 total expenditures greater than those projected for Loxahatchee Groves. The estimated expenditures projected for Loxahatchee Groves ($1,085,673) are approximately one-third of the "average" reported expenditures for the 10 comparison municipalities ($3,601,695). Two additional issues should be noted in this comparison. First, the projected expenditures for Loxahatchee Groves do not include expenditures associated with the Loxahatchee Groves Water Control District or costs for services that Palm Beach County may continue to provide to the residents of Loxahatchee Groves under the current county tax structure. If included, such costs would increase the proposed expenditures and reduce the expenditure differential between Loxahatchee Groves and the comparison municipalities. Such a budget is presented in the Study Addendum.

The second issue regarding the proposed expenditures is that the fiscal data for the10 comparison municipalities reflect total reported revenues and expenditures for FY 2002-03,while the fiscal estimates for Loxahatchee Groves are those projected for FY 2006-07. It can be assumed that total expenditures and revenues for these 10 municipalities will have increased during this time period, and as a result, the gap has increased between their "average" reported expenditures and those projected for Loxahatchee Groves. However, the ad valorem tax base for Loxahatchee Groves appears sufficient to fund

municipal services at the amount equal to the "average" expenditures by the comparison municipalities should it prove necessary to do so.

Comparison of Total Revenues and Expenditures for 10 Municipalities with Populations Similar to the Population Estimate for the Proposed Municipality of Loxahatchee Groves[5]

Municipality	2003 Pop. Est.[6]	Revenues	Expenditures
Loxahatchee Groves	3,122	$1,085,673	$1,085,673
Hilliard	2,748	$2,470,932	$2,500,234
Lake Helen	2,823	$1,823,727	$1,772,235
Ponce Inlet	2,917	$6,309,110	$6,807,364
Dundee	2,952	$2,890,820	$2,746,312
Frostproof	2,982	$3,436,992	$3,459,038
Bowling Green	3,012	$1,940,566	$1,766,766
Indialantic	3,030	$2,871,773	$2,981,874
Madison	3,079	$5,238,747	$4,565,907
Port Richey	3,139	$5,984,664	$4,790,922
Fruitland Park	3,265	$3,049,623	$4,092,063
AVERAGE	**2,995**	**$3,601,695**	**$3,548,272**

[5] FY 2002-2003 reported revenues and expenditures by the 10 comparison municipalities and projected 2006 revenue and expenditure estimate for Loxahatchee Groves contained within the Loxahatchee Groves Incorporation Feasibility Study.

[6] 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for Loxahatchee Groves for calendar year 2003 contained within the Loxahatchee Groves Incorporation Feasibility Study, Appendix A.

Sources: Florida LCIR using fiscal data submitted by municipalities to the Department of Banking and Finance; Florida Estimates of Population 2003, Bureau of Economic and Business Research, University of Florida, 2004; information contained within the Loxahatchee Groves Incorporation Feasibility Study and Study Addendum.

The LCIR also evaluated the distribution of State Shared Revenues (SSR) and impact the incorporation would have on existing local governments.

While the statutory requirements for a feasibility study do not include identifying fiscal impacts to neighboring units of local government, such information is useful for these local governments as they begin to plan for their next budget cycle.

A newly created municipality will impact the amount of funds that existing municipalities receive in the two major SSR programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing (MRS). The county government within which the new municipality is formed will realize fiscal impacts in two SSR programs: Local Government Half-Cent Sales Tax and County Revenue Sharing.

The Office of Tax Research, Florida Department of Revenue, prepared SSR estimates for the proposed Town of Loxahatchee Groves and estimates on the impact from such incorporation to SSR distribution to other units of local government within Palm Beach County. If Loxahatchee had incorporated in 2005, Palm Beach County government would realize a reduction in 2005-06 SSR distributions totaling an estimated $205,039. The extent to which revenue reductions are offset by reductions in services is not known. Municipalities within the County would realize estimated SSR reductions ranging from a low of $20 (Cloud Lake) to a high of $10,451 (West Palm Beach).

Lastly, the LCIR provided the following comments with regard to the proposed charter.

Section 1(3): Subsection (b) prohibits Loxahatchee Groves from annexing certain adjacent property. Including such a provision in a municipal charter is unusual. If there is a need to reassure certain local stakeholders that Loxahatchee Groves will not attempt to annex this adjacent property, such a commitment might better be accomplished in an ordinance or by resolution of the city council.

Section 2(1) and Section 3(1) and (2): These subsections call for a five-member council to be elected at-large and represent the municipality at-large. Such an election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act, depending upon the area's demographics.

Section 2(3): Subsection (a) invests the vice-mayor with the same legislative powers and duties as any other council member. It may be appropriate to clarify that the vice-mayor would have the powers and duties of the mayor only when serving as the mayor. Subsection (b) provides that the vice-mayor shall serve as acting mayor during the absence or disability of the mayor. It may be appropriate to define "disability" or remove it.

Section 3(4): Subsection (a) provides for filling of vacancies of council officers and members and reasons why vacancies would occur. It may be appropriate to include disability as a reason.

Section 4(3): Subsection (d) authorizes the council to designate a temporary town manager during the absence or disability of the existing town manager. It would be appropriate to define "disability" in the charter and eliminate possible future confusion on the meaning of the term. Subsection (e) provides the powers and duties of the town manager which include signing of contracts. Such responsibility is also assigned to the mayor in Article 2(2)(b). It may be appropriate to clarify the assignment of responsibilities between the mayor and manager.

Section 5(10): Subsection (b) authorizes the adoption of an emergency ordinance upon the affirmative vote of four council members. Subsection 5(5) defines a quorum as a majority (3) of the full council. This creates a situation where the council may hold an emergency meeting, but not adopt any emergency ordinance. It may be appropriate to lower the threshold for the adoption of an emergency ordinance where only a quorum of council members is present.

Sections 7, 8, and 10: Sections 7 and 8 address council elections and referendum and initiative elections, respectively. It is unclear whether Loxahatchee Groves or the Palm Beach Supervisor of

Elections Office is responsible for elections administrations. Section 10 directs Palm Beach County to hold the incorporation referendum. It may be appropriate for Sections 7 and 8 to clarify how elections will be administered and funded.

Section 10 Subsection (5) nullifies the effect of Palm Beach County ordinances and related actions enacted after passed of the referendum that are in conflict with those of Loxahatchee Groves. Subsection (7)(d) would similarly limit the comprehensive planning authority of Palm Beach County. Palm Beach County is a charter county and, as such, has authority over certain issues within the county, as well as how county government will relate to political subdivisions within the county. As such, it may be appropriate to revisit these provisions.

Section 10(8): This subsection authorizes Loxahatchee Groves to participate in all state shared revenue programs and waives the eligibility requirements in s. 218.23(1), F.S., through FY 2009-10. The requested waiver should be limited to the requirements regarding financial reports and audits which the Legislature has temporarily waived in the past until such reports are available. Also, given that it can take up to three years for the required financial reports and audits to become available, it may be appropriate to grant the waiver only through FY 2008-09.

Section 11(4) and (5): These subsections terminate the portions of the Palm Beach County Municipal Service Taxing Units (MSTUs) B and F, respectively, which lie within the boundaries of Loxahatchee Groves, upon incorporation. The purposes served and functions afforded by these MSTUs are not identified. While it may be appropriate to terminate these MSTUs, impacts, if any, from doing so are unknown.

Section 11(7): This subsection directs Palm Beach County to maintain responsibility for the Loxahatchee Groves Park and requires any proposed improvements to the park to be approved by the "Town of Loxahatchee Groves." It is unknown whether Palm Beach County government has prior policies relevant to the planning, development, and financing responsibilities for county parks or other county facilities. Any such policy may supersede, and/or be in conflict with this provision.

Office of Economic and Demographic Research (EDR)

This Office of Economic and Demographic Research submitted the following:

- The latest official population estimate for Palm Beach County placed its population at 1,265,900 (official 4/1/2005 estimate from Bureau of Economic and Business Research, University of Florida) so a new municipality would be required to have a minimum population of 5,000. The feasibility study indicates that the 2000 population of the area proposed for the Town of Loxahatchee Groves was 3,021 and EDR's analysis of census data for the blocks contained within the proposed boundaries of Loxahatchee Groves corroborated this figure. The feasibility study assumed that the area's 2004 population was 3,122 and notes that it does not meet the minimum population requirement of 5,000 persons. The study further states that even with a five percent growth rate, the community is unlikely to grow to 5,000 persons during the next decade without compromising its rural identity.

- According to the feasibility study, the area being proposed for incorporation has population density of .65 persons per acre (assuming 8,148 acres). EDR's analysis of Census map data suggests that the area contains approximately 9,103 acres. Using this acreage would indicate that the density in 2000 was more in the range of .37 persons per acre.

- According to the maps provided in the feasibility study, the areas proposed for the Town of Loxahatchee Groves are contiguous and compact.

- The proposed municipality is bordered by two other incorporated places, Wellington to the south and Royal Palm Beach to the east. No extraordinary natural boundary exists which would require separate municipal government.

Department of Revenue

The Department of Revenue provided the following comments:

Revenue Sharing

- Article 10, Section (8) of the draft charter provides that Loxahatchee Groves be entitled to participate in all state shared revenue programs effective on the date of incorporation, 11/1/06. The entitlement to immediate revenue sharing participation upon the date of incorporation poses a problem. It appears that such early participation conflicts with the definition of a "municipality" in s. 218.21(3), F.S., which requires in order to be eligible for revenue sharing, a municipality "must have held an election for its legislative body pursuant to law and established such a legislative body, which meets pursuant to law." In the instance of Loxahatchee Groves, the council will not hold its first meeting until 3/29/07 and therefore Loxahatchee Groves will not be a "municipality" until that date. **It is recommended that the initial date for revenue sharing participation be the first day of the month occurring after the first meeting of the council, i.e., 4/1/07 or the first day of any month thereafter.**

- Article 10, Section (8) of the draft charter also provides that the provisions of s. 218.23(1), F.S., are to be waived from the date of incorporation, 11/1/06, through the state fiscal year 2009-2010. **Loxahatchee Groves will have completed its first full local fiscal year on 9/31/08 and could potentially satisfy the revenue sharing reporting criteria contained in s. 218.23(1), F.S., by 6/30/09, as early as the end of the 2008-2009 state fiscal year.**

- Section 218.23(1)(c), F.S., requires as a condition of revenue sharing eligibility, that a local government impose three mills of ad valorem tax or a three-mill equivalent. The feasibility study on page 12 states that the anticipated millage for Loxahatchee Groves after incorporation is 1.5 mills for the fiscal years 2005-2010. **Neither the draft charter nor the feasibility study specifically mention the three-mil requirement nor state a method from which it is possible to determine whether the three-mill requirement can be satisfied after the state fiscal year 2009-2010.**

- Article 10, Section (8) of the draft charter lists the following revenue sources to be considered for the purposes of qualifying for revenue sharing: municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communication services tax and franchise fees. **This should probably be clarified to state that for the purposes of meeting the provisions of s. 218.23(1), F.S., relating to ad valorem taxation, the millage levied by MSTU's and special districts levied throughout the proposed corporate limits of the city may be used.**

Gas Tax Revenues

- Article 10, Section (9) of the proposed charter states that Loxahatchee Groves shall be entitled to receive local option gas tax revenues beginning 10/1/07. This date complies with s. 336.025(4)(b), F.S., which provides that newly incorporated municipalities will not receive fuel tax distributions until the beginning of the first full local fiscal year following incorporation, which in the instance of Loxahatchee Groves is 10/1/07.

- Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities are to be in accord with the lane-mile formula unless provided otherwise by the special act providing for the incorporation. Since Section (9) of the draft charter is silent

regarding any distribution pursuant to an interlocal agreement with Palm Beach County, then gas tax distributions to Loxahatchee Groves will be in accord with the lane-mile formula. Lane-mile data will have to be provided to the Department for use in calculating distributions to Loxahatchee Groves.

Local Communications Services Tax

- Neither the draft charter nor the 8/28/04 Feasibility Study addresses the communications services tax that is currently imposed by Palm Beach County within the unincorporated area of Palm Beach County, including the area within the proposed Town of Loxahatchee Groves. However, the addendum to the feasibility study does indicate Local Communications Services Tax revenues, i.e., $126,000 for FY 07/08, $132,300 for FY 08/09, etc. Pursuant to s. 202.21 F.S., local communications services taxes imposed under s. 202.19, F.S., are effective with respect to taxable services dated on or after January 1 of a year. A municipality adopting, changing or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date in order to provide sufficient time to notify providers of changes. In the administration of the local communications services tax, the Department maintains an address database for use by the providers. Each local taxing jurisdiction is required to furnish to the Department service addresses and any changes in jurisdictional boundaries. Since the Loxahatchee Groves referendum is to be held on 11/8/05,[7] providers cannot be notified that the area within the new Town of Loxahatchee will be no longer subject to the tax. Since the Loxahatchee Groves Council will not meet until 3/29/07, Loxahatchee Groves will be unable to impose a municipal communications services tax before calendar year 2008. The charter does not provide for sharing of the local communications services taxes revenues with Loxahatchee until the beginning of calendar year 2008. **The charter language could be amended to provide for a sharing of the CST imposed by Palm Beach County within the boundaries of Loxahatchee, beginning with the date of incorporation, 11/1/06 through December 31 of some future year.** The proportion could be based on the population of Loxahatchee compared to unincorporated population of Palm Beach County before the incorporation of Loxahatchee. If the incorporators intend to levy a communications services tax, it would be necessary for the new city to adopt an ordinance for this tax prior to 9/1/06 to be effective 1/1/07.

Discretionary Sales Surtax

- Currently, Palm Beach County imposes a five percent School Capital Outlay Surtax, effective 1/1/05, with a specified expiration date of 12/30/10. Proceeds of this tax are distributed entirely to the Palm Beach County School Board and will not be available to Loxahatchee Groves.

The Department also prepared revenue sharing estimates for the 2005-2006 state fiscal year which are on file with the Local Government Council.

Department of Community Affairs

The Department of Community Affairs provided the following comments:

Pursuant to ch. 163.3167(4), F.S., a new comprehensive plan must be adopted within three years of incorporation. Approximate cost of a new comprehensive plan for a City of this size is $100,000. Pursuant to ch. 163.3202(1), F.S. within one year of an adopted comprehensive plan, a new municipality must adopt land development regulations. Approximate cost of new land development regulations for a City of this size is $200,000. In addition, new cities typically become responsible for providing and maintaining certain types of infrastructure and services.

[7] It is assumed that this is a typographical error and that the drafter intended the date to read 10/10/06.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

951

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: _____
SPONSOR(S): Rep. Shelley Vana
RELATING TO: Loxahatchee Groves Incorporation
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Palm Beach County
CONTACT PERSON: Ed Chase, Executive Director
PHONE # and E-MAIL 561/355-2406 echase@pbcgov.com

I. House policy requires that three things occur before a Council or Committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the bill's purpose cannot be accomplished at the local level; (2) a local public hearing must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation. ***Local bills will not be considered by a Council or Committee without a completed, original Local Bill Certification Form.***

Does the delegation certify that the purpose of the bill cannot be accomplished locally?
YES [X] NO [ ]

Has a public hearing been held? **YES [X] NO [ ]**

Date hearing held: January 30, 2006
Location: Palm Beach, Florida

Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [X]

II. Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided in general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this Constitutional requirement been met?

Notice published: **YES [ ] NO [X]** **Date:** _____

Where? _____ **County:** _____

Referendum in lieu of publication: **YES [X] NO [ ]**

III. Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

Has this constitutional requirement been met?
YES [X] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for Local Bills be prepared at the local level.

Carl J Domino 3 Feb 2006
Delegation Chair (Original Signature) Date

HOUSE COMMITTEE ON LOCAL GOVERNMENT AND VETERANS AFFAIRS

2005 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House Local Government and Veterans Affairs Committee that no bill will be considered by the Committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact.

BILL #: To be determined

SPONSOR(S): Representative Shelley Vanna

RELATING TO: The Incorporation of Loxahatchee Groves, Palm Beach County
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 07-08	FY 08-09
Expenditures:	$1,085,673	$1,171,369

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 07-08	FY 08-09
Federal:	$0	$0
State: revenue sharing	$ 71,915	$ 79,106
half cent sales tax	$238,350	$250,268
Local: ad valorem taxes	$505,749	$558,853

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 07-08	FY 07-08
Revenues:	$1,085,673	$1,171,369

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: Individuals and businesses will have their tax money come back to their community. Unique needs of this historic rural community can be identified and addressed. There will little impact on Palm Beach County because current county services will be kept at the same level of service and this historic rural community accounts for less than .2% of the population of Palm Beach County.

Disadvantages: There will be an increase in property tax of 1.5 mils.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

It is estimated that there will be little impact upon competition and employment.

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDE SOURCE[S] OF DATA):

The data used in making revenue estimates was based on information from the Florida Department of Revenue (state revenue sharing and half-cent sales tax) and applying an ad valorem 1.5 millage rate.

The data used in making expense estimates was based on reviewing budgets of nearby towns.

All data is from the Loxahatchee Groves Incorporation Feasibility Study prepared by Dr. Arthur Sementelli

PREPARED BY: _____ 2-2-06
Must be signed by Preparer Date

TITLE: David Autrey, President.

REPRESENTING: The Committee to Incorporate Loxahatchee Groves, Inc

PHONE: (561) 315-8094

1 A bill to be entitled
2 An act relating to Palm Beach County; creating the Town of
3 Loxahatchee Groves; providing a charter; providing
4 legislative intent; providing a council-manager form of
5 government; providing boundaries; providing municipal
6 powers; providing for a town council; providing for
7 membership, qualifications, terms, powers, and duties of
8 its members, including the mayor; providing for a vice
9 mayor; providing general powers and duties; providing
10 circumstances resulting in vacancy in office; providing
11 grounds for forfeiture and suspension; providing for
12 filling of vacancies; providing for compensation and
13 expenses; providing for appointment of charter officers,
14 including a town manager and town attorney; providing for
15 removal, compensation, and filling of vacancies; providing
16 qualifications, powers, and duties; providing for
17 meetings; providing for adoption, distribution, and
18 recording of technical codes; providing for recordkeeping;
19 providing a limitation upon employment of council members;
20 prohibiting certain interference with town employees;
21 establishing the fiscal year; providing for adoption of
22 annual budget and appropriations; providing for
23 supplemental, reduction, and transfer of appropriations;
24 providing for limitations; providing for referendum
25 requirements for revenue bonds and other multiyear
26 contracts; providing for financial audit; providing for
27 nonpartisan elections and matters relative thereto;
28 providing for recall; providing for initiative and

29 referenda; providing for future amendments of the charter;
30 providing for standards of conduct in office; providing
31 for severability; providing for a personnel system;
32 providing for charitable contributions; providing for land
33 use changes; providing the town a transitional schedule
34 and procedures for first election; providing for first-
35 year expenses; providing for adoption of transitional
36 ordinances, resolutions, comprehensive plan, and local
37 development regulations; providing for accelerated
38 entitlement to state-shared revenues; providing for gas
39 tax revenue; providing for continuation of the Palm Beach
40 County Fire Rescue Municipal Service Taxing Unit;
41 providing for law enforcement; providing for continuation
42 of the Palm Beach County Library District; providing for
43 dissolution of the Palm Beach County Municipal Service
44 Taxing Unit B and dissolution of the Palm Beach County
45 Municipal Service Taxing Unit F; providing for
46 continuation of the Loxahatchee Groves Water Control
47 District; providing for continuation of Loxahatchee Groves
48 Park; repealing s. 6 of s. 2 of chapter 99-425, Laws of
49 Florida, relating to a restriction on annexation of the
50 Loxahatchee Groves Water Control District; providing for
51 waivers; requiring a referendum; providing effective
52 dates.
53
54 Be It Enacted by the Legislature of the State of Florida:
55
56 Section 1. Charter; creation; form of government;

57 boundaries and powers.--
58 (1) CHARTER; CREATION.--
59 (a) This act, together with any future amendments thereto,
60 may be known as the "Charter of the Town of Loxahatchee Groves"
61 (the "charter"), and the Town of Loxahatchee Groves (the "town")
62 is hereby created.
63 (b) The Loxahatchee Groves area in Palm Beach County
64 includes a compact and contiguous rural community of
65 approximately 3,120 persons who are experiencing certain
66 impacts, such as the destruction of rural habitats and the
67 threat to equestrian, farming, and nursery businesses, resulting
68 from urbanization in the surrounding areas. The residents within
69 the town would like to control the effects of those impacts
70 through the incorporation of the town and its continued
71 existence as a historic, rural community with the benefits of
72 self-determination.
73 (c) It is in the best interests of the public health,
74 safety, and welfare of the residents of the Loxahatchee Groves
75 area to form a separate municipality for the Loxahatchee Groves
76 area with all the powers and authority necessary to provide
77 adequate and efficient municipal services to its residents.
78 (d) It is intended that this charter and the incorporation
79 of the Loxahatchee Groves area will serve to preserve and
80 protect the distinctive rural characteristics of the community,
81 such as low density, minimal lot coverage, substantial open
82 spaces, agricultural and nursery interests, and rural habitats,
83 and to acknowledge its close ties to the agriculture and
84 equestrian industries within the boundaries of the town.

85 (e) It is the intent of this charter and the incorporation
86 of the town to secure the benefits of self-determination and
87 affirm the values of representative democracy, citizen
88 participation, strong community leadership, professional
89 management, and regional cooperation.
90 (2) FORM OF GOVERNMENT.--The town shall have a council-
91 manager form of government.
92 (3)(a) CORPORATE BOUNDARIES.--The corporate boundaries of
93 the Town of Loxahatchee Groves shall be as described as follows:
94
95 That portion of Loxahatchee Sub-Drainage District,
96 Township 43 South, Range 41 East and Range 40 East,
97 Palm Beach County, Florida, being more particularly
98 described as follows:
99 Beginning at the Northwest corner of Section Eighteen
100 (18) in Township Forty-three (43) South, Range Forty-
101 one (41) East, Palm Beach County, Florida, and run
102 thence along the North line of Section Eighteen (18)
103 and Seventeen (17) of said Township to the Northeast
104 corner of Section Seventeen (17) in said Township and
105 Range; thence run South along the Eastern boundary of
106 Section Seventeen (17) to the Southeast corner of said
107 Section;
108 Thence run East along the Northern boundary of Section
109 Twenty-one (21) and of Section Twenty-two (22) to the
110 Northeast corner of the Northwest quarter of the said
111 Section Twenty-two (22); Thence run South along the
112 East line of the Northwest quarter of said Section

113 Twenty-two (22) to the Southeast corner of said
114 Northwest quarter of said Section; Thence run West
115 along the South line of the Southeast quarter of
116 Northwest quarter of said Section Twenty-two (22) to
117 the Southwest corner of said Southeast quarter of
118 Northwest quarter of said Section; Thence run South
119 along the East line of the West half of the Southwest
120 quarter of Section Twenty-two (22) and of the West
121 half of West half of Section Twenty-seven (27) and of
122 the West half of West half of Section Thirty-four (34)
123 to the North Right of Way line of State Road 80, in
124 Section Thirty-four (34); Thence West along the
125 Northern edge of the North Right of Way line of State
126 Road 80, across the West half of West half of Section
127 Thirty-four (34) and across Section Thirty-three (33),
128 Thirty-two (32), and Thirty-one (31) in said Township
129 to the point where the range line dividing ranges
130 Forty (40) and Forty-one (41) East intersects said
131 North Right of Way line of State Road 80;
132 Thence North along the West line of Sections Thirty-
133 one (31), Thirty (30), Nineteen (19) and Eighteen (18)
134 to the Point of Beginning, embracing approximately Six
135 Thousand Nine Hundred Thirty five and 56/100
136 (6,935.56) acres.
137 Said lands lying within the above described boundary
138 lines are described more particularly as follow, to
139 wit:
140 All of Section Seventeen (17), Eighteen (18), Nineteen

141 (19), Twenty (20), and Twenty-one (21) and the
142 Northwest quarter and West half of Southwest quarter
143 of Section Twenty-two (22); and West half of West half
144 of Section Twenty-seven (27); and all Section Twenty-
145 eight (28), Twenty-nine (29) and Thirty (30) and all
146 of Section Thirty-one (31) North of North Right of Way
147 line of State Road 80; and all of Section Thirty-three
148 (32) North of North Right of Way line of State Road
149 80; and all of Section Thirty-three (33) North of
150 North Right of Way line of State Road 80; and all of
151 the West half of West half of Section Thirty-four (34)
152 North of North Right of Way line of State Road 80; all
153 in Township Forty-three (43) South Range Forty-one
154 (41) East, all of said lands being situate in Palm
155 Beach County, State of Florida, according to the
156 United States official surveys of said lands.
157 TOGETHER WITH
158 The South 1/2 of Sections 7 and 8, T43S, R41E.
159 The South 1/2 of the East 1/4 of Section 12, The East
160 1/4 of Sections 13, 24, 25, T43S, R40E, and that part
161 of the East 1/4 of Section 36, T43S, R40E, lying North
162 of the North Right of Way of S.R. 80, all in Palm
163 Beach County, Florida, containing 1320 acres, more or
164 less.
165 LESS AND EXCEPT The All or Nothing Legislation Parcel
166 as described in Senate Bill No. 2616, Laws of Florida,
167 Chapter 99-425, formerly known as The Palms West
168 Hospital property

169 A parcel bounded by Southern Boulevard (S.R. 80) on
170 the South, the Southern boundary of the drainage/road
171 Right of Way known as collecting canal on the North,
172 Folsom/Crestwood of the East, and the Western boundary
173 of The All or Nothing Legislation Parcel as described
174 in Senate Bill No. 2616, Laws of Florida, Chapter 99-
175 425 on the west, said parcel being more particularly
176 described as follows:
177 A parcel of land located in the County of Palm Beach,
178 State of Florida, to wit:
179 The point of beginning being the intersection of the
180 Easterly line of Lot 4, Block K, Loxahatchee District,
181 according to the plat thereof on file in the Office of
182 the Clerk of the Circuit Court recorded in Plat Book
183 7, Page 81, of the Public Records of Palm Beach
184 County, Florida, and the Southerly boundary of the
185 "Collecting Canal" as shown on the Replat of
186 Loxahatchee Groves Subdivision according to the Plat
187 thereof, recorded in Plat Book 12, Page 29, of the
188 Public Records of Palm Beach County, Florida; Thence
189 Easterly along said Southerly boundary of the
190 "Collecting Canal" to the Easterly boundary of said
191 Replat of Loxahatchee Groves; Thence South along said
192 Easterly boundary line of the Replat of Loxahatchee
193 Groves to the North Right of Way line of State Road
194 80; Thence Westerly along said Northerly Right of Way
195 line of State Road 80 to the Easterly line of Lot 4,
196 Block K, Loxahatchee District;

197 Thence Northerly along said Easterly line of Lot 4 to
198 the Point of Beginning, and
199 A portion of Lot 4, Block "K," Loxahatchee District
200 subdivision, according to the map or plat thereof as
201 recorded in Plat Book 7, page 81, public records, Palm
202 Beach County, Florida, being more particularly described as
203 follows:
204 Commencing at the northeast corner of said lot 4; thence,
205 south 02°16'42" west, along the east line of said lot 4, a
206 distance of 834.00 feet for a point of beginning.
207 Thence, continue south 02°16'42" west along said east line,
208 a distance of 1221.92 feet, more or less, to the
209 intersection thereof with the north right-of-way line of
210 State Road No. 80 as recorded in official records book
211 12372, page 468, said public records; thence, north
212 88°08'61" west, departing said east line and along said
213 north right-of-way line, a distance of 260.20 feet; thence,
214 north 02°16'46" east, departing said right-of-way line, a
215 distance of 80.00 feet; thence, north 88°08'51" west, a
216 distance of 248.59 feet; thence, north 02°16'46" east, a
217 distance of 321.11; thence, north 88°08'51" west, a
218 distance of 275.01 feet, more or less, to the intersection
219 thereof with the west line of said lot 4; thence, north
220 02°16'46" east, along said west line, a distance of 806.33
221 feet; thence, south 89°12'21" east, departing said west
222 line and along the south line of the north 834.00 feet of
223 said lot 4, as measured along the east and west lines of
224 said lot 4, a distance of 784.02 feet to the point of

225 beginning.
226 Containing: 18.867 acres, more or less.
227 (b) The town shall not annex that area now known as
228 Callery-Judge Groves, generally described as that area of land
229 bounded on the north by M canal, on the south by the northern
230 border of the town, on the east by 140th, and on the west by M
231 canal.
232 (4) MUNICIPAL POWERS.--The town shall be a body corporate
233 and politic and shall have all available governmental,
234 corporate, and proprietary powers of a municipality under the
235 State Constitution and laws of the state, as fully and
236 completely as though such powers were specifically enumerated in
237 this charter, and may exercise them, except when prohibited by
238 law. Through the adoption of this charter, it is the intent of
239 the electors of the town that the municipal government
240 established herein have the broadest exercise of home rule
241 powers permitted under the State Constitution and laws of the
242 state. This charter and the powers of the town shall be
243 construed liberally in favor of the town. It is recognized that
244 certain services within the municipal boundaries are provided by
245 independent special districts created by special acts of the
246 Legislature and by Palm Beach County.
247 Section 2. Council; mayor and vice mayor.--
248 (1) TOWN COUNCIL.--There shall be a five-member town
249 council ("council") vested with all legislative powers of the
250 town, consisting of five members ("council members"), each
251 elected from and representing the town at large. Unless
252 otherwise stated within this charter, all charter powers shall

253 be exercised by the council.
254 (2) THE MAYOR; POWERS AND DUTIES.--
255 (a) The council, at its first regular meeting after the
256 fourth Tuesday of each March, shall elect from its members a
257 mayor who shall serve for a period of 1 year and who shall have
258 the same legislative powers and duties as any other council
259 member, except as provided herein.
260 (b) In addition to carrying out the regular duties of a
261 council member, the mayor shall preside at the meetings of the
262 council and shall be recognized as the head of town government
263 for service of process, ceremonial matters, and the signature or
264 execution of ordinances, contracts, deeds, bonds, and other
265 instruments and documents and for purposes of military law. The
266 mayor shall also serve as the ceremonial head of the town and
267 the town official designated to represent the town when dealing
268 with other entities. The mayor shall have no administrative
269 duties other than those necessary to accomplish these actions,
270 or such other actions as may be authorized by the town council,
271 consistent with general or special law.
272 (3) THE VICE MAYOR.--
273 (a) The council, at its first regular meeting after the
274 fourth Tuesday of each March, shall elect from its members a
275 vice mayor who shall serve for a period of 1 year and who shall
276 have the same legislative powers and duties while serving as any
277 other council member.
278 (b) The vice mayor shall serve as acting mayor during the
279 absence or disability of the mayor. In the absence of the mayor
280 and the vice mayor, the remaining council members shall select a

281 council member to serve as acting mayor.
282 Section 3. Election and terms of office.--
283 (1) TERM OF OFFICE.--Each council member shall be elected
284 at large for a 3-year term by the electors of the town in the
285 manner provided herein. Council members shall be sworn into
286 office at the first regularly scheduled meeting following their
287 election. Each council member shall remain in office until his
288 or her successor is elected and assumes the duties of the
289 position.
290 (2) SEATS.--The town council shall be divided into five
291 separate council seats to be designated as seats 1, 2, 3, 4, and
292 5, to be voted on townwide, with each qualified elector entitled
293 to vote for one candidate for each seat.
294 (3) QUALIFICATION.--Candidates for each council seat must
295 qualify for council elections by seat in accordance with
296 applicable general law, and the council members elected to those
297 seats shall hold the seats 1 through 5, respectively. To qualify
298 for office:
299 (a) Filing.--Each candidate for council member shall file
300 a written notice of candidacy with the town clerk at such time
301 and in such manner as may be prescribed by ordinance and shall
302 make payment to the town of any fees required by general law as
303 a qualifying fee.
304 (b) Registered elector.--Each candidate for council member
305 shall be a registered elector in the state.
306 (c) Residency.--Each candidate for council member shall
307 have maintained his or her domicile within the boundaries of the
308 town for a period of 1 year prior to qualifying for election

309 and, if elected, shall maintain such residency throughout his or
310 her term of office.
311 (d) Deadline.--Any resident of the town who wishes to
312 become a candidate for a council member seat shall qualify with
313 the town clerk no sooner than noon on the last Tuesday in
314 January, nor later than noon on the first Tuesday in February,
315 of the year in which the election is to be held.
316 (4) VACANCIES IN OFFICE; FORFEITURE; SUSPENSION; FILLING
317 OF VACANCIES.--
318 (a) Vacancies.--A vacancy in the office of mayor, vice
319 mayor, or any council member shall occur upon the death of the
320 incumbent, removal from office as authorized by law,
321 resignation, appointment to other public office which creates
322 dual office holding, judicially determined incompetence, or
323 forfeiture of office as described in paragraph (b).
324 (b) Forfeiture of office.--Any council member shall
325 forfeit his or her office upon determination by the council,
326 acting as a body, at a duly noticed public meeting that he or
327 she:
328 1. Lacks at any time, or fails to maintain during his or
329 her term of office, any qualification for the office prescribed
330 by this charter or otherwise required by law;
331 2. Is convicted of a felony or enters a plea of guilty or
332 nolo contendere to a crime punishable as a felony, even if
333 adjudication is withheld;
334 3. Is convicted of a first degree misdemeanor arising
335 directly out of his or her official conduct or duties, or enters
336 a plea of guilty or nolo contendere thereto, even if

337 adjudication of guilt has been withheld;
338 4. Is found to have violated any standard of conduct or
339 code of ethics established by law for public officials and has
340 been suspended from office by the Governor, unless subsequently
341 reinstated as provided by law; or
342 5. Is absent from three consecutive regular council
343 meetings without good cause, or for any other reason established
344 in this charter.
345
346 The council shall be the sole judge of the qualifications of its
347 members and shall hear all questions relating to forfeiture of a
348 council member's office, including whether good cause for
349 absence has been or may be established. The burden of
350 establishing good cause shall be on the council member in
351 question; however, any council member may at any time during any
352 duly held meeting move to establish good cause for his or her
353 absence or the absence of any other commission member from any
354 past, present, or future meeting or meetings, which motion, if
355 carried, shall be conclusive. A council member whose
356 qualifications are in question or who is otherwise subject to
357 forfeiture of his or her office shall not vote on any such
358 matters. The council member in question shall be entitled to a
359 public hearing on request regarding an alleged forfeiture of
360 office. If a public hearing is requested, notice thereof shall
361 be published in one or more newspapers of general circulation in
362 the town at least 1 week in advance of the hearing. Any final
363 determination by the council that a council member has forfeited
364 his or her office shall be made by resolution. All votes and

365 other acts of the council member in question prior to the
366 effective date of such resolution shall be valid regardless of
367 the grounds of forfeiture.
368 (c) Suspension from office.--Any council member shall be
369 suspended from office upon return of an indictment or issuance
370 of any information charging the council member with any crime
371 which is punishable as a felony or with any crime arising out of
372 his or her official duties which is punishable as a first degree
373 misdemeanor. Pursuant thereto:
374 1. During a period of suspension, a council member shall
375 not perform any official act, duty, or function or receive any
376 pay, allowance, emolument, or privilege of office.
377 2. If the council member is subsequently found not guilty
378 of the charge, or if the charge is otherwise dismissed, reduced,
379 or altered in such a manner that suspension would no longer be
380 required as provided herein, the suspension shall be lifted and
381 the council member shall be entitled to receive full back pay
382 and such other emoluments or allowances as he or she would have
383 been entitled to had the suspension not occurred.
384 (d) Filling of vacancies.--
385 1. If any vacancy occurs in the office of any council
386 member and the remainder of the council member's unexpired term
387 is less than 1 year and 81 days, the remaining council members
388 shall, within 30 days following the occurrence of such vacancy,
389 by majority vote, appoint a person to fill the vacancy for the
390 remainder of the unexpired term.
391 2. If any vacancy occurs in the office of any council
392 member and the remainder of the unexpired term is equal to or

393 exceeds 1 year and 81 days, the remaining council members shall,
394 within 30 days following the occurrence of such vacancy, by
395 majority vote, appoint a person to fill the vacancy until the
396 next regularly scheduled town election, at which time an
397 election shall be held to fill the vacancy.
398 3. If a vacancy occurs in the office of mayor and fewer
399 than 120 days remain in the term of the council member who was
400 elected mayor, the vice mayor shall serve as mayor until a new
401 mayor is elected by the council and assumes the duties of his or
402 her office. If a vacancy occurs in the office of mayor and 120
403 days or more remain in the term of the mayor, the vice mayor
404 shall serve as mayor until a new council member is elected and
405 the council elects a new mayor and vice mayor as provided by
406 this charter.
407 4. Any person appointed to fill a vacancy on the council
408 shall be required to meet the qualifications of the seat to
409 which he or she is appointed.
410 5. Notwithstanding any quorum requirements established
411 herein, if at any time the full membership of the council is
412 reduced to less than a quorum, the remaining members may, by
413 majority vote, appoint additional members to the extent
414 otherwise permitted or required under this subsection.
415 6. In the event that all the members of the council are
416 removed by death, disability, recall, forfeiture of office, or
417 resignation, or any combination thereof, the Governor shall
418 appoint interim council members who shall call a special
419 election within not fewer than 30 days or more than 60 days
420 after such appointment. Such election shall be held in the same

421 manner as the initial elections under this charter. However, if
422 there are fewer than 6 months remaining in any unexpired terms,
423 the interim council appointed by the Governor shall serve out
424 the unexpired terms. Appointees must meet all requirements for
425 candidates as provided in this charter.
426 (e) Compensation and expenses.--
427 1. Town council members shall be entitled to receive
428 reimbursement in accordance with general law for authorized
429 travel and per diem expenses incurred in the performance of
430 their official duties.
431 2. The town council, by not fewer than four affirmative
432 votes, may elect to provide for compensation and any increase in
433 such compensation by ordinance. However, no such ordinance
434 establishing or increasing compensation shall take effect until
435 the date of commencement of the terms of council members elected
436 at the next regular election which follows the adoption of such
437 ordinance.
438 Section 4. Administrative.--
439 (1) DESIGNATION OF CHARTER OFFICERS.--The town manager and
440 the town attorney are designated as charter officers, except
441 that the office of town attorney may be contracted to an
442 attorney or law firm.
443 (2) APPOINTMENT; REMOVAL; COMPENSATION; FILLING OF
444 VACANCIES.--
445 (a) The charter officers shall be appointed by a majority
446 vote of the full council and shall serve at the pleasure of the
447 council.
448 (b) The charter officers shall be removed from office only

449 by a super majority vote of the full council. Upon demand by a
450 charter officer, a public hearing shall be held prior to such
451 removal.
452 (c) The compensation of the charter officers shall be
453 fixed by the town council through the approval of an acceptable
454 employment contract.
455 (d) The town council shall begin the process to fill a
456 vacancy in a charter office within 90 days after the vacancy. An
457 acting town manager or an acting town attorney may be appointed
458 by the council during a vacancy in such charter office.
459 (e) A charter officer shall not be a member of the town
460 council or a candidate for town council while holding a charter
461 officer position.
462 (3) TOWN MANAGER.--The town manager shall be the chief
463 administrative officer of the town.
464 (a) The town council shall appoint a town manager who
465 shall be the administrative head of the municipal government
466 under the direction and supervision of the town council. The
467 town manager shall hold office at the pleasure of the town
468 council. The town manager shall be appointed by resolution
469 approving an employment contract between the town and the town
470 manager. The town manager shall receive such compensation as
471 determined by the town council through the adoption of an
472 appropriate resolution.
473 (b) The town manager shall have the minimum qualifications
474 of a combination of a bachelor's degree in public
475 administration, business administration, or other related fields
476 from an accredited college or university and 3 years' public

477 administration experience or 6 years' experience in a city
478 manager or assistant city manager position, preferably in an
479 International City Manager Association-recognized local
480 government.
481 (c) It is preferred that the town manager be an
482 International City Manager Association-credentialed manager or
483 obtain such credential within 2 years after being appointed.
484 (d) During the absence or disability of the town manager,
485 the town council may by resolution designate some properly
486 qualified person to temporarily execute the functions of the
487 town manager. The person thus designated shall have the same
488 powers and duties as the town manager and shall be known while
489 serving as acting town manager. The town manager or acting town
490 manager may be removed by the town council at any time.
491 (e) As the chief administrative officer, the town manager
492 shall:
493 1. Direct and supervise the administration of all
494 departments, offices, and agencies of the town, except the
495 office of town attorney, and except as otherwise provided by
496 this charter or by law.
497 2. Appoint, suspend, or remove any employee of the town or
498 appointive administrative officer provided for, by, or under
499 this charter, except the office of town attorney, and except as
500 may otherwise be provided by law, this charter, or personnel
501 rules adopted pursuant to the charter. The town manager may
502 authorize any administrative officer who is subject to his or
503 her direction and supervision to exercise these powers with
504 respect to subordinates in that officer's department, office, or

505 agency.
506 3. Ensure that all laws, provisions of this charter, and
507 acts of the council are faithfully executed.
508 4. Prepare and submit the annual budget and capital
509 program to the council in the form prescribed by ordinance.
510 5. Attend meetings of the town council.
511 6. Draw and sign vouchers upon depositories as provided by
512 ordinance and keep, or cause to be kept, a true and accurate
513 account of same.
514 7. Sign all licenses issued by the town, issue receipts
515 for all moneys paid to the town, and deposit such moneys in the
516 proper depositories on the first banking day after receipt. The
517 town manager may delegate the responsibilities of this
518 subparagraph to an appropriate town employee who shall be
519 bonded.
520 8. Provide administrative services in support of the
521 official duties of the mayor and the council.
522 9. Keep the council advised as to the financial condition
523 and future needs of the town and make recommendations to the
524 council concerning the affairs of the town.
525 10. Submit to the council, and make available to the
526 public, a complete report on finances and administrative
527 activities of the town as of the end of each fiscal year.
528 11. Sign contracts on behalf of the town to the extent
529 authorized by ordinance.
530 12. Perform such other duties as are specified in this
531 charter or as may be required by the council.
532 (4) TOWN ATTORNEY.--

533 (a) The town attorney shall be employed under terms and
534 conditions deemed advisable by the town council, which may
535 include the appointment of a law firm.
536 (b) The town attorney shall be a member in good standing
537 with The Florida Bar, have been admitted to practice in the
538 state for at least 5 years, and have not less than 2 years'
539 experience in the practice of local government law.
540 (c) The town attorney has sole discretion to appoint,
541 promote, suspend, demote, remove, or terminate deputy and
542 assistant town attorneys, subject to the town's annual budget.
543 (d) The town attorney shall perform the following
544 functions in addition to other functions as designated by the
545 town council:
546 1. Serve as chief legal advisor to the town council, the
547 charter officers, and all town departments, offices, and
548 agencies.
549 2. Attend all regular and special town council meetings,
550 unless excused by the town council, and perform such
551 professional duties as may be required by law or by the council
552 in furtherance of the law.
553 3. Approve all contracts, bonds, and other instruments in
554 which the town is concerned and shall endorse on each his or her
555 approval of the form and correctness thereof. No contract with
556 the town shall take effect until his or her approval is so
557 endorsed thereon.
558 4. When requested to do so by the council, prosecute and
559 defend on behalf of the town all complaints, suits, and
560 controversies in which the town is a party.

561 5. Perform such other professional duties as required of
562 him or her by resolution of the council or as prescribed for
563 municipal attorneys in the general laws of the state which are
564 not inconsistent with this charter.
565 6. Prepare an annual budget for the operation of the
566 office of the town attorney and submit this budget to the town
567 manager for inclusion in the annual town budget, in accordance
568 with uniform town procedures.
569 (5) TOWN CLERK.--The town manager shall appoint a town
570 clerk or management firm to serve as town clerk (the "clerk").
571 The clerk shall give notice of council meetings to its members
572 and the public, keep minutes of its proceedings, and perform
573 such other duties as the council or town manager may prescribe
574 from time to time. The clerk shall report to the town manager.
575 (6) EXPENDITURE OF TOWN FUNDS.--No funds of the town shall
576 be expended except pursuant to duly approved appropriations or
577 for the payment of bonds, notes, or other indebtedness duly
578 authorized by the council and only from such funds so
579 authorized.
580 (7) TOWN BOARDS AND AGENCIES.--Except as otherwise
581 provided by law, the council may establish or terminate such
582 boards and agencies as it may deem advisable from time to time.
583 The boards and agencies shall report to the council. Members of
584 boards and agencies shall be appointed by the council by
585 resolution.
586 Section 5. Legislative.--
587 (1) REGULAR MEETINGS.--The council shall conduct regular
588 meetings at such times and places as the council shall prescribe

589 by resolution. Such meetings shall be public meetings within the
590 meaning of state law and shall be subject to notice and other
591 requirements of law applicable to public meetings.
592 (2) SPECIAL MEETINGS.--Special meetings may be held at the
593 call of the mayor or, in his or her absence, at the call of the
594 vice mayor. Special meetings may also be called upon the request
595 of a majority of the council members. Unless the meeting is of
596 an emergency nature, the person or persons calling such a
597 meeting shall provide not less than 72 hours' prior notice of
598 the meeting to the public.
599 (3) COMMENCEMENT.--All meetings shall be scheduled to
600 commence no earlier than 7 a.m. nor later than 10 p.m.
601 (4) RULES; ORDER OF BUSINESS.--The council shall determine
602 its own rules and order of business.
603 (5) QUORUM.--A majority of the full council shall
604 constitute a quorum.
605 (6) VALIDITY OF ACTION.--No action of the council shall be
606 valid unless adopted by an affirmative vote of the majority of
607 the full council, unless otherwise provided by law.
608 (7) LEGISLATIVE POWERS.--Except as otherwise prescribed
609 herein or as provided by law, the legislative powers of the town
610 shall be vested in the council. The council shall provide for
611 the exercise of its powers and for the performance of all duties
612 and obligations imposed on the town by law.
613 (8) DEPARTMENTS.--The council may establish such other
614 departments as it determines necessary for the efficient
615 administration and operation of the town. Such departments,
616 offices, or agencies shall be established by ordinance.

617 (9) CODE.--The council may adopt any standard code of
618 technical regulations by reference thereto in an adopting
619 ordinance and may amend the code in the adopting ordinance or
620 later amendatory ordinance. The procedures and requirements
621 governing such an adopting ordinance shall be as prescribed for
622 ordinances generally, except that:
623 (a) Requirements regarding distribution and filing of
624 copies of the ordinance shall not be construed to require
625 distribution and filing of copies of the adopted code of
626 technical regulations.
627 (b) A copy of each adopted code of technical regulations,
628 as well as of the adopting ordinance, shall be authenticated and
629 recorded by the town clerk.
630 (10) EMERGENCY ORDINANCES.--
631 (a) To meet a public emergency affecting life, health,
632 property, or the public peace, the council may adopt, in the
633 manner provided by general law, one or more emergency
634 ordinances, but such ordinances may not enact or amend a land
635 use plan or rezone private property; levy taxes; grant, renew,
636 or extend any municipal franchise; set service or user charges
637 for any municipal services; or authorize the borrowing of money,
638 except as provided under the emergency appropriations provisions
639 of this charter, if applicable. An emergency ordinance shall be
640 introduced in the form and manner prescribed for ordinances
641 generally, except that it shall be plainly designated in a
642 preamble as an emergency ordinance and shall contain, after the
643 enacting clause, a declaration stating that an emergency exists
644 and describing it in clear and specific terms.

645 (b) Upon the affirmative vote of four council members, an
646 emergency ordinance may be adopted with or without amendment or
647 rejected at the meeting at which it is introduced. After its
648 adoption, the ordinance shall be advertised and printed as
649 prescribed for other ordinances.
650 (c) Emergency ordinances shall become effective upon
651 adoption or at such other date as may be specified in the
652 ordinance.
653 (d) Every emergency ordinance, except emergency
654 appropriation ordinances, shall automatically be repealed as of
655 the 61st day following its effective date, but this shall not
656 prevent reenactment of the ordinance under regular procedures
657 or, if the emergency still exists, in the manner specified in
658 this section. An emergency ordinance may also be repealed by
659 adoption of a repealing ordinance in the same manner specified
660 in this section for adoption of emergency ordinances.
661 (11) EMERGENCY APPROPRIATIONS.--To meet a public emergency
662 affecting life, health, property, or the public peace, the
663 council, by resolution, may make emergency appropriations. To
664 the extent that there are no unappropriated revenues to meet
665 such appropriation, the council may by such emergency resolution
666 authorize the issuance of emergency notes, which may be renewed
667 from time to time, but the emergency notes and renewals in any
668 fiscal year shall be paid not later than the last day of the
669 fiscal year succeeding that in which the emergency
670 appropriations were made.
671 (12) RECORDKEEPING.--The council shall, in a properly
672 indexed book kept for the purpose, provide for the

673 authentication and recording in full of all minutes of meetings
674 and all ordinances and resolutions adopted by the council, and
675 the same shall at all times be a public record. The council
676 shall further maintain a current codification of all ordinances.
677 Such codification shall be printed and shall be made available
678 for distribution to the public on a continuing basis. All
679 ordinances or resolutions of the council shall be signed by all
680 council members and attested to by the town clerk.
681 (13) DUAL OFFICE HOLDING.--No present elected town
682 official shall hold any compensated appointive office or
683 employment of the town while in office, nor shall any former
684 council member be employed by the town until after the
685 expiration of 1 year from the time of leaving office.
686 (14) NONINTERFERENCE BY TOWN COUNCIL.--Except for the
687 purposes of inquiry and information, council members are
688 expressly prohibited from interfering with the performance of
689 the duties of any employee of the town government who is under
690 the direct or indirect supervision of the town manager or town
691 attorney. Such action shall be malfeasance within the meaning of
692 section 112.51, Florida Statutes. Recommendations for
693 improvements in the town government operations shall come
694 through the town manager, but each member of the council shall
695 be free to discuss or recommend improvements to the town
696 manager, and the council is free to direct the town manager to
697 implement specific recommendations for improvement in town
698 government operations.
699 Section 6. Budget and appropriations.--
700 (1) FISCAL YEAR.--The town shall have a fiscal year which

701 shall begin on the first day of October and shall end on the
702 last day of September of the following calendar year, unless
703 otherwise defined by general law. Such fiscal year shall also
704 constitute the annual budget and accounting year.
705 (2) BUDGET ADOPTION.--The council shall adopt a budget in
706 accordance with applicable general law, following a minimum of
707 two public hearings on the proposed budget. A resolution
708 adopting the annual budget shall constitute appropriation of the
709 amounts specified therein as expenditures from funds indicated.
710 (3) EXPENDITURES.--The budget shall not provide for
711 expenditures in an amount greater than the revenues budgeted.
712 (4) APPROPRIATIONS.--
713 (a) If, during the fiscal year, revenues in excess of
714 those estimated in the budget are available for appropriation,
715 the council by resolution may make supplemental appropriations
716 for the year in an amount not to exceed such excess.
717 (b) If, at any time during the fiscal year, it appears
718 probable to the town manager that the revenues available will be
719 insufficient to meet the amount appropriated, the town manager
720 shall report to the council without delay, indicating the
721 estimated amount of the deficit, any remedial action taken, and
722 recommendations as to any other steps that should be taken. The
723 council shall then take such further action as it deems
724 necessary to prevent or minimize any deficit and, for that
725 purpose, the council may by resolution reduce one or more
726 appropriations accordingly.
727 (c) No appropriation for debt service may be reduced or
728 transferred, and no appropriation may be reduced below any

729 amount required by law to be appropriated, or by more than the
730 unencumbered balance thereof. Other provisions of law to the
731 contrary notwithstanding, the supplemental and emergency
732 appropriations and reduction or transfer of appropriations
733 authorized by this section may be made effective immediately
734 upon adoption.
735 (5) BONDS; INDEBTEDNESS.--
736 (a) Subject to the referendum requirements of the State
737 Constitution, if applicable, the town may from time to time
738 borrow money and issue bonds or other obligations or evidence of
739 indebtedness (collectively, "bonds") of any type or character
740 for any of the purposes for which the town is now or hereafter
741 authorized by law to borrow money, including to finance the cost
742 of any capital or other project and to refund any and all
743 previous issues of bonds at or prior to maturity. Such bonds may
744 be issued pursuant to one or more resolutions adopted by a
745 majority of the council.
746 (b) The town may assume all outstanding indebtedness
747 related to facilities it acquires from other units of local
748 government and be liable for payment thereon in accordance with
749 its terms.
750 (6) REVENUE BONDS; LEASE-PURCHASE CONTRACTS.--Unless
751 authorized by the electors of the town at a duly held referendum
752 election, the council shall not authorize or allow to be
753 authorized the issuance of revenue bonds or enter into lease-
754 purchase contracts or any other unfunded multiyear contracts for
755 the purchase of real property or the construction of any capital
756 improvement, the repayment of which extends in excess of 36

757 months, unless mandated by state or federal governing agencies.
758 (7) ANNUAL AUDIT.--The council shall provide for an
759 independent annual financial audit of all town accounts and may
760 provide for more frequent audits as it deems necessary. Such
761 audits shall be made by a certified public accountant or a firm
762 of such accountants who have no personal interest, direct or
763 indirect, in the fiscal affairs of the town government or in any
764 of its officers. Residency in the town shall not be construed as
765 a prohibited interest.
766 Section 7. Elections.--
767 (1) ELECTORS.--Any person who is a resident of the town,
768 who has qualified as an elector of this state, and who registers
769 in the manner prescribed by law shall be an elector of the town.
770 (2) NONPARTISAN ELECTIONS.--All elections for the town
771 council members shall be conducted on a nonpartisan basis
772 without any designation of political party affiliation.
773 (3) ELECTION DATES.--A special election shall be held on
774 the second Tuesday in March 2007, and regular elections shall be
775 held on the second Tuesday in March of each election year,
776 provided as follows:
777 (a) For the two council member seats that received the
778 highest number of votes in the March 2007 election, the next
779 election to fill the council member seats shall be held on the
780 second Tuesday in March after the first Monday in March in 2010,
781 and every 3 years thereafter.
782 (b) For the two council member seats that received the
783 next highest number of votes in the March 2007 election, the
784 next election to fill the council member seats shall be held on

785 the second Tuesday in March after the first Monday in March in
786 2009, and every 3 years thereafter.
787 (c) For the remaining council member seat, the next
788 election to fill the council member seat shall be held on the
789 second Tuesday in March after the first Monday in March in 2008,
790 and every 3 years thereafter.
791 (d) Such town elections shall be general town elections.
792 (4) RUNOFF ELECTIONS.--In the event no candidate for an
793 office receives a majority of the votes cast for such office,
794 the person receiving the largest number of votes cast will be
795 elected. In the event two candidates receive an equal number of
796 votes, a runoff election shall be held on the fourth Tuesday in
797 March.
798 (5) TOWN CANVASSING BOARD.--The town canvassing board
799 shall be composed of those members of the town council who are
800 not candidates for reelection and the town clerk, who shall act
801 as chair. At the close of the polls of any town election, or as
802 soon thereafter as practicable, the canvassing board shall meet
803 at a time and place designated by the chair and shall proceed to
804 publicly canvass the vote as shown by the returns then on file
805 in the office of the town clerk, and then shall publicly canvass
806 the absentee elector ballots. The canvassing board shall prepare
807 and sign a certificate containing the total number of votes cast
808 for each candidate or other measure voted upon. The certificate
809 shall be placed on file with the town clerk.
810 (6) SPECIAL ELECTIONS.--Special municipal elections, when
811 required, shall be held in the same manner as regular elections,
812 except that the town council, by ordinance, shall fix the time

813 for holding such elections consistent with this charter and
814 state law.
815 (7) GENERAL ELECTION.--
816 (a) The ballot for the general election shall contain the
817 names of all qualified candidates for each respective council
818 member seat and shall instruct electors to cast one vote for
819 each council member seat, with a maximum of one vote per
820 candidate. The candidate for each council member seat receiving
821 the most votes shall be the duly elected council member for that
822 designated council member seat.
823 (b) No election for any council member seat shall be
824 required in any election if there is only one duly qualified
825 candidate for the council member seat.
826 (c) If more than one candidate for a designated council
827 member seat receive an equal and highest number of votes, the
828 candidates for the office receiving the highest vote in the
829 general election shall run again in the runoff election.
830 (d) The candidate receiving the highest number of votes
831 cast for the designated council member seat in the runoff
832 election shall be elected to the designated council member seat.
833 If the vote at the runoff election results in a tie, the outcome
834 shall be determined by lot.
835 (e) The term of office of any elected official shall
836 commence immediately after the election.
837 (f) All elected officers, before entering upon their
838 duties, shall take and subscribe to the following oath of
839 office:
840 "I do solemnly swear (or affirm) that I will support, protect,

841 and defend the Constitution and Government of the United States
842 and of the state, and the charter of the Town of Loxahatchee
843 Groves; that I am duly qualified to hold office under the
844 Constitution of the State and the charter of the Town of
845 Loxahatchee Groves; and that I will well and faithfully perform
846 the duties of council member upon which I am now about to
847 enter."
848 (g) The election laws of the state shall apply to all
849 elections.
850 (h) Any member of the town council may be removed from
851 office by the electors of the town following the procedures for
852 recall established by general law.
853 Section 8. Initiative and referendum.--
854 (1) POWER TO INITIATE AND RECONSIDER ORDINANCES.--
855 (a) The electors of the town shall have the power to
856 propose ordinances to the town council and, if the town council
857 fails to adopt an ordinance so proposed without any change in
858 substance, to adopt or reject it at a town election, provided
859 that such power shall not extend to the annual budget or capital
860 program or any ordinance appropriating money, levying taxes, or
861 setting salaries of town officers or employees.
862 (b)1. The town council shall have the power, by
863 resolution, to call for a referendum vote by the electors of the
864 town at any time, provided that the purpose of such referendum
865 is presented to the town at a public hearing at least 60 days
866 prior to the adoption of such resolution. Any resolution calling
867 for a referendum vote of the electors of the town must be passed
868 by the affirmative vote of not less than four members of the

869 council.
870 2. The electors of the town shall have the power to
871 require reconsideration by the town council of any adopted
872 ordinance and, if the town council fails to repeal an ordinance
873 so reconsidered, to approve or reject it at a town election,
874 provided that such power shall not extend to the annual budget
875 or capital program or any ordinance appropriating money, levying
876 taxes, or setting salaries of town officers or employees.
877 (2) COMMENCEMENT OF PROCEEDINGS.--Any 10 electors may
878 commence initiative or referendum proceedings by filing with the
879 town clerk an affidavit stating that they shall constitute the
880 petitioner's committee and be responsible for circulating the
881 petition and filing it in proper form stating their names and
882 addresses and specifying the address to which all notices to the
883 committee are to be sent, and setting out in full the proposed
884 initiative ordinance or citing the ordinance sought to be
885 reconsidered. Promptly after the affidavit of the petitioner's
886 committee is filed, the town clerk may, at the committee's
887 request, issue the appropriate petition blanks to the
888 petitioner's committee at the committee's expense.
889 (3) PETITIONS.--
890 (a) Initiative and referendum petitions must be signed by
891 electors of the town equal in number to at least 10 percent of
892 the total number of electors registered to vote in the last
893 regular town election.
894 (b) All papers of a petition shall be assembled as one
895 instrument of filing. Each signature shall be executed in ink
896 and shall be followed by the printed name and address of the

897 person signing. Petitions shall contain or have attached thereto
898 throughout their circulation the full text of the ordinance
899 proposed or sought to be reconsidered.
900 (c) Each paper of a petition shall have attached to it
901 when filed an affidavit executed by the circulator thereof
902 stating that he or she personally circulated the paper, the
903 number of signatures thereon, that all signatures were affixed
904 in his or her presence, that he or she believes them to be the
905 genuine signatures of the persons whose names they purport to
906 be, and that each signer had an opportunity before signing to
907 read the full text of the ordinance proposed or sought to be
908 reconsidered.
909 (d) Except as otherwise provided herein, all initiative
910 and referendum petitions must be filed within 60 days of the
911 date on which proceedings with respect to such initiative or
912 referendum are commenced, and all requirements of the process,
913 including, but not limited to, the submission of the signatures
914 required, must be completed no later than 90 days following the
915 date of filing such initiative or referendum petition.
916 (4) PROCEDURE FOR FILING.--
917 (a) Within 20 days after an initiative petition or a
918 referendum petition is filed, the town clerk shall complete a
919 certificate as to its sufficiency, specifying, if it is
920 insufficient, the particulars wherein it is defective, and shall
921 promptly send a copy of the certificate to the petitioner's
922 committee by registered mail. Grounds for insufficiency are only
923 those specified herein that are not met. A petition certified
924 insufficient for lack of the required number of valid signatures

925 may be amended once if the petitioner's committee files a notice
926 of intent to amend it with the designated official within 2
927 business days after receiving the copy of the certificate and
928 files a supplementary petition upon additional papers within 10
929 days after receiving the copy of such certificate. Such
930 supplementary petition shall comply with original petition
931 requirements, and within 5 days after it is filed the town clerk
932 shall complete a certificate as to the sufficiency of the
933 petition as amended and promptly send a copy of such certificate
934 to the petitioner's committee by registered mail. If a petition
935 or an amended petition is certified sufficient, or if a petition
936 or amended petition is certified insufficient and the
937 petitioner's committee does not elect to amend or request the
938 town council review within the time required, the town clerk
939 shall promptly present a certificate to the town council and
940 such certificate shall then be a final determination as to the
941 sufficiency of the petition.
942 (b) If a petition has been certified insufficient and the
943 petitioner's committee does not file notice of intent to amend
944 it or if an amended petition has been certified insufficient,
945 the committee may, within 2 business days after receiving the
946 copy of such certificate, file a request that it be reviewed by
947 the town council. The town council shall review the certificate
948 at its next meeting following the town council's filing of such
949 request and approve or disapprove it, and determination shall
950 then be final as to the sufficiency of the petition.
951 (5) ACTION ON PETITIONS.--
952 (a) When an initiative or referendum petition has been

953 determined sufficient, the town council shall promptly consider
954 the proposed initiative ordinance or reconsider the referendum
955 ordinance by voting its repeal. If the town council fails to
956 adopt a proposed initiative ordinance without any change in
957 substance within 45 days or fails to repeal the referendum
958 ordinance within 30 days after the date on which the petition is
959 determined to be sufficient, it shall submit the proposed
960 initiative or referendum ordinance to the electors of the town.
961 If the town council fails to act on a proposed initiative
962 ordinance or a referendum ordinance within the time period
963 specified, the town council shall be deemed to have failed to
964 adopt the proposed initiative ordinance or failed to repeal the
965 referendum ordinance on the last day that the town council was
966 authorized to act on such matter.
967 (b) The vote of the town on a proposed initiative or
968 referendum ordinance shall be held not fewer than 30 days or
969 more than 60 days from the date the town council acted or was
970 deemed to have acted pursuant to this charter. If no regular
971 election is to be held within the period described in this
972 paragraph, the town council shall provide for a special
973 election, except that the town council may, in its discretion,
974 provide for a special election at an earlier date within the
975 described period. Copies of the proposed initiative or
976 referendum ordinance shall be made available at the polls.
977 (c) An initiative or referendum petition may be withdrawn
978 at any time prior to the 15th day preceding the day scheduled
979 for a vote of the town by filing with the town clerk a request
980 for withdrawal signed by at least eight members of the

981 petitioner's committee. Upon the filing of such request, the
982 petition shall have no further force or effect and all
983 proceedings thereon shall be terminated.
984 (6) RESULTS OF ELECTION.--
985 (a) If a majority of the qualified electors voting on a
986 proposed initiative ordinance vote in its favor, it shall be
987 considered adopted upon certification of the election results.
988 If conflicting ordinances are approved at the same election, the
989 one receiving the greatest number of affirmative votes shall
990 prevail to the extent of such conflict.
991 (b) If a majority of the qualified electors voting on a
992 referendum ordinance vote against it, it shall be considered
993 repealed upon certification of the election results.
994 Section 9. General provisions.--
995 (1) SEVERABILITY.--If any section or part of any section
996 of this charter shall be held invalid by a court of competent
997 jurisdiction, such holding shall not affect the remainder of
998 this charter or the context in which such section or part of a
999 section so held invalid may appear, except to the extent that an
1000 entire section or part of a section may be inseparably connected
1001 in meaning and effect with the section or part of a section to
1002 which such holding shall directly apply.
1003 (2) TOWN PERSONNEL SYSTEM.--All new employments,
1004 appointments, and promotions of town officers and employees
1005 shall be made pursuant to personnel procedures to be established
1006 by the town manager from time to time.
1007 (3) CHARITABLE CONTRIBUTIONS.--The town shall not make any
1008 charitable contribution to any person or entity unless

1009 authorized by the council.
1010 (4) VARIATION OF PRONOUNS.--All pronouns and any
1011 variations thereof used in this charter shall be deemed to refer
1012 to masculine, feminine, neutral, singular, or plural as the
1013 identity of the person or persons shall require and are not
1014 intended to describe, interpret, define, or limit the scope,
1015 extent, or intent of this charter.
1016 (5) CALENDAR DAY.--For the purpose of this charter, a day
1017 shall mean a calendar day.
1018 (6) CHARTER REVIEW COMMITTEE.--
1019 (a) At its first regular meeting in March 2012, and every
1020 10th year thereafter, the town council may appoint a charter
1021 review committee consisting of 15 individuals who are not
1022 members of the town council to serve in an advisory capacity to
1023 the town council.
1024 (b) Each council member shall recommend and nominate three
1025 individuals to serve on the committee as regular members, which
1026 appointments shall be approved by a majority vote of the town
1027 council. Individuals appointed to the charter review committee
1028 shall be citizens of the town.
1029 (c) The charter review committee shall appoint its own
1030 chair and vice chair and adopt its own rules and procedures.
1031 (d) The town clerk and the town attorney shall advise the
1032 town council in advance of the date when such appointments may
1033 be made.
1034 (e) If appointed, the charter review committee shall
1035 commence its proceedings within 30 days after the committee is
1036 appointed by the town council. The committee shall review the

1037 charter and provide input to the town council to modernize and
1038 improve the charter. The public shall be given an opportunity to
1039 speak and participate at charter review committee meetings in
1040 accordance with the rules of the charter review committee.
1041 (f) All recommendations by the charter review committee
1042 shall be forwarded to the town council in ordinance form for
1043 consideration no later than the 1st day of March of the year
1044 following the appointment of the charter review committee, and
1045 in sufficient time for any recommendations to be considered by
1046 the town council as provided herein.
1047 (g) The town council shall consider the recommendations of
1048 the charter review committee at the regular meeting in November
1049 and the regular meeting in December of the year following
1050 appointment of the charter review committee.
1051 (7) CHARTER AMENDMENTS.--This charter may be amended in
1052 accordance with the provisions for charter amendments as
1053 specified in general law or as may otherwise be provided by
1054 general law. The form, content, and certification of any
1055 petition to amend shall be established by ordinance.
1056 (8) INITIATION BY PETITION.--The electors of the town may
1057 propose amendments to this charter by petition to be submitted
1058 to the council to be placed before the electors, as provided by
1059 general law.
1060 (9) STANDARDS OF CONDUCT.--All elected officials and
1061 employees of the town shall be subject to the standards of
1062 conduct for public officers and employees set by general law. In
1063 addition, the town council shall, no later than 6 months from
1064 the effective date of incorporation, establish by ordinance a

1065 code of ethics for officials and employees of the town which may
1066 be supplemental to general law, but in no case may such an
1067 ordinance diminish the provisions of general law. The intent of
1068 this subsection is to require more stringent standards than
1069 those provided under general law.
1070 (10) LAND USE, REZONING.--Any change to the town's future
1071 land use map, or any change to the zoning designation for any
1072 parcel within the town shall require the affirmative vote of no
1073 fewer than four members of the town council.
1074 Section 10. Transition schedule.--
1075 (1) REFERENDUM.--The Palm Beach County Commission shall
1076 hold the referendum election called for by this act on October
1077 10, 2006, at which time the following question shall be placed
1078 upon the ballot:
1079
1080 "Shall the creation of the Town of Loxahatchee Groves and its
1081 charter be approved?"
1082
1083 Yes
1084
1085 No
1086
1087 (2) INITIAL ELECTION OF COUNCIL MEMBERS; DATES.--
1088 (a) Following the adoption of this charter, the Palm Beach
1089 County Commission shall call a special election for the election
1090 of the five town council members to be held on March 13, 2007.
1091 Candidates for the election shall qualify for seat 1, seat 2,
1092 seat 3, seat 4, and seat 5. The candidate receiving the highest

1093 number of votes for that seat shall be elected. If more than one
1094 candidate for a designated council member seat receives an equal
1095 and highest number of votes, then the candidates receiving the
1096 highest votes in the general election shall run again in the
1097 runoff election which shall be held on March 27, 2007.
1098 (b) Any individual who wishes to run for one of the five
1099 initial seats on the council shall qualify as a candidate with
1100 the Palm Beach County Supervisor of Elections in accordance with
1101 the provisions of this charter and general law.
1102 (c) The Palm Beach County Commission shall appoint a
1103 canvassing board which shall certify the results of the
1104 election.
1105 (d) Those candidates who are elected on March 13, 2007,
1106 and March 27, 2007, shall take office at the initial town
1107 council meeting, which shall be held at 7 p.m. on March 29,
1108 2007.
1109 (3) CREATION AND ESTABLISHMENT OF THE TOWN.--For the
1110 purpose of compliance with section 200.066, Florida Statutes,
1111 relating to assessment and collection of ad valorem taxes, the
1112 town is hereby created and established effective November 1,
1113 2006; notwithstanding anything to the contrary contained herein,
1114 the town, although created and established as of November 1,
1115 2006, shall not be operational until March 30, 2007.
1116 (4) FIRST YEAR EXPENSES.--The town council, in order to
1117 provide moneys for the expenses and support of the town, shall
1118 have the power to borrow money necessary for the operation of
1119 town government until such time as a budget is adopted and
1120 revenues are raised in accordance with the provisions of this

1121 charter.
1122 (5) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--All
1123 applicable county ordinances currently in place at the time of
1124 passage of the referendum, unless specifically referenced
1125 herein, shall remain in place until and unless rescinded by
1126 action of the town council, except that a county ordinance,
1127 rule, or regulation which is in conflict with an ordinance,
1128 rule, or regulation of the town shall not be effective to the
1129 extent of such conflict. Any existing Palm Beach County
1130 ordinances, rules, and regulations as of October 12, 2006, shall
1131 not be altered, changed, rescinded, or added to, nor shall any
1132 variance be granted thereto insofar as such action would affect
1133 the town without the approval of the town council.
1134 (6) TEMPORARY EMERGENCY ORDINANCES.--The town council
1135 shall adopt ordinances and resolutions required to effect the
1136 transition. Ordinances adopted within 60 days after the first
1137 council meeting may be passed as emergency ordinances. These
1138 transitional ordinances, passed as emergency ordinances, shall
1139 be effective for no longer than 90 days after adoption and
1140 thereafter may be readopted, renewed, or otherwise continued
1141 only in the manner normally prescribed for ordinances.
1142 (7) TRANSITIONAL COMPREHENSIVE PLAN AND LAND DEVELOPMENT
1143 REGULATIONS.--
1144 (a) Until such time as the town adopts a comprehensive
1145 plan, the Palm Beach County Future Land Use Map, the Palm Beach
1146 County Zoning Map, and all other applicable provisions
1147 applicable to the town, of the Comprehensive Plan and Land
1148 Development Regulations of Palm Beach County, as the same exist

1149 on the day the town commences corporate existence, shall remain
1150 in effect as the town's transitional comprehensive plan and land
1151 development regulations. However, all planning functions,
1152 duties, and authority shall thereafter be vested in the Town
1153 Council of Loxahatchee Groves which shall also be deemed the
1154 local planning agency until the council establishes a separate
1155 local planning agency.
1156 (b) Upon this act becoming a law, no changes in the future
1157 land use map or the zoning districts within the boundaries of
1158 the town shall be considered for alteration, amendment, or other
1159 modification in any way until such time as the town adopts
1160 appropriate procedures as referenced in this act.
1161 (c) All powers and duties of the planning commission,
1162 zoning authority, any boards of adjustment, and the County
1163 Commission of Palm Beach County, as set forth in these
1164 transitional zoning and land use regulations, shall be vested in
1165 the Town Council of Loxahatchee Groves until such time as the
1166 town council delegates all or a portion thereof to another
1167 entity.
1168 (d) Subsequent to the passage of this act, no amendment of
1169 the comprehensive plan or land development regulations enacted
1170 by the Palm Beach County Commission shall be deemed as an
1171 amendment of the town's transitional comprehensive plan or land
1172 development regulations or otherwise take effect within the
1173 town's corporate limits except in accordance with the
1174 requirements, and upon adoption of the procedures specified in
1175 this act.
1176 (e)1. The owner or assigns of the 97+/- acre property

1177 located at the northwest corner of B-Road and Southern
1178 Boulevard, commonly known as the "Simon property," have applied
1179 for a land use change through the Palm Beach County
1180 comprehensive plan amendment process (LGA 2004-00037). This
1181 parcel and it owners and assigns will remain subject to the Palm
1182 Beach County comprehensive plan and approval process until such
1183 time as the town adopts its own comprehensive plan.
1184 2. In the event that the town initiates a review and
1185 approval process in a timeframe that is faster than presently
1186 expected, the owner or assigns of the Simon property may elect,
1187 at their own option, to go through the town's zoning approval
1188 process.
1189 (8) STATE SHARED REVENUES.--The Town of Loxahatchee Groves
1190 shall be entitled to participate in all shared revenue programs
1191 of the state available to municipalities effective immediately
1192 on the date of incorporation. The provisions of section
1193 218.23(1), Florida Statutes, shall be waived for the purpose of
1194 eligibility to receive revenue sharing funds from the date of
1195 incorporation through the state fiscal year 2009-2010. Initial
1196 population estimates for calculating eligibility for shared
1197 revenues shall be determined by the University of Florida Bureau
1198 of Economic and Business Research. Should the bureau be unable
1199 to provide an appropriate population estimate, the Palm Beach
1200 County Planning Division estimate should be utilized. For the
1201 purposes of qualifying for revenue sharing, the following
1202 revenue sources shall be considered: municipal service taxing
1203 units, fire municipal service taxing units, water control
1204 district revenues, occupational license taxes, ad valorem taxes,

1205 public utility service taxes, communication services tax, and
1206 franchise fees.
1207 (9) GAS TAX REVENUES.--The town shall be entitled to
1208 receive local option gas tax revenues beginning October 1, 2007.
1209 This specifically includes the relevant statutorily referenced
1210 interlocal agreements.
1211 (10) WAIVER.--The provisions of section 218.23(1), Florida
1212 Statutes, shall be waived for the purpose of conducting audits
1213 and financial reporting through fiscal year 2007-2008.
1214 Section 11. Continuation, merger, and dissolution of
1215 existing districts and service providers.--
1216 (1) PALM BEACH COUNTY FIRE RESCUE MUNICIPAL SERVICE TAXING
1217 UNIT; CONTINUATION.--Notwithstanding the incorporation of the
1218 Town of Loxahatchee Groves, that portion of the Palm Beach
1219 County Fire Rescue Municipal Service Taxing Unit, a special
1220 taxing district created by the Palm Beach County Commission that
1221 lies within the boundaries of the Town of Loxahatchee Groves, is
1222 authorized to continue in existence until the town adopts an
1223 ordinance to the contrary. However, the town shall not establish
1224 a town fire department without a referendum.
1225 (2) LAW ENFORCEMENT.--Law enforcement services will be
1226 provided by contract with the Palm Beach County Sheriff's
1227 Office, or contracted with other law enforcement agencies, until
1228 the town adopts an ordinance to the contrary, provided that the
1229 town shall not establish a town police department without a
1230 referendum.
1231 (3) PALM BEACH COUNTY LIBRARY DISTRICT;
1232 CONTINUATION.--Notwithstanding the incorporation of the Town of

1233 Loxahatchee Groves, that portion of the Palm Beach County
1234 Library District, a dependent district of Palm Beach County
1235 created by chapter 2000-405, Laws of Florida, that lies within
1236 the boundaries of the Town of Loxahatchee Groves, is authorized
1237 but not required to continue in existence, provided that in
1238 order to be excluded from the library district the town shall
1239 establish a municipal-funded library.
1240 (4) PALM BEACH COUNTY MUNICIPAL SERVICE TAXING UNIT
1241 B.--That portion of Palm Beach County Municipal Service Taxing
1242 Unit B, a dependent district of Palm Beach County created by the
1243 Palm Beach Commission that lies within the boundaries of the
1244 Town of Loxahatchee Groves, shall cease to exist within the
1245 municipal boundaries of the Town of Loxahatchee Groves on
1246 October 10, 2006.
1247 (5) PALM BEACH COUNTY MUNICIPAL SERVICE TAXING UNIT
1248 F.--That portion of Palm Beach County Municipal Service Taxing
1249 Unit F, a dependent district of Palm Beach County created by the
1250 Palm Beach County Commission that lies within the boundaries of
1251 the Town of Loxahatchee Groves, shall cease to exist within the
1252 municipal boundaries of the Town of Loxahatchee Groves on
1253 October 10, 2006.
1254 (6) LOXAHATCHEE GROVES WATER CONTROL DISTRICT;
1255 CONTINUATION.--Notwithstanding the incorporation of the Town of
1256 Loxahatchee Groves, the Loxahatchee Groves Water Control
1257 District, an independent special district created pursuant to
1258 the laws of the state, is authorized to continue in existence.
1259 (7) LOXAHATCHEE GROVES PARK;
1260 CONTINUATION.--Notwithstanding the incorporation of the Town of

1261 Loxahatchee Groves, the Loxahatchee Groves Park will continue to
1262 be operated by the Palm Beach County Department of Parks and
1263 Recreation, in accordance with existing Palm Beach County
1264 standards. All planned improvements to the park shall be subject
1265 to approval of the Town of Loxahatchee Groves but are the
1266 responsibility of Palm Beach County. Nothing contained herein
1267 shall prevent Palm Beach County and the Town of Loxahatchee
1268 Groves from entering into an interlocal agreement related to
1269 maintenance, planned improvements, sale, or transfer of the
1270 park.
1271 Section 12. Repeal.--Section 6 of section 2 of chapter 99-
1272 425, Laws of Florida, is repealed.
1273 Section 13. Waivers.--The thresholds established by
1274 section 165.061, Florida Statutes, for incorporation have been
1275 met with the following exceptions:
1276 (1) A waiver is granted to provisions of section
1277 165.061(1)(b), Florida Statutes, relating to minimum population
1278 requirements of 5,000, due to the rural character of the Town of
1279 Loxahatchee Groves.
1280 (2) A waiver is granted to provisions of section
1281 165.061(1)(c), Florida Statutes, relating to the minimum density
1282 of population of 1.5 persons per acre, to protect the historic,
1283 rural, and agricultural character of the town from surrounding
1284 development pressure.
1285 (3) A waiver is granted to provisions of section
1286 165.061(1)(d), Florida Statutes, relating to the minimum
1287 distance of 2 miles from the town to an existing municipality
1288 due to the marked difference in character between the town, a

1289 historic and rural community, and surrounding communities with
1290 significantly greater density and urban characteristics.
1291 Section 14. This act shall only take effect upon approval
1292 by a majority of those qualified electors residing within the
1293 proposed corporate limits of the proposed Town of Loxahatchee
1294 Groves as described in section 1, voting in a referendum
1295 election to be called by the Board of County Commissioners of
1296 Palm Beach County and to be held on October 10, 2006, in
1297 accordance with the provisions relating to elections currently
1298 in force, except that section 10(1) and this section shall take
1299 effect upon this act becoming a law.

HB 973

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 973 South Broward Drainage District, Broward County
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Camechis	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends the charter of the South Broward Drainage District to authorize the district to levy ad valorem taxes, and to remove authority to levy an administrative tax and maintenance tax upon benefited lands. Commencing with the fiscal year beginning October 1, 2007, the board of supervisors of the district is authorized to levy an ad valorem tax on all taxable property within the district, up to and including 5 mills per dollar of assessed valuation. In the absence of any contrary action of the board of supervisors, the tax rate for each calendar year is automatically set at the maximum of 5 mills. The manner and basis for taxation for the FY 2006-07 is the same as existed for the South Broward Drainage District prior to the enactment of this act, which means the district will continue to levy an administrative tax and a maintenance tax through FY 2006-07.

Before the ad valorem tax may be levied, it must be approved by a majority of the qualified voters voting in a referendum.

Currently, the board may not execute a contract for the construction or maintenance of any improvements, nor may any goods, supplies, or materials be purchased, when the amount to be paid by the district exceeds $10,000 unless the district complies with public notice and competitive bidding requirements in the charter. This bill amends the district charter to increase the threshold from $10,000 to $25,000, the threshold amount provided in s. 287.017(1), F.S. for CATEGORY TWO purchases.

Revenues generated by the maintenance tax and administrative tax currently levied by the district total approximately $1.9 million annually. If this bill passes, and the maximum millage rate of 5 mills is levied, ad valorem tax revenues will total approximately $76.5 million annually.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide for lower taxes: This bill authorizes the district to levy ad valorem tax up to 5 mills and eliminates authority to levy currently maintenance and administrative taxes. Current tax revenues of the district total approximately $1.9 million, while the levy of a 5 mill tax will generate approximately $76.5 million annually. Thus, if the maximum millage rate is levied, tax revenues will increase by approximately 40 times current revenues.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The South Broward Drainage District (district) was originally established by the Legislature in 1967[1] as an independent water control district. In 1998, the Legislature codified the charter of the district.[2] Today, the district operates as a water control district under its special act charter as well as under the provisions of ch. 298, F.S. A water control district operating under ch. 298, F.S., is organized for limited and definite purposes, and its powers are restricted to those deemed essential by the Legislature to affect its purpose. Therefore, these districts have no power or authority other than that conferred by law.

The district is governed by a board consisting of six members elected by the landowners of the district. The board is authorized to exercise any and all other powers conferred upon drainage districts by ch. 298, F.S., including, but not limited to, the power to acquire and construct drainage improvements, to issue bonds to pay the cost thereof, and to levy and collect non-ad valorem taxes upon lands benefited by the improvements.

Current Revenue Sources

Section 23 of the district charter authorizes the board to levy a tax of such portion of benefits of the district's plan of reclamation on all lands in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and improvements, as shown in said plan of reclamation and in carrying out the objects of said district; and, in addition thereto, 10 percent of said total amount for emergencies. The tax must be apportioned to, and levied on, each tract of land in said district in proportion to the benefits assessed, and not in excess thereof; and, in case bonds are issued, a tax must be levied in a sum not less than an amount 90 percent of which must be equal to the principal of said bonds.

Section 40 of the district charter authorizes to board to levy an annual installment tax. The board must annually determine, order, and levy the annual installment of the total taxes which are levied under section 23 and collected during each year that county taxes are collected. The annual installment and levy must be evidenced to and certified by the board of supervisors each year to the Broward County Property Appraiser. The tax is entered by the county property appraiser on the county tax rolls and collected by the Broward County revenue collector in the same manner and same time as county taxes and the proceeds thereof paid to the district. The tax is a lien until paid on the property against which assessed and enforceable in like manner as county taxes.

Section 41 of the district charter authorizes the board to levy an "operation and administrative tax" to carry on the business of the district and to pay the administrative and operational costs thereof and in

[1] ch. 67-904, L.O.F.
[2] ch. 98-524, L.O.F.

addition to any other tax or assessment authorized to be levied. The tax is levied on all the lands within the district as determined by the board for said purpose.

Section 42 of the district charter authorizes the levy of a "maintenance tax" to maintain and preserve the drainage improvements of the district. The maintenance tax must be evidenced to and certified by the board of supervisors each year to the property appraiser, entered by the property appraiser on the county tax rolls, and collected by the revenue collector in the same manner and time as county taxes and the proceeds therefrom paid to the district. The tax is a lien until paid on the property against which assessed and enforceable in like manner as county taxes. The amount of the maintenance tax is determined by the board based upon a report of the chief engineer or director and assessed by the board upon such lands, which may be all of the lands within the district, benefited by the maintenance thereof. In the alternative, the board may by resolution determine the amount of taxes as provided by s. 298.365, F.S., and thereafter the annual installments are levied, collected, and enforced as provided in ch. 298, F.S.

Section 45 authorizes the board to provide for the construction or reconstruction of assessable improvements and for the levying of special assessments upon benefited property for the payment thereof, under provisions of this section. "Assessable improvements" includes, without limitation, any and all drainage and land reclamation works and facilities, sewer systems, storm sewers and drains, water systems, streets, roads, or other projects of the district, or that portion or portions thereof, local in nature and of special benefit to the premises or lands served thereby, and any and all modifications, improvements, and enlargements thereof.

Procurement of contractual services and purchase of goods, supplies, and materials.

Section 53 of the district charter requires all contracts let by the board for professional architectural, engineering, landscape architectural, or land surveying services for any project authorized by the charter to be in compliance with s. 287.055, F. S. Unless exempt by the charter or s. 287.055, F.S., no contract may be executed by the board for the construction or maintenance of any improvements authorized under the charter, nor may any goods, supplies, or materials be purchased when the amount thereof to be paid by the district exceeds $10,000, unless notice of bids is advertised once a week for 2 consecutive weeks in a newspaper in general circulation in Broward County, and in each case the bid of the lowest responsible bidder must be accepted, unless all bids are rejected because the bids are too high. The board may require the bidders to furnish bond with responsible surety to be approved by the board. Nothing in this section prevents the board from undertaking and performing the construction, operation, and maintenance of any project, facility, or improvements authorized under the charter by the employment of labor, material, and machinery.

Notwithstanding the bidding procedure prescribed above, if the board determines, by resolution, that the use of competitive bidding is not practicable, contractual services and purchases of goods, supplies, or materials may be procured by competitive sealed proposals. The request for proposals must include a statement of the services sought or the goods, supplies, or materials requested and all contractual terms and conditions applicable to the procurement of the contractual services or of the goods, supplies, or materials requested. The contract must be awarded to the responsive offeror whose proposal is determined to be the most advantageous to the district, taking into consideration price and other evaluation criteria set forth in the request for proposals.

If the board determines, by resolution, that an immediate danger to the public health or safety or other substantial loss to the district requires emergency action, the board may proceed with the procurement of contractual services necessitated by the immediate danger without competition. However, such emergency procurement must be made with such competition as is practicable under the circumstances.

If no competitive bids or proposals for contractual services or for purchase of goods, supplies, or materials are received, the board may negotiate the best terms and conditions available as determined by the board.

Effect of Proposed Changes

Authorization to levy ad valorem taxes

The bill amends the district charter to authorize the district to levy ad valorem taxes, and to remove authority to levy the administrative tax and maintenance tax upon benefited lands. Commencing with the fiscal year beginning October 1, 2007, the board of supervisors of the district is authorized to levy an ad valorem tax on all taxable property within the district, up to and including 5 mills per dollar of assessed valuation. In the absence of any contrary action of the board of supervisors, the tax rate for each calendar year is automatically set at the maximum of 5 mills.

To carry on the business of the district, to implement capital improvements, to pay the administrative and operational costs thereof, and to maintain and preserve the drainage improvements of the district, and in addition to any other tax or assessment authorized to be levied, the district is authorized to levy an ad valorem tax on all taxable property within the district as determined by the board for said purposes. The ad valorem tax must be evidenced to and certified by the board of supervisors each year to the property appraiser, entered by the property appraiser on the county tax rolls, and collected by the revenue collector in the same manner and time as county taxes and the proceeds therefrom paid to the district. Until paid, the tax is a lien on the property against which assessed and shall be enforceable in like manner as county taxes. The amount of the ad valorem tax is be determined by the board based upon a report of the chief engineer or director and assessed by the board upon such taxable property, which may be all of the taxable property within the district benefited by the operation, administration, and maintenance thereof.

The manner and basis for taxation for the fiscal year 2006-2007 shall be the same as existed for the South Broward Drainage District prior to the enactment of this act.

The ad valorem tax provided for herein is in addition to county and municipal ad valorem taxes provided for by law. The district is not authorized to levy ad valorem taxes unless taxing authority has been approved in a referendum by a majority vote of the electors residing in the district voting on the question.

Referendum

The bill requires the Broward County Supervisor of Elections to place the following ballot question on the November 7, 2006, general election ballot: Shall the South Broward Drainage District's method of taxation be changed from assessment per acre/unit to ad valorem tax upon taxable property, at a rate not to exceed 5 mills?

Procurement of contractual services and purchase of goods, supplies, and materials.

Currently, the board may not execute a contract for the construction or maintenance of any improvements, nor may any goods, supplies, or materials be purchased, when the amount to be paid by the district exceeds $10,000 unless the district complies with public notice and competitive bidding requirements in the charter. This bill amends the district charter to increase the threshold from $10,000 to $25,000, the threshold amount provided in s. 287.017(1), F.S. for CATEGORY TWO purchases.

C. SECTION DIRECTORY:

Section 1. Amends ch. 98-524, L.O.F.; authorizing the board to levy and collect an annual ad valorem tax upon all taxable property within the district and removing authority to collect an administrative taxes;

Section 2. Amends ch. 98-524, L.O.F., changing the amount for which advertisement for bids is required for the procurement by the district of contractual services and purchase of goods, supplies, and materials to comply with state statutory requirements;

Section 3. Repealing section 42 of section 2 of chapter 98-524, L.O.F. relating to the levy of a maintenance tax;
Section 4. Providing for recording of the Act in the public record;
Section 5. Providing for a referendum;
Section 6. Providing severability;
Section 7. Providing an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 31, 2005

WHERE? Sun-Sentinel, Fort Lauderdale, Broward County, Boca Raton, Palm Beach County, Miami, Miami-Dade County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [x] No []

IF YES, WHEN? November 7, 2006

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: See Drafting Issues or Other Comments.

B. RULE-MAKING AUTHORITY: Rule-making is not addressed in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: As filed, the charter as amended by this bill, appears to be inconsistent with the ballot question included in section 5 of the bill. The ballot question reads as follows: Shall the South Broward Drainage District's method of taxation be changed from assessment per acre/unit to ad valorem tax upon taxable property, at a rate not to exceed 5 mills?" The phrasing of the question may lead voters to assume that the only manner in which the district may raise revenues is the levy of a 5 mill ad valorem tax on all taxable property. However, the charter as amended by the bill continues to allow the district to levy assessments on benefited property under sections 23, 40, and 45. Also, since section 13(19) of the charter authorizes the district "to exercise any and all other powers conferred upon drainage districts by chapter 298", the district will continue to have the power to levy any taxes and assessments authorized by that chapter including maintenance taxes, drainage taxes, and administrative taxes. The ballot question may not be considered constitutionally sufficient in that it may not correctly advise the voters as to the impact of changing the district's charter. According to the Florida Supreme Court, requirements in elections include (1) the voter should not be misled and (2) the voter should have an opportunity to know and be on notice as to the proposition on which he is to case his vote.[3]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[3] *Hill v. Milander*, 72 So.2d 796 (Fla. 1954).

Representative Sobel is expected to offer a strike-all amendment at the meeting of the Local Government Council to:

- Clarify that the administrative tax and maintenance tax will no longer be levied by the district if the ad valorem tax referendum is approved;
- Clarify the ballot question;
- Reduce the ad valorem millage rate from 5 mills to 2 mills; and
- Delete a provision allowing the automatic assessment of the maximum millage rate unless the board takes action otherwise.

SUN-SENTINEL

PUBLISHED DAILY
FORT LAUDERDALE, BROWARD COUNTY, FLORIDA
BOCA RATON, PALM BEACH COUNTY, FLORIDA
MIAMI, MIAMI DADE COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF BROWARD/PALM BEACH/MIAMI DADE
BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED

_____ WHO, ON OATH, SAYS THAT HE/SHE IS A DULY AUTHORIZED REPRESENTATIVE OF THE CLASSIFIED DEPARTMENT OF THE SUN-SENTINEL, DAILY NEWSPAPER PUBLISHED IN BROWARD/PALM BEACH/MIAMI DADE COUNTY, FLORIDA, AND THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A:

NOTICE OF LEGISLATION

IN THE MATTER OF:

Amending chapter 98 524

IN THE CIRCUIT COURT, WAS PUBLISHED IN SAID NEWSPAPER IN THE ISSUES OF:

12/31 12653821

AFFIANT FURTHER SAYS THAT THE SAID SUN-SENTINEL IS A NEWSPAPER PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI DADE COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS HERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI DADE COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MATTER AT THE POST OFFICE IN FORT LAUDERDALE, IN SAID BROWARD COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT HE/SHE HAS NEITHER PAID, NOR PROMISED, ANY PERSON, FIRM, OR CORPORATION, ANY DISCOUNT, REBATE, COMMISSION, OR REFUND, FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN SAID NEWSPAPER.

_____
(SIGNATURE OF AFFIANT)

SWORN TO AND SUBSCRIBED BEFORE ME
ON: **31-December-2005** , A.D.

Idella M. Johnson
(SIGNATURE OF NOTARY PUBLIC)

NOTARY PUBLIC STATE OF FLORIDA
Idella M. Johnson
Commission # DD325508
Expires June 6, 2008
Bonded Troy Fain - Insurance, Inc. 800-385-7019

_____
(NAME OF NOTARY, TYPED, PRINTED, OR STAMPED)

PERSONALLY KNOWN ✓ OR

PRODUCED IDENTIFICATION _____

NOTICE OF LEGISLATION

Notice is hereby given that the following bill will be presented to the 2006 Legislative Session of the Florida Legislature for consideration and enactment.

A bill to be entitled

An act relating to the South Broward Drainage District, Broward County; amending chapter 98-524, Laws of Florida; authorizing the board to levy and collect an annual ad valorem tax upon all taxable property within the district; repealing s. 42 of chapter 98-524, Laws of Florida, relating to the maintenance tax; providing for a referendum; amending the amount advertisement for bids is required for the procurement by district for contractual services and purchase of goods, supplies and materials to comply with state statutory requirements; providing severability; providing an effective date. BROWARD COUNTY LEGISLATIVE DELEGATION

REPRESENTATIVE ELEANOR SOBEL, CHAIR

CONTACT: Sandy Harris (954-357-6555)

December 31, 2005

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: HB 973

SPONSOR(S): Rep. Eleanor Sobel

RELATING TO: South Broward Drainage District, Broward County
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Broward County Legislative Delegation

CONTACT PERSON: Sandy Harris

PHONE # and E-Mail: 922-9833 saharris@broward.org

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: 12/15/05

Location: Broward County Governmental Center

(3) Was this bill formally approved by a majority of the delegation members?
YES [X] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [12/31/05 **]**

Where? Sun-Sentinel **County** Broward

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Eleanor Sobel 3/06/06
Delegation Chair (*Original Signature*) **Date**

House Committee on Local Government

2005 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House Community Affairs Committee that no bill will be considered by the Committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this for must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the House Community Affairs Committee as soon as possible after the bill is filed.

BILL #: HB 973

SPONSOR (S): **Senator Nan Rich** / Rep. Eleanor Sobel

RELATING TO: **South Broward Drainage District**

I. **ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:**

	FY 05-06	FY 06-07
Expenditures:	-0-	-0-

ANTICIPATED SOURCES (S) OF FUNDING:

	FY 05-06	FY 06-07
Federal	N/A	N/A
State		
Local		

III **ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:**

	FY 05-06	FY 06-07
Revenues	-0-	-0-

IV **ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

AS TO THE ADVALOREM TAX REVISIONS

Advantages: Will result in more equitable distribution of taxes throughout the district; will result in a reduction of taxes for the majority of property owners throughout the district.

Disadvantages: For some property owners, will result in an increase in property taxes.

AS TO THE SECTION 53(1) REVISIONS

Advantages: Will reduce the overall cost of contracts for construction or maintenance of any improvements and for the purchase of goods, supplies or materials which cost between $10,000 and $25,000.

Disadvantages: NONE

V ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Proposed legislation will result in no impact on competition in the open market for employment.

VI DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCES[S] OF DATA):

The district's office, district's attorney's files and the Broward County Property Appraiser's Records.

Prepared by: _____
TITLE : Douglas R. Bell, District Counsel

10/13/05

REPRESENTING: South Broward Drainage District

PHONE: (954) 524-8526

1 A bill to be entitled
2 An act relating to the South Broward Drainage District,
3 Broward County; amending chapter 98-524, Laws of Florida;
4 authorizing the board to levy and collect an annual ad
5 valorem tax upon all taxable property within the district;
6 amending the amount for which advertisement for bids is
7 required for the procurement by the district of
8 contractual services and purchase of goods, supplies, and
9 materials to comply with state statutory requirements;
10 repealing section 42 of section 2 of chapter 98-524, Laws
11 of Florida, relating to the maintenance tax; providing for
12 a referendum; providing severability; providing an
13 effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsection (10) of section 13 and sections 41,
18 43, and 44 of section 2 of chapter 98-524, Laws of Florida, are
19 amended to read:
20 Section 13. Powers.--The district shall have, and the
21 board may exercise, any or all of the following powers:
22 (10) To levy ~~assess~~ and impose upon all of the taxable
23 property ~~lands~~ in the district ~~an~~ annual ad valorem taxes
24 ~~drainage tax, an administrative tax, and a maintenance tax~~ as
25 hereinafter provided.
26 Section 41. Ad valorem ~~Operation and administrative~~
27 tax.--To carry on the business of the district, to implement
28 capital improvements, ~~and~~ to pay the administrative and

29 operational costs thereof, and to maintain and preserve the
30 drainage improvements of the district, ~~and~~ in addition to any
31 other tax or assessment authorized to be levied, the district is
32 authorized to levy an ad valorem ~~a~~ tax on all taxable property
33 ~~the lands~~ within the district as determined by the board for
34 said purposes ~~purpose~~. Such ad valorem tax shall be evidenced to
35 and certified by the board of supervisors each year to the
36 property appraiser, shall be entered by the property appraiser
37 on the county tax rolls, and shall be collected by the revenue
38 collector in the same manner and time as county taxes and the
39 proceeds therefrom paid to the district. Until paid, the tax
40 shall be a lien on the property against which assessed and shall
41 be enforceable in like manner as county taxes. The amount of
42 said ad valorem tax shall be determined by the board based upon
43 a report of the chief engineer or director and assessed by the
44 board upon such taxable property, which may be all of the
45 taxable property within the district benefited by the operation,
46 administration, and maintenance thereof.
47 Section 43. Taxation and enforcement of taxes.--
48 (1) Commencing with the fiscal year beginning October 1,
49 2007, the board of supervisors of the district is authorized to
50 levy the aforestated ad valorem tax on all taxable property
51 within the district, up to and including 5 mills per dollar of
52 assessed valuation. In the absence of any contrary action of the
53 board of supervisors as herein provided, the tax rate for each
54 calendar year shall be at the maximum provided herein.
55 (2) Such taxes as provided herein and as may be determined
56 necessary by the board of supervisors shall be certified to the

57 property appraiser of Broward County by the board of supervisors
58 of the South Broward Drainage District, shall be placed upon the
59 tax rolls of Broward County by the property appraiser, and shall
60 be collected by the revenue collector of Broward County, as now
61 provided by law, and such taxes so levied shall become a lien
62 under the law against the taxable property within the boundaries
63 of the South Broward Drainage District and shall be enforceable
64 under the laws of this state pertaining to the South Broward
65 Drainage District.
66 (3) The manner and basis for taxation for the fiscal year
67 2006-2007 shall be the same as existed for the South Broward
68 Drainage District prior to the enactment of this act.
69 (4) ~~(1)~~ The collection and enforcement of all taxes levied
70 by the district shall be at the same time and in the like manner
71 as county taxes and the provisions of the Florida Statutes
72 relating to the sale of lands for unpaid and delinquent county
73 taxes, the issuance, sale, and delivery of tax certificates for
74 such unpaid and delinquent county taxes, the redemption thereof,
75 the issuance to individuals of tax deeds based thereon, and all
76 other procedures in connection therewith shall be applicable to
77 the district to the same extent as if said statutory provisions
78 were expressly set forth herein. All taxes shall be subject to
79 the same discounts as county taxes.
80 (5) The ad valorem tax provided for herein shall be in
81 addition to county and municipal ad valorem taxes provided for
82 by law.
83 (6) The district shall have no authority to levy ad
84 valorem taxes as provided herein unless such authority has been

85 approved in a referendum by a majority vote of the electors
86 residing in the district voting on the question.
87 ~~(2) The provisions of subsection (1) shall not be~~
88 ~~applicable if the board has determined to levy and collect taxes~~
89 ~~under section 40(2).~~
90 Section 44. When unpaid tax is delinquent; penalty.--
91 ~~(1)~~ All taxes provided for in this act shall become
92 delinquent and bear penalties on the amount of said taxes in the
93 same manner as county taxes.
94 ~~(2) The provisions of subsection (1) shall not be~~
95 ~~applicable if the board has determined to levy and collect taxes~~
96 ~~under section 40(2).~~
97 Section 2. Subsection (1) of section 53 of section 2 of
98 chapter 98-524, Laws of Florida, is amended to read:
99 Section 53. Procurement of contractual services and
100 purchase of goods, supplies, and materials.--
101 (1) All contracts let by the board for professional
102 architectural, engineering, landscape architectural, or land
103 surveying services for any project authorized by chapter 98-524,
104 Laws of Florida, as amended, ~~this act~~ shall be in compliance
105 with section ~~s.~~ 287.055, Florida Statutes, as amended. Except as
106 stated herein and as provided by section ~~s.~~ 287.055, Florida
107 Statutes, as amended, no contract shall be let by the board for
108 the construction or maintenance of any improvements authorized
109 under chapter 98-524, Laws of Florida, as amended ~~this act~~, nor
110 shall any goods, supplies, or materials be purchased, when the
111 amount thereof to be paid by the district shall exceed the
112 threshold amount provided in section 287.017(1), Florida

113 Statutes, as amended, for CATEGORY TWO ~~$10,000~~, unless notice of
114 bids shall be advertised once a week for 2 consecutive weeks in
115 a newspaper in general circulation in Broward County, and in
116 each case the bid of the lowest responsible bidder shall be
117 accepted, unless all bids are rejected because the bids are too
118 high. The board may require the bidders to furnish bond with
119 responsible surety to be approved by the board. Nothing in this
120 section shall prevent the board from undertaking and performing
121 the construction, operation, and maintenance of any project,
122 facility, or improvements authorized under chapter 98-524, Laws
123 of Florida, as amended, ~~this act~~ by the employment of labor,
124 material, and machinery.
125 Section 3. Section 42 of section 2 of chapter 98-524, Laws
126 of Florida, is repealed.
127 Section 4. A certified copy of this act shall be recorded
128 in the Broward County Public Records by the South Broward
129 Drainage District.
130 Section 5. In accordance with the requirements of section
131 101.161, Florida Statutes, and section 7 of this act, the
132 Broward County Supervisor of Elections shall place the title and
133 substance of the referendum on the ballot as follows:
134
135 CHANGE THE SOUTH BROWARD DRAINAGE DISTRICT'S METHOD OF TAXATION
136 TO AD VALOREM TAX UPON TAXABLE PROPERTY
137
138 Shall the South Broward Drainage District's method of taxation
139 be changed from assessment per acre/unit to ad valorem tax upon
140 taxable property, at a rate not to exceed 5 mills?

141
142 _____ Yes
143 _____ No
144
145 Section 6. If any provision of this act or the application
146 thereof to any person or circumstance is held invalid, the
147 invalidity shall not affect other provisions or applications of
148 the act which can be given effect without the invalid provision
149 or application, and to this end the provisions of this act are
150 declared severable.
151 Section 7. This act shall take effect upon becoming a law,
152 except that sections 1 and 3 shall take effect only upon their
153 approval by a majority vote of those qualified electors of the
154 South Broward Drainage District voting in a referendum held in
155 conjunction with the November 7, 2006, general election by the
156 Broward County Supervisor of Elections in accordance with the
157 provisions of law relating to elections currently in force and
158 this act.

Bill No. **HB 973**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Local Government Council
2 Representative(s) Sobel offered the following:
3
4 **Amendment**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsections (10) and (19) of section 13 and
7 sections 22, 23, 25, 40, 41, 43, and 44 of section 2 of chapter
8 98-524, Laws of Florida, are amended to read:
9 Section 13. Powers.--The district shall have, and the
10 board may exercise, any or all of the following powers:
11 (10) To levy ~~assess~~ and impose upon all of the taxable
12 property ~~lands~~ in the district ~~an~~ annual ad valorem taxes
13 ~~drainage tax, an administrative tax, and a maintenance tax~~ as
14 hereinafter provided.
15 (19) To exercise any and all other powers conferred upon
16 drainage districts by chapter 298, Florida Statutes, including,
17 but not limited to, the power to acquire and construct drainage
18 improvements and ~~,~~ to issue bonds to pay the cost thereof, and
19 to levy and collect ~~drainage~~ taxes upon lands benefited by the
20 improvements. The district shall not, however, exercise the
21 power to impose the maintenance tax as provided in s. 298.54.

22 Section 22. Adoption, revision, and revocation of plan of
23 reclamation.—In addition to and not in limitation of its power
24 to provide for and adopt a plan of reclamation provided in
25 section 21 and under chapter 298, Florida Statutes, and
26 amendments thereto, the board may at any time and from time to
27 time adopt, revoke, or modify in whole or in part, any plan of
28 reclamation or any plan providing for the drainage of lands
29 within the district, and may provide for such new and additional
30 drainage facilities, canals, ditches, levees, and other works as
31 the board may determine. In connection with the revision of any
32 plan of reclamation or the providing of any new or additional
33 drainage facilities, canals, ditches, levees, or other works, or
34 in the event that the total taxes and assessments theretofore
35 levied or the funds derived from the sale of bonds are
36 insufficient to pay the cost of any drainage works, benefits may
37 be reassessed, additional assessments made, and taxes levied in
38 accordance with the procedures provided in this act ~~or in~~
39 ~~chapter 298, Florida Statutes~~. The board may at any time approve
40 and make effective technical changes or modifications in any
41 plan of reclamation or drainage not affecting assessed benefits,
42 levy of taxes, or the security of bondholders.
43 Section 23. Assessing land for reclamation; apportionment
44 of tax; ~~drainage~~ tax record.—The board shall, without any
45 unnecessary delay, levy a tax of such portion of benefits of the
46 district's plan of reclamation on all lands in the district to
47 which benefits have been assessed, as may be found necessary by
48 the board of supervisors to pay the costs of the completion of
49 the proposed works and improvements, as shown in said plan of
50 reclamation and in carrying out the objects of said district;
51 and, in addition thereto, 10 percent of said total amount for
52 emergencies. The said tax shall be apportioned to, and levied

53 on, each tract of land in said district in proportion to the
54 benefits assessed, and not in excess thereof; and, in case bonds
55 are issued, as provided in this act, a tax shall be levied in a
56 sum not less than an amount 90 percent of which shall be equal
57 to the principal of said bonds. The amount of bonds to be issued
58 for paying the cost of the works as set forth in the plan of
59 reclamation shall be ascertained and determined by the board;
60 however, the total amount of all bonds to be issued by the
61 district shall in no case exceed 90 percent of the benefits
62 assessed upon the lands of the district. The amount of the
63 interest, as estimated by said board, which will accrue on such
64 bonds, shall be included and added to the said tax, but the
65 interest to accrue on account of the issuing of said bonds shall
66 not be construed as a part of the costs of construction in
67 determining whether or not the expenses and costs of making said
68 improvements are equal to, or in excess of, the benefits
69 assessed. The secretary of the board of supervisors or the
70 director, as soon as said total tax is levied, shall, at the
71 expense of the district, prepare a list of all taxes levied, in
72 the form of a well bound book, which book shall be endorsed and
73 named "~~DRAINAGE~~ TAX RECORD OF SOUTH BROWARD DRAINAGE DISTRICT,
74 BROWARD COUNTY, FLORIDA," which endorsement shall be printed or
75 written at the top of each page in said book, and shall be
76 signed and certified by the president and secretary of the
77 board, attested by the seal of the district, and the same shall
78 thereafter become a permanent record in the office of said
79 secretary or director. In the alternative, so long as the
80 Broward County property appraiser or revenue collector assesses
81 and collects the taxes and assessments authorized by this
82 section, the records of the Broward County property appraiser

83 shall satisfy the requirements of the ~~drainage~~ tax record of the
84 district.
85 Section 25. Tax liens.—All taxes of the district provided
86 for in this act ~~or chapter 298, Florida Statutes,~~ together with
87 all penalties for default in the payment of the same and all
88 costs in collecting the same including a reasonable attorney's
89 fee fixed by the court and taxed as cost in the action brought
90 to enforce payment, shall, from January 1 for each year the
91 taxable property is liable to assessment and until paid,
92 constitute a lien of equal dignity with the liens for state and
93 county taxes and other taxes of equal dignity with state and
94 county taxes upon all taxable property ~~the lands~~ against which
95 such taxes shall be levied. A sale of any of the taxable ~~real~~
96 property within the district for state and county or other taxes
97 shall not operate to relieve or release the taxable property so
98 sold from the lien for subsequent district taxes or installments
99 of district taxes which lien may be enforced against such
100 property as though no such sale thereof had been made. The
101 provisions of s. 194.171, Florida Statutes, and amendments
102 thereto, shall be applicable to district taxes with the same
103 force and effect as if said provisions were expressly set forth
104 in this act.
105 Section 40. Annual installment taxes.—
106 (1) The board shall annually determine, order, and levy
107 the annual installment of the total taxes which are levied under
108 section 23 ~~or under s. 298.36, Florida Statutes~~, which shall be
109 due and be collected during each year that county taxes are due
110 and collected and said annual installment and levy shall be
111 evidenced to and certified by the board of supervisors each year
112 to the Broward County Property Appraiser. Said tax shall be
113 entered by the county property appraiser on the county tax rolls

114 and shall be collected by the Broward County revenue collector
115 in the same manner and same time as county taxes and the
116 proceeds thereof paid to the district. The tax shall be a lien
117 until paid on the property against which assessed and
118 enforceable in like manner as county taxes.
119 ~~(2) In the alternative, the board may by resolution~~
120 ~~determine the amount of taxes as provided by s. 298.365, Florida~~
121 ~~Statutes, and thereafter the annual installments shall be~~
122 ~~levied, collected, and enforced as provided in chapter 298,~~
123 ~~Florida Statutes.~~
124 Section 41. Ad valorem ~~Operation and administrative~~
125 tax.--To carry on the business of the district, to implement
126 capital improvements, ~~and~~ to pay the administrative and
127 operational costs thereof, and to maintain and preserve the
128 drainage improvements of the district, ~~and~~ in addition to any
129 other tax or assessment authorized to be levied, the district is
130 authorized to levy an ad valorem ~~a~~ tax on all taxable property
131 ~~the lands~~ within the district as determined by the board for
132 said purposes ~~purpose~~. Such ad valorem tax shall be evidenced to
133 and certified by the board of supervisors each year to the
134 property appraiser, shall be entered by the property appraiser
135 on the county tax rolls, and shall be collected by the revenue
136 collector in the same manner and time as county taxes and the
137 proceeds therefrom paid to the district. The amount of said ad
138 valorem tax shall be determined by the board based upon a report
139 of the chief engineer or director and assessed by the board upon
140 such taxable property, which may be all of the taxable property
141 within the district benefited by the operation, administration,
142 and maintenance thereof.
143 Section 43. Taxation and enforcement of taxes.--

144 (1) Commencing with the fiscal year beginning October 1,
145 2007, the board of supervisors of the district is authorized to
146 levy the aforestated ad valorem tax on all taxable property
147 within the district, up to and including 2 mills per dollar of
148 assessed valuation.
149 (2) Such taxes as provided herein and as may be determined
150 necessary by the board of supervisors shall be certified to the
151 property appraiser of Broward County by the board of supervisors
152 of the South Broward Drainage District, shall be placed upon the
153 tax rolls of Broward County by the property appraiser, and shall
154 be collected by the revenue collector of Broward County, as now
155 provided by law.
156 (3) The manner and basis for taxation for the fiscal year
157 2006-2007 shall be the same as existed for the South Broward
158 Drainage District prior to the enactment of this act.
159 (4) ~~(1)~~ The collection and enforcement of all taxes levied
160 by the district shall be at the same time and in the like manner
161 as county taxes and the provisions of the Florida Statutes
162 relating to the sale of lands for unpaid and delinquent county
163 taxes, the issuance, sale, and delivery of tax certificates for
164 such unpaid and delinquent county taxes, the redemption thereof,
165 the issuance to individuals of tax deeds based thereon, and all
166 other procedures in connection therewith shall be applicable to
167 the district to the same extent as if said statutory provisions
168 were expressly set forth herein. All taxes shall be subject to
169 the same discounts as county taxes.
170 (5) The ad valorem tax provided for herein shall be in
171 addition to county and municipal ad valorem taxes provided for
172 by law.
173 (6) The district shall have no authority to levy ad
174 valorem taxes as provided herein unless such authority has been

175 approved in a referendum by a majority vote of the qualified
176 electors residing in the district voting on the question.
177 ~~(2) The provisions of subsection (1) shall not be~~
178 ~~applicable if the board has determined to levy and collect taxes~~
179 ~~under section 40(2).~~
180 Section 44. When unpaid tax is delinquent; penalty.--
181 ~~(1)~~ All taxes provided for in this act shall become
182 delinquent and bear penalties on the amount of said taxes in the
183 same manner as county taxes.
184 ~~(2) The provisions of subsection (1) shall not be~~
185 ~~applicable if the board has determined to levy and collect taxes~~
186 ~~under section 40(2).~~
187 Section 2. Subsection (1) of section 53 of section 2 of
188 chapter 98-524, Laws of Florida, is amended to read:
189 Section 53. Procurement of contractual services and
190 purchase of goods, supplies, and materials.--
191 (1) All contracts let by the board for professional
192 architectural, engineering, landscape architectural, or land
193 surveying services for any project authorized by chapter 98-524,
194 Laws of Florida, as amended, ~~this act~~ shall be in compliance
195 with section ~~s.~~ 287.055, Florida Statutes, as amended. Except as
196 stated herein and as provided by section ~~s.~~ 287.055, Florida
197 Statutes, as amended, no contract shall be let by the board for
198 the construction or maintenance of any improvements authorized
199 under chapter 98-524, Laws of Florida, as amended ~~this act~~, nor
200 shall any goods, supplies, or materials be purchased, when the
201 amount thereof to be paid by the district shall exceed the
202 threshold amount provided in section 287.017(1), Florida
203 Statutes, as amended, for CATEGORY TWO ~~$10,000~~, unless notice of
204 bids shall be advertised once a week for 2 consecutive weeks in
205 a newspaper in general circulation in Broward County, and in

206 each case the bid of the lowest responsible bidder shall be
207 accepted, unless all bids are rejected because the bids are too
208 high. The board may require the bidders to furnish bond with
209 responsible surety to be approved by the board. Nothing in this
210 section shall prevent the board from undertaking and performing
211 the construction, operation, and maintenance of any project,
212 facility, or improvements authorized under chapter 98-524, Laws
213 of Florida, as amended, ~~this act~~ by the employment of labor,
214 material, and machinery.
215 Section 3. Section 42 of section 2 of chapter 98-524, Laws
216 of Florida, is repealed.
217 Section 4. A certified copy of this act shall be recorded
218 in the Broward County Public Records by the South Broward
219 Drainage District.
220 Section 5. In accordance with provisions of law relating
221 to elections currently in force, the South Broward Drainage
222 District shall call and the Broward County Supervisor of
223 Elections shall conduct a referendum in conjunction with a
224 general election held on or before November 30, 2006, of the
225 qualified electors residing within the district for the purpose
226 of determining whether the district shall be authorized to levy
227 an ad valorem tax upon taxable property within the district at a
228 rate not to exceed 2 mills to replace the maintenance tax and
229 operation and administrative tax currently levied. "Qualified
230 elector" means a person who is a registered voter qualified to
231 vote in a general election held in Broward County.
232 Section 6. If any provision of this act or the application
233 thereof to any person or circumstance is held invalid, the
234 invalidity shall not affect other provisions or applications of
235 the act which can be given effect without the invalid provision

236 or application, and to this end the provisions of this act are
237 declared severable.
238 Section 7. This act shall take effect upon becoming a law,
239 except that sections 1 and 3 which authorize the levy of ad
240 valorem taxes shall take effect only upon express approval by a
241 majority vote of those qualified electors of the district voting
242 in a referendum held in accordance with section 5 of this act as
243 required by Section 9 of Article VII of the State Constitution.

HB 979

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 Property Tax Administration
SPONSOR(S): Seiler
TIED BILLS: **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Finance & Tax Committee			
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) conducts an in-depth review of every property appraiser's assessment rolls at least every two years. DOR creates a report on each assessment roll. Included in the report is DOR's confidence level in the property appraiser's rolls based on DOR's use of various statistical and analytical measures, which are also included in the report. DOR then forwards this report to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the property appraiser. Once DOR presents the property appraiser with its report, the report becomes a public record.

This bill changes the committees in the Legislature that DOR would submit its report to from the specific committees above to, "the committees of the Senate and the House of Representatives with oversight responsibilities for taxation." The bill then requires that the property appraiser forward DOR's report to the chairperson of their county commission, or the corresponding official under a consolidated charter.

This bill would take effect July 1, 2006.

The operational impact on the Department of Revenue is yet to be determined. This bill will increase the reports property appraisers are to generate, which may or may not have a significant economic impact, which may or may not require a constitutional mandate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the duties of county property appraisers by requiring them to the forward a copy of the reports they receive from the Department of Revenue to the county commission.

B. EFFECT OF PROPOSED CHANGES:

Current Situation in Assessment Rolls:

Property appraisers[1] are required to assess all property in their county and prepare assessment rolls for all real property and tangible personal property.[2] An assessment roll is a record of all taxable property within the tax district which is completed, verified, and reported to the Department of Revenue (DOR) by the property appraiser. DOR has supervisory authority over property appraisers under chapter 195, F.S. DOR prescribes forms, rules and regulations for assessing and collecting taxes, establishment of standards of value, manual of instructions, classification of property, budgetary processes, and review of assessment rolls.

Each assessment roll is submitted to DOR for review. The purpose of the review is to determine that the rolls meet the appropriate requirements of law relating to form and just value.[3] DOR is required to conduct an in-depth review of the assessment rolls for each county no less than once every two years. At a minimum, DOR is to review the level of assessment for the county in relation to just value of each of the various classifications of property found in s. 195.0969(3)(a), F.S. The in-depth review may include review of the proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

Within 120 days after receiving a county's assessment roll, or within 10 days after approving it, whichever is later, DOR is to finalize its review and forward its findings to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the appropriate property appraiser. DOR is to include in its findings a statement of the confidence interval for the median, other measures studied, and the roll as a whole[4], and related statistical and analytical information.[5] DOR's report becomes a public record, subject to chapter 119, F.S., once it is released to the property appraiser.[6]

Effect of Bill:

This bill changes the committees in the Legislature DOR is to submit its findings to. Rather than submitting its findings to the specific committees within the Senate and House, DOR is to submit them to the committees of the Senate and House with oversight responsibilities for taxation. This change will allow the statute to remain correct when the committees that handle taxation issues change.

The bill also requires the property appraiser who receives the report from DOR to forward a copy of the report to the chairperson of the county commission, or the corresponding official, within 90 days. The copy is required to include:

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[1] Property Appraisers are independently elected, constitutional officers. Art. VII, section 1(d), Florida Constitution.
[2] Sections 192.011 and 193.114, F.S.
[3] Section 193.1142(1), F.S.
[4] The confidence interval is a statistical measure of the reliability of DOR's sample. E-mail from David Beggs of DOR (March 8, 2006).
[5] Section 195.096(2)(f), F.S.
[6] Section 195.096(2)(e), F.S.

- All statistical and analytical measures taken for the real property assessment roll as a whole and the personal property assessment roll as a whole
- The results of any audit or review of procedures the county used to appraise the property, listed independently for each class or sub class of real property studied.

For the years in which the county is not under in-depth review, the report forwarded by the property appraiser must include any value-weighted mean level of assessment as projected by DOR.[7]

C. SECTION DIRECTORY:

Section 1: Amends paragraph (f) of section (2) to change committees to which reports are forward and require forwarding by the property appraiser.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Operational impact on the Department of Revenue is yet to be determined.[8]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill requires each property appraiser to forward DOR's tax roll report to the county commission. Property appraisers will incur costs associated with meeting this requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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[7] These projections are based upon the best information available, utilizing professionally accepted methodology, and separately allocate changes in total assessed value to: new construction, additions, and deletions, changes in the value of the dollar, changes in the market value of property, and the level of assessment. Section 195.096(3)(b), F.S.

[8] Department of Revenue: Bill Analysis (HB 979).

This bill requires property appraisers to take actions requiring the expenditure of money. As a result, the mandates provision of s. 18(a), Art. VII, of the State Constitution may apply. However, the bill will be exempt from this provision if the total impact is less than $1.8 million.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Proponents:

The Broward County Property Appraiser (Lori N. Parrish) is a proponent of the bill. She supports the bill as a current property appraiser and former County Commissioner and School Board Member. During hers years of service, she was unaware, as she asserts many are, that these reports existed. When she became the property appraiser and learned of the reports, she found out that few in the office knew of these reports and there were no records of the reports in the office. Upon obtaining copies of the reports from the Department of Revenue, it was discovered that Broward County had been out of compliance for a number of years. She asserts that had these reports been made known to the public, the property appraiser would have been forced to fix the problem or face the threat of not being reelected. The problem, she asserts, is not the availability of the report, but rather knowing it even exists. She hopes that the public scrutiny and examination will improve public performance, ensuring every Florida resident pays their fair share, not only in Broward County, but in all counties within Florida.[9]

Opponents:

Both the Florida Association of Property Appraisers and the Property Appraisers' Association of Florida oppose the bill. Both Associations believe that the bill is unnecessary since this information is a public record and the county commission can obtain it when, and if they choose to. Both Associations further feel that this bill is the result of an issue specific to Broward County and may be solved by a bill specific to Broward County.[10]

The Property Appraisers' Association of Florida (Association) also believes that the bill is uneconomical in that it generates lots of paper work for information that many county commissions do not want and will not use. If the issue involves apprising county commissions of the availability of this information, the Association suggests that this could be better solved by having the Department of Revenue notify the county commissions when it releases its report to the property appraisers. It is preferred that DOR notify the county commissioners because they have the report in electronic format.[11]

There is a local bill, HB 1253, filed by Representative Sobel, which requires the Property Appraiser of Broward County to forward of a copy of the findings of the Department of Revenue regarding the Broward County Assessment Rolls to the Mayor of Broward County, each county commissioner, and the county auditor.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

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[9] E-mail from Lori N. Parrish, May 20, 2006.

[10] Statements taken from Mr. Loren Levy, representing the opinion of the Property Appraisers' Association of Florida, and Mrs. Martha Cleaver, representing the opinion of the Florida Association of Property Appraisers. (March 7, 2006).

[11] Statement in e-mail from Mr. Levy (March 9, 2006) and conversation on March 10, 2006.

1 A bill to be entitled
2 An act relating to property tax administration; amending
3 s. 195.096, F.S.; requiring that a county property
4 appraiser forward a copy of the findings from the
5 Department of Revenue regarding its review of the county
6 tax assessment roll to the county commissioner or to the
7 corresponding official under a consolidated charter;
8 requiring that the copy include all statistical and
9 analytical measures computed for the real property
10 assessment roll as a whole, the personal property
11 assessment roll as a whole, and the results of any audit
12 of procedures used by the county to appraise property;
13 requiring that the copy include any value-weighted mean
14 levels of assessment projected by the department for a
15 county not studied in the current year; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Paragraph (f) of subsection (2) of section
21 195.096, Florida Statutes, is amended to read:
22 195.096 Review of assessment rolls.--
23 (2) The department shall conduct, no less frequently than
24 once every 2 years, an in-depth review of the assessment rolls
25 of each county. The department need not individually study every
26 use-class of property set forth in s. 195.073, but shall at a
27 minimum study the level of assessment in relation to just value
28 of each classification specified in subsection (3). Such in-

29 depth review may include proceedings of the value adjustment
30 board and the audit or review of procedures used by the counties
31 to appraise property.
32 (f) Within 120 days following the receipt of a county
33 assessment roll by the executive director of the department
34 pursuant to s. 193.1142(1), or within 10 days after approval of
35 the assessment roll, whichever is later, the department shall
36 complete the review for that county and forward its findings,
37 including a statement of the confidence interval for the median
38 and such other measures as may be appropriate for each
39 classification or subclassification studied and for the roll as
40 a whole, employing a 95-percent level of confidence, and related
41 statistical and analytical details to the committees of the
42 Senate and the House of Representatives with oversight
43 responsibilities for taxation ~~Finance, Taxation, and Claims~~
44 ~~Committee; the House Finance and Taxation Committee;~~ and to the
45 appropriate property appraiser, who shall, within 90 days after
46 receipt of the findings, forward a copy of the findings to the
47 chairperson of the appropriate county commission or to the
48 corresponding official under a consolidated charter. The copy
49 must include all statistical and analytical measures computed
50 under this section for the real property assessment roll as a
51 whole, the personal property assessment roll as a whole, and the
52 results of any audit or review of procedures used by the county
53 to appraise property, listed independently for each class or
54 subclass of real property studied. For a county not studied in
55 the current year, the copy must include any value-weighted mean
56 levels of assessment projected by the department pursuant to

57 paragraph (3)(b).

58 Section 2. This act shall take effect July 1, 2006.

HB 1023

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1023 Playgrounds
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 1892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Agriculture & Environment Appropriations Committee			
3) Governmental Operations Committee			
4) Fiscal Council			
5)			

SUMMARY ANALYSIS

The Florida Recreation Development Assistance Program (FRDAP) is established by the Department of Environmental Protection (DEP) and funded by a portion of the funds credited to the Land Acquisition Trust Fund and Florida Forever Trust Fund. FRDAP provides grants to qualified local government entities to acquire or develop land for public outdoor recreation.

This bill creates a boundless playground program under FRDAP. The boundless playground program would be an additional program, requiring separate rules and consideration for projects that meet the definition of a boundless playground provided in the bill. The boundless playground program would require DEP to create a rule to set aside a portion of FRDAP's funds specifically for boundless playground projects.

This bill requires funds currently granted to all projects based on competitive rankings to be divided in such a way that allows for a separate allocation to boundless playgrounds without having them ranked in the same competitive system.

This bill would take effect July 1, 2006.

This bill does not require additional state expenditures, but may negatively impact smaller cities and counties by reducing funds available under FRDAP for the other projects that must compete in the ranking system. The bill has the potential to directly benefit the private company - Boundless Playgrounds®.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- This bill assigns an additional responsibility to the Department of Environmental Protection (DEP) by requiring DEP to create a new program. After implementing rules for the program, DEP will also then bear the responsibility of distributing the funds under this program each year.

B. EFFECT OF PROPOSED CHANGES:

Florida Recreation Development Assistance Program (FRDAP)

The Florida Recreation Development Assistance Program (FRDAP) provides grants to qualified local government entities so they may acquire or develop land for public outdoor recreation purposes.[1] Funding for the program is based upon not less than 5% of the money credited to the Land Acquisition Trust Fund and from the Florid Forever Trust Fund as determined in s. 259.105(d), F.S., which is currently 2%. Because it is based on percentages, FRDAP's budget varies each year.

In distributing funds, the Department of Environmental Protection (DEP) has adopted rules and procedures within a competitive selection process to maximize the benefits to the public.[2] In the Florida Administrative Code, DEP has developed a point score ranking system. The system allows eligible projects to earn points for meeting various criteria within general criteria, developmental criteria, acquisition criteria, and trail consideration criteria.[3] Many of the criteria are based on meeting the outdoor recreation goals, objectives, and priorities in the Statewide Comprehensive Outdoor Recreation Plan (SCORP).[4]

FRDAP grants are only awarded to projects with the sole purpose of providing outdoor recreational opportunities to the public. To be eligible, the site of the project must be either owned by the applicant or leased to them for a sufficient period of time to satisfy the dedication period. DEP has the ability to make exceptions for what is considered an eligible site. In addition, DEP must also consider the project to be viable and practical. A project that does not receive at least 53 points in the ranking system is considered to be nonviable.[5] After points are awarded, the projects that received at least 53 points are then ranked and listed on a priority list, with funds going to the projects with the highest points first. The minimum point requirement is to help in securing larger, more inclusive projects. Under this system, it is hard, if not impossible, for stand alone projects to qualify for funding.[6]

FRDAP funds are distributed as reimbursements with match requirements.[7] There is a maximum grant limit of $200,000 for each project. No local government may apply for more than two grants each application period, nor may a local government have more than three active projects receiving grant funds per fiscal year.[8] In three of the last five years (not including 2006), all projects on the priority list have received funding. There have been instances when a project has not made the list but was funded by the Legislature in a separate line item appropriation.[9]

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[1] Section 375.075(1), F.S.
[2] Section 375.075(2), F.S.
[3] Fla, Admin, Code R. 62D-5.
[4] The purpose of SCORP is to provide a guide for the "development of a diverse, balanced, statewide outdoor recreation system toward meeting current and future needs." It is intended to be comprehensive in both planning and implementation. www.dep.state.fl.up/parks/planning/defualt.htm
[5] Fla. Admin. Code R. 62D-5.056.
[6] E-mail from Bruce Deterding of DEP, March 6, 2006.
[7] Fla. Admin. Code R. 62D-5.055.
[8] Section 375.075(3), F.S.
[9] E-mail from Bruce Deterding of DEP, March 6, 2006.

Effect of Bill

The bill creates a separate program under FRDAP to specifically fund boundless playground projects. The bill defines a boundless playground as:

> A playground with a barrier-free environment designed for children of all abilities, including those with physical, developmental, cognitive, and sensory disabilities, to experience independent self-directed play, each at his or her own highest level of ability, and includes accessible play components and equipment that engage and provide access for children with various motor impairments.

Consistent with the statutory requirements of FRDAP, DEP is directed to adopt, by rule, a program to fund boundless playgrounds. This requires DEP to set aside a certain amount of FRDAP's funds to fund the boundless playground program.

Projects being defined as boundless playgrounds by this bill are technically eligible to be funded under the current FRDAP program. However, under the current FRDAP program, these projects are subjected to the minimum 53 point requirements and the same competitive ranking system as all other qualifying projects. For boundless playgrounds to be funded under the current FRDAP, they normally must be part of a larger project.[10] By creating a separate program, boundless playground projects could be initiated as stand alone projects and would only have to compete with other boundless playground projects for the funds set aside for that purpose.

C. SECTION DIRECTORY:

Section 1: Amends directory language of s. 375.075, F.S., to include boundless playgrounds and creates subsection (4) to provide for a boundless playground program.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill has no effect on state revenues.

2. Expenditures:

   This bill may negatively impact the normal expenditures from the FRDAP grant program, which may negatively impact smaller counties and cities and their eligibility under the FRDAP grant program.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

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[10] E-mail from Bruce Deterding of DEP, March 6, 2006.
[11] Department of Environmental Protection: Draft Bill Analysis 2006 (HB 1023).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will directly benefit a private company- Boundless Playgrounds®.[12]

D. FISCAL COMMENTS:

This bill may negatively impact the normal expenditures from FRDAP grants by focusing on a particular playground built by a particular company. Due to the expense of this company's product, DEP suggests that the FRDAP statutory limits on grants be raised. This bill may negatively impact smaller cities and counties since there may not be as much FRDAP revenue available due to the cost of these playgrounds.[13]

If the bill passes, DEP suggests that because Boundless Playgrounds® cost approximately $300,000, s. 375.075, F.S., should be amended to raise the statutory limit on FRDAP, which is presently $200,000.[14]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill directs DEP to adopt by rule a new program to fund boundless playgrounds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

It is unclear how the additional program will impact the application process. Under current law, a local government is limited to two grant applications each application period.[15] By creating a new program under FRDAP so that two programs exists where previously only one did, it is unclear if there will be two applications per program or two applications total.

The same issue arises under the permissible number of active projects. Currently, a local government may not have more than three active projects using FRDAP granted funds during the fiscal year.[16] Whether this will be applied as three projects under each program, or three total projects under FRDAP is unclear.

The term boundless playground also is the name of a private company, Boundless Playgrounds® and using this term could be seen as endorsing this company's product.

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[12] Department of Environmental Protection: Draft Bill Analysis 2006 (HB 1023).
[13] Department of Environmental Protection: Draft Bill Analysis 2006 (HB 1023).
[14] Department of Environmental Protection: Draft Bill Analysis 2006 (HB 1023).
[15] Section 375.075(3), F.S.
[16] Section 375.075(3), F.S.

The current statute contains an incorrect cross reference to s. 259.105(3)(c). The correct cross reference should be s. 259.105(3)(d). This is being corrected in a revisers bill, HB 7067(42).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to playgrounds; amending s. 375.075, F.S.;
3 requiring the Department of Environmental Protection to
4 adopt by rule a program to provide funding to local
5 governments to construct boundless playgrounds; defining
6 the term "boundless playground"; providing an effective
7 date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 375.075, Florida Statutes, is amended
12 to read:
13 375.075 Outdoor recreation; financial assistance to local
14 governments; boundless playgrounds.--
15 (1) The Department of Environmental Protection is
16 authorized to establish the Florida Recreation Development
17 Assistance Program to provide grants to qualified local
18 governmental entities to acquire or develop land for public
19 outdoor recreation purposes. To the extent not needed for debt
20 service on bonds issued pursuant to s. 375.051, each year the
21 department shall develop and plan a program which shall be based
22 upon funding of not less than 5 percent of the money credited to
23 the Land Acquisition Trust Fund pursuant to s. 201.15(2) and (3)
24 in that year. Beginning fiscal year 2001-2002, the department
25 shall develop and plan a program which shall be based upon the
26 cumulative total funding provided from this section and from the
27 Florida Forever Trust Fund pursuant to s. 259.105(3)(c).

28 (2)(a) The department shall adopt, by rule, procedures to
29 govern the program, which shall include, but need not be limited
30 to, a competitive project selection process designed to maximize
31 the outdoor recreation benefit to the public.
32 (b) Selection criteria shall, at a minimum, rank:
33 1. The extent to which the project would implement the
34 outdoor recreation goals, objectives, and priorities specified
35 in the state comprehensive outdoor recreation plan; and
36 2. The extent to which the project would provide for
37 priority resource or facility needs in the region as specified
38 in the state comprehensive outdoor recreation plan.
39 (c) No release of funds from the Land Acquisition Trust
40 Fund, or from the Florida Forever Trust Fund beginning in fiscal
41 year 2001-2002, for this program may be made for these public
42 recreation projects until the projects have been selected
43 through the competitive selection process provided for in this
44 section.
45 (3) A local government may submit up to two grant
46 applications during each application period announced by the
47 department. However, a local government may not have more than
48 three active projects expending grant funds during any state
49 fiscal year. The maximum project grant for each project
50 application may not exceed $200,000 in state funds.
51 (4) The department shall adopt by rule a program
52 consistent with the requirements of this section to provide
53 funding for boundless playgrounds. The term "boundless
54 playground" means a playground with a barrier-free environment
55 designed for children of all abilities, including those with

56 physical, developmental, cognitive, and sensory disabilities, to
57 experience independent self-directed play, each at his or her
58 own highest level of ability, and includes accessible play
59 components and equipment that engage and provide access for
60 children with various motor impairments.
61 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1137 Rupert J. Smith Law Library, St. Lucie County
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Rupert J. Smith Law Library of Saint Lucie County (Law Library) is an independent special district. A Board of Trustees was created to establish, operate, and maintain law library facilities within Saint Lucie County. The Board of Trustees consists of three members: a circuit judge, a county commissioner, and an attorney. Each seat has its own requirements and assignment of who makes the appointment.

This bill increases the number of seats on the Board of Trustees from three to five, and creates requirements and appointment power for each new seat. The additions would include another attorney and a lay member.

The bill also contains a Supremacy Clause.

This bill would take effect on becoming law.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill increases the number of seats on the Board of Trustees for the Rupert J. Smith Law Library of Saint Lucie County.

B. EFFECT OF PROPOSED CHANGES:

Rupert J. Smith Law Library of Saint Lucie County and Board of Trustees

The Rupert J. Smith Law Library of Saint Lucie County (Law Library) is an independent special district, codified in chapter 2001-326, L.O.F. The Law Library is governed by a Board of Trustees. The Board of Trustees establish, operate, and maintain law library facilities within Saint Lucie County. They have the authority to prescribe rules and regulations of their own functions, and those of the library. The Board of County Commissioners of Saint Lucie County provides funds to the Board of Trustees for the Law Library in its annual budget. All of the funds are placed in the "Law Library Fund", and expended by the Trustees for procuring, equipping, and maintaining the Law Library. This includes securing furnishings, equipment, and personnel as necessary for operation of the Law Library.

The Board of Trustees consists of three members, broken down as follows:

- A Circuit Judge who is a resident of Saint Lucie County and appointed by the Chief Judge of the Nineteenth Judicial Circuit.
- A member of the Board of County Commissioners for Saint Lucie County, appointed by the members of the Board of County Commissioners biannually.
- An active practicing attorney who is a resident of the Saint Lucie County and appointed by the president of the Saint Lucie County Bar Association.

The attorney is appointed for a term of one year. The term begins on the first Tuesday after the first Monday in January of each year.

Effect of Bill

This bill increases the number of seats on the Board of Trustees for the Law Library from three to five and creates qualifications and appointment authority for the new seats. The new seats are as follows:

- An active practicing attorney who resides in Saint Lucie County, appointed by the president of the Port Saint Lucie Bar Association.
- A lay member, appointed by the president of the Friends of Saint Lucie County Library Association, Inc.

A change also is made to reflect that both attorneys would have a one year term, beginning on the first Tuesday after the first Monday in January of each year.

The bill also contains a Supremacy clause. The bill provides that all previsions of law that are in direct conflict with the act are superseded to the extent of such conflict.

SECTION DIRECTORY:

Section 1: Amends section 1 of section 3 of chapter 2001-326, L.O.F., to increase number of seats on Board of Trustees.

Section 2: Provides a Supremacy Clause.

Section 3: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? November 10, 2005.

WHERE? *Fort Pierce Tribune*, Saint Lucie County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [X] No []

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Supremacy Clause

In the past the House has adopted a policy of recommending the removal of supremacy clauses which attempt to repeal or nullify any and all previous acts that conflict with the language of the bill being proposed. Non-specific supremacy language is problematic in that it raises the question of whether or not a particular prior enactment is in conflict with a future enactment. Language that provides specific sites for repeal at least lets the legislative intent be known.

House Bill Drafting suggests the following language if a supremacy clause is to be included:

All provisions of law which are in direct conflict with this act are hereby superseded to the extent of such conflict.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL AMENDMENT POLICY

All substantive amendments to local bills must be approved by the legislative delegation. This form must accompany all substantive amendment(s) (committee, council or floor). All substantive amendments must be reviewed by appropriate House staff. This form is not needed for technical, clarifying or conforming amendments.

BILL #: HB 1137

SPONSOR(S): Representative Harrell

RELATING TO: Rupert J. Smith Law Library, St. Lucie County
[Indicate Area Affected (City, County, Special District) and Subject]

SPONSOR OF AMENDMENT: Representative Harrell

CONTACT PERSON: Heather Yang

PHONE # and E-mail: (772)462-1441 heatherg@stlucie.co.gov

REVIEWED BY HOUSE STAFF [X] (must be checked)

I. BRIEF DESCRIPTION OF AMENDMENT DESIRED:

Removal of Supremacy Clause.

II. REASON/NEED FOR AMENDMENT:

Removal of Supremacy Clause per House Policy.

III. THE AMENDMENT DESCRIBED ABOVE HAS BEEN APPROVED BY A MAJORITY OF THE DELEGATION:

YES [✓] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

Ken Pruitt

Delegation Chair *(Original Signature)* **Date**

1137

SCRIPPS TREASURE COAST NEWSPAPERS

Fort Pierce Tribune

600 Edwards Road, Fort Pierce, FL 34982

AFFIDAVIT OF PUBLICATION

SCRIPPS HOWARD

STATE OF FLORIDA
COUNTY OF ST. LUCIE

Before the undersigned authority personally appeared, S. Darlene Mailing, who on oath says that she is Classified Inside Sales Manager of the Fort Pierce Tribune, a daily newspaper published at Fort Pierce in St. Lucie County, Florida: that the attached copy of advertisement was published in the Fort Pierce Tribune in the following issues below. Affiant further says that the said Fort Pierce Tribune is a newspaper published in Fort Pierce, in said St. Lucie County, Florida, and that said newspaper has heretofore been continuously published in said St. Lucie County, Florida, daily and distributed in St. Lucie County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid or promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. The Fort Pierce Tribune has been entered as Periodical Matter at the Post Offices in Fort Pierce, St. Lucie County, Florida and has been for a period of one year next preceding the first publication of the attached copy of advertisement.

Aff

Customer	Ad Number	Pub Date	Copyline	PO #
ST LUCIE COUNTY BOCC	1264511	11/10/2005	NOI	NOTICEOFINTENT
ST LUCIE COUNTY BOCC		11/17/2005		
ST LUCIE COUNTY BOCC		11/24/2005	11/10 = $43.47	

NOTICE OF INTENT TO SEEK LEGISLATION

The Board of Trustees of the Rupert J. Smith Law Library of St. Lucie County, hereby gives notice pursuant to Article III, Section 10 of the Florida Constitution and Section 11.02, Florida Statutes, of its intent to seek legislation before the 2006 Florida Legislature. This legislation would request the St. Lucie County Legislative Delegation to support an amendment to Chapter 2001-326, Section 1, Laws of Florida, so as to increase representation on the Board of Trustees of the Robert J. Smith Law Library of St. Lucie County by the addition of two members, one who is a lay member representing the general public to be appointed by the Friends of the St. Lucie County Library Association, Inc. and another who is a practicing attorney who is a member of, and will represent thereon, the Port St. Lucie Bar Association. The Legislative Delegation is scheduled to meet on Thursday, December 1, 2005, beginning at 10:00 a.m. at IRCC/FAU St. Lucie West Campus in the Schreiber Center.

THIS NOTICE DATED this 3rd day of November, 2005.

PUBLISH: November 10, 17, 24, 2005
1264511

Subscribed and sworn to me before this date:

November 25, 2005

S. Darlene Mailing

Mary T Byrne

Notary Public

MARY T. BYRNE
Notary Public - State of Florida
My Commission Expires Aug 2, 2006
Commission # DD132804
Bonded By National Notary Assn.

Gayle
1137

HOUSE OF REPRESENTATIVES
LOCAL BILL CERTIFICATION

BILL #: _____

SPONSOR(S): Rep. Gayle Harrell

RELATING TO: Rupert J Smith Law Library
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: St Lucie County Delegation

CONTACT PERSON: _____

PHONE # and E-Mail: _____

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [✓] NO [ ]

(2) Has a public hearing been held? YES [✓] NO [ ]

Date hearing held: _____

Location: _____

(3) Was this bill formally approved by a majority of the delegation members?
YES [✓] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [✓] NO [ ] DATE [_____]

Where? Newspapers **County** St Lucie County

Referendum in lieu of publication: YES [ ] NO [ ]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [ ]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

X Ken Pruitt
Delegation Chair *(Original Signature)* **Date**

St. Lucie County Legislative Delegation
December 3, 2005

LOCAL BILL VOTE

Rupert J Smith Law Library

Chairman Pruitt	**Yes**	**No**	
Senator Alexander	**Yes**	**No**	- Absent
Representative Harrell	**Yes**	**No**	
Representative Machek	**Yes**	**No**	
Representative Mayfield	**Yes**	**No**	
Representative Negron	**Yes**	**No**	
Senator Haridopolos	**Yes**	**No**	- Absent

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: HB 1137

SPONSOR(S): Harrell

RELATING TO: Rupert J. Smith Law Library for St. Lucie County

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	0	0
State:		
Local:		

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: N/A

Disadvantages: N/A

Economic Impact Statement
PAGE 2

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

NONE

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

N/A

PREPARED BY: Daniel S. McIntyre 3/13/06
[Must be signed by Preparer] Date

TITLE: St. Lucie County Attorney

REPRESENTING: St. Lucie County

PHONE: (772) 462-1420

E-Mail Address: DANM@STLUCIECO.GOV

1 A bill to be entitled
2 An act relating to the Rupert J. Smith Law Library, St.
3 Lucie County; amending chapter 2001-326, Laws of Florida;
4 providing for the appointment of additional members to the
5 board of trustees; providing for supersedure of
6 inconsistent law; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 1 of section 3 of chapter 2001-326,
11 Laws of Florida, is amended to read:
12 Section 1. There is hereby created a Board of Trustees to
13 be known as "Board of Trustees, Rupert J. Smith Law Library of
14 Saint Lucie County," which said board shall consist of five
15 ~~three~~ members; the membership of the said board shall consist of
16 a Circuit Judge who is a resident of Saint Lucie County, to be
17 designated by the Chief Judge of the Nineteenth Judicial
18 Circuit, one member of the Board of County Commissioners of
19 Saint Lucie County to be chosen by the said Board of County
20 Commissioners biennially, two ~~and one~~ active practicing
21 attorneys ~~attorney~~ who reside ~~resides~~ in Saint Lucie County, one
22 to be appointed by the president of the Saint Lucie County Bar
23 Association and one to be appointed by the president of the Port
24 Saint Lucie Bar Association, and a lay member to be appointed by
25 the president of the Friends of Saint Lucie County Library
26 Association, Inc. At the time this act takes effect, two
27 attorneys ~~one attorney~~ shall be appointed for a term of 1 year,
28 beginning on the first Tuesday after the first Monday in January

29 of each year. The Board of Trustees shall have full power and
30 authority to establish, operate, and maintain one or more law
31 library facilities within Saint Lucie County at such place or
32 places as may, from time to time, be designated by said Board of
33 Trustees; to prescribe rules and regulations as to its own
34 functions and organization; and to prescribe and enforce rules
35 and regulations as to the use, maintenance, and operation of
36 said law library. Said Board of Trustees shall purchase books,
37 furniture, equipment, and supplies either for cash or upon
38 retained title or other contracts that shall be payable solely
39 out of said law library fund and not otherwise.
40 Section 2. All provisions of law which are in direct
41 conflict with this act are hereby superseded to the extent of
42 such conflict.
43 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 1137

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Local Government Council
2 Representative Harrell offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 40-42 and insert:
6 (renumber sections)
7
8 ========== T I T L E A M E N D M E N T ==========
9 Remove line(s) 5-6 and insert:
10 board of trustees; providing an effective date.

000000

HB 1187

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1187 Florida Building Code
SPONSOR(S): Murzin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Smith T.L.S.	Hamby
2) Growth Management Committee			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

The Florida Building Code (Code) was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The Code was developed and is updated and maintained by the Florida Building Commission (Commission).

HB 1187 authorizes the Commission to amend the Code to implement revised wind-design standards for new construction in the state, including the windborne-debris requirements applicable to the region from the western border of Jefferson County west to the Florida-Alabama line. Depending on the Commission's final adopted standard, new construction in the impacted areas may be required to incorporate increased protection for structural openings (doors and windows).

This bill repeals the statutory definition of "Exposure category C," leaving that determination to the Commission's authority to define the term within the Code development process.

This bill corrects a reference to the International Code Council as it relates to adoption of the foundation codes of the updated Code.

The bill provides for the Commission to expedite the adoption and implementation of the triennial update of the Code pursuant only to the provisions of chapter 120, F.S. The special update and amendment requirements of section 553.73, F.S., and the administrative rule requiring additional delay time between adoption and implementation of such Code are waived. The bill restricts the types of amendments that may be adopted through this process.

This bill prohibits interpretations under section 553.775, F.S., of the Florida Accessibility Code for Building Construction and chapter 11 of the Code, providing that this section of law has no effect on the Commission's authority to waive the accessibility Code provided by section 553.512, F.S.

The bill has an indeterminate fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill allows the Commission to adopt wind-design standards for Northwest Florida. The bill authorizes the Commission to utilize rule-making procedures in chapter 120, F.S., rather than section 553.73, F.S., in implementing certain provisions within this bill. The bill prohibits interpretations of the Accessibility Code for Building Construction and chapter 11 of the Code.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Building Code - Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity, mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promote innovation and new technology, and help to ensure economic viability through the availability of safe and affordable buildings and structures.

Section 553.73, F.S., provides for the Florida Building Code. The Code was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The Code was developed and is updated and maintained by the Florida Building Commission (Commission) that works towards consistency of standards throughout the state and full accessibility to information on the standards. The law allows for differences in the standards in different locales based on compelling differences in physical conditions. However, the law establishes procedures for administration of the Code at all levels that will constrain unwarranted differences and ensure the availability of information on local differences to all parties throughout the state.

The law established the Commission as the body which is responsible for the development of the Code and the other elements of the system which support its implementation. The Commission has 23 members, appointed by the Governor, representing engineers, architects, contractors, building owners and insurers, state and local governments and persons with disabilities.

The Code is updated every three years by the Commission. The Commission may amend the Code once each year to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public, or the amendment provides an economic advantage to the consumer. A proposed amendment must include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement are established by rule and must include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance. The 2004 Florida Building Code is scheduled to take effect on July 1, 2005.

The Commission also is authorized to hear appeals from decisions of local boards regarding the interpretation of the Code; issue declaratory statements relating to the Code; determine the types of products requiring approval for local or statewide use and provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use; and develop a Building Code Training Program.

Non-Binding Interpretations of the Florida Building Code - The 2002 Legislature provided an additional mechanism for guidance when interpreting the Code.[1] It authorized the Commission to

[1] Chapter 2002-193, s. 16, L.O.F.

recognize an outside entity to consult with Code officials and industry, and to issue nonbinding advisory opinions. These advisory opinions were to be developed by licensed code enforcement officials. The Commission selected the Building Officials Association of Florida (BOAF) as the entity to work with toward this end.

Requests for opinions are received through the Commission's Internet site, and are then forwarded to BOAF and its experts on varied subject matters from industry and local building departments. The advice of these experts is directed to an experienced building official who drafts a response and forwards it to a select group of licensed and active building Code enforcement officials familiar with the subject matter as assigned by BOAF. These officials make the final determination of the response, which then is forwarded to the questioner and posted on both the BOAF site and in the Commission's Building Code Information System. The electronic information system can be queried for advisory opinions and declaratory statements by subject area for any section of the Code. The Commission reports that more than 1,000 advisory opinions have been issued through this process since its inception.

Because the Code is an administrative rule, interpretations of the Code that are of general applicability must comply with the provisions of ss. 120.536 and 120.54, F.S. The consensus of opinion by stakeholders was that necessary binding interpretations of the Code require a more expedited resolution than is afforded by the Code amendment and update process or the rulemaking provisions of ch. 120, F.S.

The 2005 Legislature created section 553.775, F.S., which allows the Commission, by rule, to establish an informal process of rendering interpretations of the Code. This section also provides that local building departments may approve minor changes to state approved plans under the prototype building program.

Current law sets forth a procedure for the Commission to review decisions of local building officials and local enforcement agencies regarding interpretations of the Code. Local agencies retain the primary responsibility for interpreting the Code, consistent with declaratory statements and interpretations by the Commission. While anyone may petition the Commission to issue a declaratory statement, review of local interpretations of the Code must be appealed through the following system:

- First, the Commission is directed to coordinate with the Building Officials Association of Florida, Inc. (BOAF), a statewide organization of municipal and county codes enforcement officials, to designate panels composed of five hearing officers to hear requests to review decisions of local building officials. These hearing officers must be members of a statewide organization of code enforcement officials and licensed as building code administrators and have experience interpreting and enforcing provisions of the Code.

- The request to review a decision of a local building official's interpretation of the Code may be initiated by any substantially affected person. Requests for review, or petitions, must be submitted to the Commission, who then forwards the information to a panel of hearing officers and to the local building official, and posts the petition on the Building Code Information System. The local building official then provides a written response to the panel. The petitioner then replies to the hearing officers addressing the information provided by the local building official. The panel must then conduct a proceeding to resolve the issue and publish its interpretation. The panel has 21 days after the date the petition is filed to complete the review.

- The petitioner may then file an appeal of the decision to the Commission. The burden of proof in any proceeding is on the party who initiated the appeal. Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this process. These local decisions may not be appealed to the Commission if the local governing body finds that there is an immediate danger to the health and safety of the public. Similarly, the

Commission only has advisory powers with respect to any decision of the State Fire Marshal made under chapter 633, F.S.

The Commission also may establish an informal process of rendering non-binding interpretations of the Code. The Commission may refer interpretive issues to organizations that represent those engaged in the construction industry. The resulting interpretations are advisory only and nonbinding on the parties and the Commission.

The Commission is authorized to impose a fee not to exceed $250 for binding interpretations for each request for review or interpretation. For third-party proceedings the payment may be made directly to the third-party who must remit to the DCA that portion of the fee necessary to cover the DCA's costs.

Prior to its integration into the Code in 2002, the Accessibility Code was statutorily adopted within chapter 553, F.S. Avenues of interpretation of the Code were specifically and definitively restrictive based on concerns by advocates for the disabled that the authority to interpret conferred the power to limit the implementation of the accessibility provisions within that Code. Upon its integration, however, the Accessibility Code became subject to interpretation by Declaratory Statement by the Commission, and subsequently by non-binding and binding opinion by a third-party. Based on the historical practice and present concerns of advocates for the disabled, the Commission has recommended restricting interpretation of the accessibility provisions.

Hurricane Protection - The Commission established standards for hurricane protection in the Code that are based on a national model building code, federal regulations, and standards evolving out of southeast Florida's experience with Hurricane Andrew. Specifically, for protection against hurricane waters, the Code incorporates the flood plain management standards of the Federal Emergency Management Agency's National Flood Insurance Program for the entire state. For coastal construction it incorporates the Florida "coastal building zone" storm surge protection standards.

The Code requires that new homes throughout the state be designed to resist external wind speeds that the American Society of Civil Engineers standard (ASCE 7-98) predicts will experience sometime within a 50 to 100-year time period. In November of 1999, the Commission agreed with the developers of ASCE 7 and applied additional requirements in what is called the "wind-borne debris region" to ensure that buildings inside this region also will be able to withstand internal wind pressure caused by the penetration of flying debris. This region includes areas expected to experience winds of 120 mph or greater as well as areas within one mile of the coast that experience at least 110 mph winds.

Subsection (3) of section 109 of chapter 2000-141, L.O.F., directs the Commission to adopt for areas of the state not within the high velocity hurricane zone, pursuant to section 553.73, F.S., the wind protection requirements of the ASCE, Standard 7, 1998 edition as modified by the Commission in its February 15, 2000, adoption of the Code.[2] However, the Legislature stipulated that from the eastern border of Franklin County to the Florida-Alabama line, only land within one mile of the coast is subject to the windborne-debris requirements adopted by the Commission. This subsection provides for the exact location of wind speed lines to be established by ordinance using specified physical landmarks, and provides that buildings constructed within the windborne debris region must be either designed for internal pressures resulting from a broken window or door or a hole in the walls or roof, or be designed

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[2] Subsection (3), section 109, Ch. 2000-141, L.O.F., states: *For areas of the state not within the high velocity hurricane zone, the commission shall adopt, pursuant to s. 553.73, F.S., the wind protection requirements of the American Society of Civil Engineers, Standard 7, 1998 edition as implemented by the International Building Code, 2000 edition, and as modified by the commission in its February 15, 2000, adoption of the Florida Building Code for rule adoption by reference in Rule 9B-3.047, Florida Administrative Code. However, from the eastern border of Franklin County to the Florida-Alabama line, only land within 1 mile of the coast shall be subject to the windborne-debris requirements adopted by the commission. The exact location of wind speed lines shall be established by local ordinance, using recognized physical landmarks such as major roads, canals, rivers, and lake shores, wherever possible. Buildings constructed in the windborne debris region must be either designed for internal pressures that may result inside a building when a window or door is broken or a hole is created in its walls or roof by large debris, or be designed with protected openings. Except in the high velocity hurricane zone, local governments may not prohibit the option of designing buildings to resist internal pressures.*

with protected openings. The subsection further provides that except in the high velocity hurricane zone, local governments may not prohibit the option of designing buildings to resist internal pressures.

The ASCE 7 standard considers both wind speeds that can be developed by hurricanes and factors such as terrain and shielding by other buildings which affect the strength of those winds when they impact buildings. Exposure A is characteristic of large cities with large expanses of tall buildings. Exposure B is characteristic of suburban areas with large expanses of short and medium height buildings and wooded areas. Exposure C is characteristic of areas of exposed expanses of open terrain or open water. Section 553.71, F.S., defines "exposure category C" to mean, except in the high velocity hurricane zone, that area which lies within 1,500 feet of the coastal construction control line, or within 1,500 feet of the mean high tide line, whichever is less. On barrier islands, exposure category C is applicable in the coastal building zone set forth in section 161.55(5), F.S.

Commission Recommendations - In January of 2005, the Commission issued a report entitled, *The Florida Building Code Commission Report to the 2005 Legislature*. This report contained a number of recommendations to improve the effectiveness of the Code. The report included the following specific recommendations relating to wind protection provisions:

- Eliminate the edition designation and referenced amendments of the ASCE Standard 7 currently in section 109, ch. 2000-141, L.O.F., and allow updated editions of the standard to be adopted through updates to the Code.
- Eliminate the designation of the wind-borne debris region for the Panhandle region of Florida from ch. 2000-141, L.O.F., and allow the wind-borne debris region for that area to be determined by the Code.
- Eliminate the definition of the wind exposure class C from section 553.73, F.S., and allow the definition of ASCE 7, as adopted by the Code, to be used.
- Authorize the Commission to make determinations related to designing for internal pressures.

Changes Enacted During the 2005 Legislative Session – During the 2005 Regular Session, the Legislature addressed several issues relating to wind-design standards. Chapter 2005-147, L.O.F., directed the Commission to update the Code with the most recent and relevant design standards for wind resistance of buildings issued by the ASCE, notwithstanding subsection (3) of section 109, ch. 2000-141, L.O.F. However, the bill specified that this provision was intended to *explicitly supersede only the first sentence of that law.*[3] As a result, the bill effectively exempted the Panhandle region from the requirement that the Commission utilize the most current edition of the wind protection requirements contained in ASCE 7.

The bill also instructed the Commission and local building officials to evaluate the damage from Hurricane Ivan and make recommendations to the Legislature for changes to the Code as it relates to the region from the eastern border of Franklin County to the Florida-Alabama line. Finally, the bill required the Commission to evaluate the definition of "exposure category C" as currently defined in section 553.71(10), F.S., and make recommendations for a new definition that more accurately depicts the Florida-specific conditions prior to the 2006 Legislative Session.

Post-Session Commission Deliberations – Pursuant to the requirements of Chapter 2005-147, L.O.F., the Commission convened several workshops to solicit input from local building officials and other stakeholders in the Panhandle region of the state. Much of the discussion centered on the extent to which property damage resulted from hurricane-related storm surges versus windborne debris. Similarly, considerable discussion focused on the impact of revised windborne debris protection requirements on the costs of housing in the region. At the conclusion of the initial workshop, there was consensus for the strategy of conducting a study on the treed environment effects and historical wind data affects, prior to making recommendations to the Legislature regarding the existing definition and whether to recommend changes.[4]

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[3] *Id.*

[4] *Report to the Florida Building Commission*, Florida Panhandle Windborne Debris Region Workshop I, September 14, 2005.

At the second workshop, the Commission representatives voted unanimously to contract with a consultant to conduct an engineering-based risk assessment of hurricane windborne debris protection options for the Panhandle in order to analyze the risks, costs, and benefits of windborne debris protection for the region. The research would focus on factors unique to the Panhandle region including treed areas inland of the coast, and consider historical wind data affects. The requested funding authorization was approved, and the preliminary research results will be presented to the Commission in March of 2006, and subsequently input will be solicited at a follow-up workshop. Following the workshop, the Commission will use the study results and stakeholder input, to make its recommendations to the 2006 Legislature as required by law.[5]

Effect of Proposed Changes

This bill authorizes the Commission to amend the wind design standards contained in the Code subject to the amendatory requirements contained in section 553.73, F.S. In addition, the bill specifically authorizes the Commission to identify within the Code those areas of the state from the western border of Jefferson County west to the Florida-Alabama line (the Panhandle region) that are subject to the windborne debris requirements of the Code. The Commission's initial designation of windlines for this region must address the results of the Florida Panhandle Windborne Debris Region study and is only subject to the rule adoption procedures contained in chapter 120, F.S. This authorization expressly supersedes the limitations contained in section 109 of chapter 2000-141, L.O.F.

The bill allows the Commission to eliminate or revise the existing "Panhandle exception" (limiting wind-borne debris requirements to within 1 mile of the coast) and amend the wind design standards applicable to the Panhandle region to incorporate the current edition of the national model building code engineering standard (American Society of Civil Engineers Standard 7, 2002 Edition). This would subject new construction in the Panhandle region to the same windborne debris requirements (enhanced door and window protection) applicable to other areas of the state. The bill also authorizes the Commission to utilize expedited rule-making procedures pursuant to chapter 120, F.S., rather than section 553.73, F.S., in implementing this provision.

This bill repeals the statutory definition of "Exposure category C," leaving that determination to the Commission's authority to define the term within the Code development process.

This bill corrects a reference to the International Code Council as it relates to adoption of the foundation codes of the updated Code.

The bill provides for the Commission to expedite the adoption and implementation of the triennial update of the Code pursuant only to the provisions of chapter 120, F.S. The special update and amendment requirements of section 553.73, F.S., and the administrative rule requiring additional delay time between adoption and implementation of such Code are waived. The bill provides that the Commission shall approve amendments pursuant to this provision only to the extent necessary to address: conflicts within the updated Code, conflicts between the updated Code and the Florida Fire Prevention Code adopted pursuant to chapter 633, F.S., omission of previously adopted Florida-specific amendments to the updated Code if the omission is not supported by a specific recommendation of a technical advisory committee or particular action by the Commission, or unintended results from the integration of previously adopted Florida-specific amendments with the model Code.

This bill prohibits interpretations under section 553.775, F.S., of the Florida Accessibility Code for Building Construction and chapter 11 of the Code, providing that this section of law has no effect on the Commission's authority to waive the accessibility Code provided by section 553.512, F.S.

[5] *Report to the Florida Building Commission*, Florida Panhandle Windborne Debris Region Workshop II, February 16, 2006.

C. SECTION DIRECTORY:

Section 1: Amends subsections (10) and (11) of section 553.71, F.S., deleting the statutory definition of "Exposure category C."

Section 2: Amends subsection (6) of section 553.73(6)(a), F.S., providing that the *applicable model code entity* adopts the foundation codes of the updated Code instead of the International Code Council; creating a process that addresses issues identified by the Commission to amend the updated Code pursuant only to the rule adoption procedures contained in chapter 120, F.S.; providing authorities that have jurisdiction to enforce the Code may enforce the recommended corrections to the Code after approval; providing amendment approval pursuant only to: conflicts within the updated Code, conflicts between the updated Code and the Florida Fire Prevention Code adopted pursuant to chapter 633, F.S., omission of previously adopted Florida-specific amendments to the updated Code if the omission is not supported by a specific recommendation of a technical advisory committee or particular action by the Commission, or unintended results from the integration of previously adopted Florida-specific amendments with the model Code.

Section 3: Creates section 553.775, F.S., restricting interpretations of the Florida Accessibility Code for Building Construction and chapter 11 of the Code.

Section 4: Authorizes the Commission to amend the wind design standards contained in the Code subject to the amendatory requirements contained in section 553.73, F.S; authorizing the Commission to identify within the Code those areas of the state from the western border of Jefferson County west to the Florida-Alabama line (the Panhandle region) that are subject to the windborne debris requirements of the Code; providing the Commission's initial designation of windlines for this region must address the results of the Florida Panhandle Windborne Debris Region study and is only subject to the rule adoption procedures contained in chapter 120, F.S; providing this authorization expressly supersedes the limitations contained in section 109 of chapter 2000-141, L.O.F.

Section 5: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact of the bill on homebuilders, and ultimately, home buyers is indeterminate. To the extent the bill results in increased construction costs associated with enhanced window and door protection, homebuilders and homebuyers could be adversely impacted. However, these costs could be offset by benefits, primarily in the form of reduced hurricane-related property damage.

D. FISCAL COMMENTS:

According to the Department of Community Affairs, increased cost of construction is likely, but dependent on the Commission's utilization of the authority granted. Design and construction to withstand internal pressure results in minimal cost increase of a home, and use of shutters and other impact resistant openings can likely be achieved at a cost of around $2,000. These costs will ultimately be passed on to the consumer in the sales price of the building, but should be offset over time by savings on insurance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   There do not appear to be other constitutional issues with the bill.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Commission to utilize expedited rule-making procedures in chapter 120, F.S., rather than section 553.73, F.S., in implementing certain provisions within this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

<u>Drafting Issues</u>

Section 4 of the bill, lines 132 – 136, states the following, "The Florida Building Commission is specifically authorized to identify within the Florida Building Code those areas of the state from the *western border of Jefferson County west to the Florida-Alabama line* that are subject to the windborne debris requirements of the code." However, subsection (3) of section 109, 2000-141, L.O.F., provides, "However, from the *eastern border of Franklin County to the Florida-Alabama line*, only land within 1 mile of the coast shall be subject to the windborne-debris requirements adopted by the commission."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

1 A bill to be entitled
2 An act relating to the Florida Building Code; amending s.
3 553.71, F.S.; deleting the definition of "exposure
4 category C"; amending s. 553.73, F.S.; authorizing the
5 Florida Building Commission to make certain limited
6 amendments to the Florida Building Code pursuant to rule
7 adoption procedures for certain purposes after triennial
8 updates; amending s. 553.775, F.S.; prohibiting
9 interpretation and review of certain accessibility
10 provisions of certain codes under certain procedures;
11 authorizing the commission to update or modify certain
12 wind design standards; authorizing the Florida Building
13 Commission to identify in the code certain areas of the
14 northwest portion of the state subject to certain wind
15 debris requirements of the code; specifying such areas as
16 subject to certain rule adoption procedures without being
17 subject to certain code development procedures;
18 superseding certain provisions of general law relating to
19 wind protection requirements; providing an effective date.
20
21 Be It Enacted by the Legislature of the State of Florida:
22
23 Section 1. Subsections (10) and (11) of section 553.71,
24 Florida Statutes, are amended to read:
25 553.71 Definitions.--As used in this part, the term:
26 ~~(10) "Exposure category C" means, except in the high~~
27 ~~velocity hurricane zone, that area which lies within 1,500 feet~~
28 ~~of the coastal construction control line, or within 1,500 feet~~

29 ~~of the mean high tide line, whichever is less. On barrier~~
30 ~~islands, exposure category C shall be applicable in the coastal~~
31 ~~building zone set forth in s. 161.55(5).~~
32 (10) ~~(11)~~ "Prototype building" means a building constructed
33 in accordance with architectural or engineering plans intended
34 for replication on various sites and which will be updated to
35 comply with the Florida Building Code and applicable laws
36 relating to firesafety, health and sanitation, casualty safety,
37 and requirements for persons with disabilities which are in
38 effect at the time a construction contract is to be awarded.
39 Section 2. Subsection (6) of section 553.73, Florida
40 Statutes, is amended to read:
41 553.73 Florida Building Code.--
42 (6)(a) The commission, by rule adopted pursuant to ss.
43 120.536(1) and 120.54, shall update the Florida Building Code
44 every 3 years. When updating the Florida Building Code, the
45 commission shall select the most current version of the
46 International Building Code, the International Fuel Gas Code,
47 the International Mechanical Code, the International Plumbing
48 Code, and the International Residential Code, all of which are
49 adopted by the International Code Council, and the National
50 Electrical Code, which is adopted by the National Fire
51 Protection Association, to form the foundation codes of the
52 updated Florida Building Code, if the version has been adopted
53 by the applicable model code entity ~~International Code Council~~
54 and made available to the public at least 6 months prior to its
55 selection by the commission.

56 (b) Codes regarding noise contour lines shall be reviewed
57 annually, and the most current federal guidelines shall be
58 adopted.
59 (c) The commission may modify any portion of the
60 foundation codes only as needed to accommodate the specific
61 needs of this state, maintaining Florida-specific amendments
62 previously adopted by the commission and not addressed by the
63 updated foundation code. Standards or criteria referenced by the
64 codes shall be incorporated by reference. If a referenced
65 standard or criterion requires amplification or modification to
66 be appropriate for use in this state, only the amplification or
67 modification shall be set forth in the Florida Building Code.
68 The commission may approve technical amendments to the updated
69 Florida Building Code after the amendments have been subject to
70 the conditions set forth in paragraphs (3)(a)-(d). Amendments to
71 the foundation codes which are adopted in accordance with this
72 subsection shall be clearly marked in printed versions of the
73 Florida Building Code so that the fact that the provisions are
74 Florida-specific amendments to the foundation codes is readily
75 apparent.
76 (d) The commission shall further consider the commission's
77 own interpretations, declaratory statements, appellate
78 decisions, and approved statewide and local technical amendments
79 and shall incorporate such interpretations, statements,
80 decisions, and amendments into the updated Florida Building Code
81 only to the extent that they are needed to modify the foundation
82 codes to accommodate the specific needs of the state. A change
83 made by an institute or standards organization to any standard

84 or criterion that is adopted by reference in the Florida
85 Building Code does not become effective statewide until it has
86 been adopted by the commission. Furthermore, the edition of the
87 Florida Building Code which is in effect on the date of
88 application for any permit authorized by the code governs the
89 permitted work for the life of the permit and any extension
90 granted to the permit.
91 (e) A rule updating the Florida Building Code in
92 accordance with this subsection shall take effect no sooner than
93 6 months after publication of the updated code. Any amendment to
94 the Florida Building Code which is adopted upon a finding by the
95 commission that the amendment is necessary to protect the public
96 from immediate threat of harm takes effect immediately.
97 (f) Upon the conclusion of a triennial update to the
98 Florida Building Code, notwithstanding the provisions of this
99 subsection or subsection (3), the commission may address issues
100 identified in this subsection by amending the code pursuant only
101 to the rule adoption procedures contained in chapter 120.
102 Authorities having jurisdiction to enforce the Florida Building
103 Code may enforce the recommended corrections to the code upon
104 approval by the commission and publication of the corrections on
105 the commission's website. The commission shall approve
106 amendments pursuant to this paragraph only to the extent
107 necessary to address:
108 1. Conflicts within the updated code.
109 2. Conflicts between the updated code and the Florida Fire
110 Prevention Code adopted pursuant to chapter 633.
111 3. Omission of previously adopted Florida-specific

112 amendments to the updated code if such omission is not supported
113 by a specific recommendation of a technical advisory committee
114 or particular action by the commission.
115 4. Unintended results from the integration of previously
116 adopted Florida-specific amendments with the model code.
117 Section 3. Subsection (5) is added to section 553.775,
118 Florida Statutes, to read:
119 553.775 Interpretations.--
120 (5) Notwithstanding the other provisions of this section,
121 the Florida Accessibility Code for Building Construction and
122 chapter 11 of the Florida Building Code may not be interpreted
123 through or subject to review by any of the procedures in this
124 section. This subsection has no effect upon the commission's
125 authority to waive the accessibility code as provided by s.
126 553.512.
127 Section 4. Notwithstanding subsection (3) of section 109,
128 2000-141, Laws of Florida, the Florida Building Commission may
129 update or modify the wind design standard applicable to
130 construction in this state as adopted within the Florida
131 Building Code in accordance with the requirements of s. 553.73,
132 Florida Statutes. The Florida Building Commission is
133 specifically authorized to identify within the Florida Building
134 Code those areas of the state from the western border of
135 Jefferson County west to the Florida-Alabama line that are
136 subject to the windborne debris requirements of the code. The
137 initial designation of those areas after July 1, 2006, is
138 subject to only the rule adoption procedures of chapter 120,
139 Florida Statutes, notwithstanding the code development

140 procedures of chapter 553, Florida Statutes. The provisions of
141 subsection (3) of section 109, 2000-141, Laws of Florida, are
142 expressly superseded.
143 Section 5. This act shall take effect July 1, 2006.

HB 1189

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1189 Pasco County
SPONSOR(S): Legg
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Camechis	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill provides that the resolution of the District School Board of Pasco County providing for the receipt of proceeds of the local government infrastructure surtax authorized under s. 212.055(2), F.S., may include a covenant by the board to decrease the capital local school property tax levied pursuant to s. 1011.71(2), F.S., and to maintain that tax at the reduced millage as long as the surtax is in effect. Finally, if the surtax revenues are pledged to service bonded indebtedness, the board may covenant not to levy the capital property tax under s. 1011.71(2), F.S., at a millage rate in excess of the reduced millage rate promised in the resolution.

This bill also ratifies and confirms the referendum held in Pasco County in March 2004.

According to the Economic Impact Statement, this bill "has no direct impact on collection of revenues but would insure (sic) lower bond insurance and better bond rating for the voter approved sales tax increase".

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes - The bill allows the Pasco County School Board to include a covenant to decrease the capital local school property tax in a resolution providing for the receipt of Local Government Infrastructure Surtax revenues and to maintain the reduction as long as the surtax is in effect.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 1011.71, F.S., authorizes each school board to levy, without a referendum, not more than 2 mills against the taxable value for school purposes to fund a variety of facilities and services for school purposes, including new facility construction, maintenance of facilities, acquisition of equipment, payment of certain student transportation expenses.

School districts may also derive capital funding from the Local Government Infrastructure Surtax (surtax) levied by a county pursuant to s. 212.055(2), F.S. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax must be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and takes effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

If approved at referendum, revenue from the surtax is distributed as determined in an interlocal agreement that is typically executed before the surtax is levied, and which may provide for distribution of surtax revenues to the school boards or municipalities within the county.

Effect of Proposed Changes

The resolution of the District School Board of Pasco County providing for the receipt of proceeds of the local government infrastructure surtax authorized under s. 212.055(2), F.S., may include a covenant by the board to decrease the capital local school property tax levied pursuant to s. 1011.71(2), F.S., and to maintain that tax at the reduced millage as long as the surtax is in effect. Finally, if the surtax revenues are pledged to service bonded indebtedness, the board may covenant not to levy the capital property tax under s. 1011.71(2), F.S., at a millage rate in excess of the reduced millage rate promised in the resolution.

This bill also ratifies and confirms the referendum held in Pasco County in March 2004.

C. SECTION DIRECTORY:

Section 1. Authorizes covenants to limit the levy of capital local school property taxes.
Section 2. Provides an effective date; ratifies and confirms the referendum held in Pasco County in March 2004.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 23, 2005.

WHERE? Pasco Times, Port Richey, Pasco County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: This bill ratifies and confirms the referendum held in March 2004 in Pasco County. Under Florida law, legislative bodies may retroactively enact curative laws to ratify, validate, and confirm any act that they could have authorized in the first place, assuming that no constitutional objection exists at the time of the ratification.[1] The subject of the March 2004 referendum is not specified in the bill, and it is unknown whether any constitutional issues exist with respect to the March 2004 referendum.

B. RULE-MAKING AUTHORITY: This bill does not address rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: The Economic Impact Statement submitted for this bill indicates that the bill will result in a $14 million increase in revenues; however, this is not an accurate reflection of the actual impact of the bill. The bill will not have a direct fiscal impact on revenues of the school district.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

[1] *Davis v. City of Clearwater*, 104 Fla. 42 (Fla. 1932); *Dover Drainage Dist. v. Pancoast*, 102 Fla. 267 (Fla. 1931); *Utley v. City of St. Petersburg*, 106 Fla. 692 (Fla. 1932).

1189

001796459

PASCO TIMES

An Edition of the St. Petersburg Times

Published Daily
Port Richey, Pasco County, Florida

STATE OF FLORIDA
COUNTY OF PASCO:

Before the undersigned authority personally appeared Jessica Attard who on oath says that she is Legal Clerk of the Pasco Times a daily newspaper published at Port Richey, in Pasco County, Florida: that the attached copy of advertisement, being a Legal Notice in the matter of RE: Florida House of Representatives

_____ in the _____ Court was published in said newspaper in the issues of December 23, 2005.

Affiant further says the said Pasco Times is a newspaper published at Port Richey, in said Pasco County, Florida, and that the said newspaper has heretofore been continuously published in said Pasco County, Florida, each day and has been entered as second class mail matter at the post office in Port Richey in said Pasco County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Jessica Attard
Signature of Affiant

Sworn to and subscribed before me this 23rd day of December, 2005.

Kimberly L Cronshaw
MY COMMISSION # DD199802 EXPIRES
June 26, 2007
BONDED THRU TROY FAIN INSURANCE, INC.

Kimberly L. Cronshaw
Signature of Notary Public

Personally known X or produced identification ____

Type of identification produced _____

FLORIDA HOUSE OF REPRESENTATIVES

A bill to be entitled. An act relating to Pasco County; providing that a resolution of the District School Board of Pasco County which provides for receipt of proceeds from the local government infrastructure surtax authorized under s. 212.055(2), F.S., may include a covenant to decrease capital local school property taxes or to discontinue the surtax in certain circumstances; ratifying and confirming a referendum; providing an effective date.

Be It Enacted by the Legislature of the State of Florida

Section 1. Resolution regarding local government infrastructure surtax for the Pasco County School District. The resolution of the District School Board of Pasco County providing for the receipt of proceeds of the local government infrastructure surtax authorized under section 212.055(2), Florida Statutes, may include a covenant by the board to decrease the capital local school property tax levied pursuant to section 1011.71(2), Florida Statutes, and to maintain that tax at the reduced millage as long as the surtax is in effect. Finally, if the surtax revenues are pledged to service bonded indebtedness, the board may covenant not to levy the capital property tax under section 1011.71(2), Florida Statutes, at a millage rate in excess of the reduced millage rate promised in the resolution.

Section 2. This act shall take effect upon becoming a law but shall ratify and confirm the referendum held in Pasco County in Marcy 2004. (001796459) 12/23/05

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: 1189

SPONSOR(S): Legg

RELATING TO: Pasco County District School Board
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Pasco County Delegation

CONTACT PERSON: Summer Robertson, Rep. Billirakis' office 727-869-191

PHONE # and E-Mail: Amanda Stewart, or Rep. Legg's office 727-869-8600

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [✓] NO [ ]

(2) Has a public hearing been held? YES [✓] NO [ ]

Date hearing held: November 1, 2005

Location: Pasco Hernando Community College

(3) Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [✓]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [ ] NO [ ] DATE [ ]

Where? _____ **County** Pasco

Referendum in lieu of publication: YES [ ] NO [✓]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [✓] NO [ ] NOT APPLICABLE [ ]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Gus M. Billirakis 11/1/05

Delegation Chair *(Original Signature)* **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: HB 1189

SPONSOR(S): Representative Legg

RELATING TO: Pasco County

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	N/A	N/A

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:		
State:		
Local: 45% of additional Penny sales tax		

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	$14 million	$14 million

The bill has no direct impact on collection of revenues but would insure lower bond insurance and better bond rating for the voter approved sales tax increase (March 9, 2004).

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: Allow the District School Board of Pasco County to be more competitive in the bond market with the voter approved (March 9, 2004) one cent surtax.

Disadvantages: Failure to approve bill would cost the District School Board of Pasco County significant revenues in the form of higher interest rates and increased insurance costs.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Estimates used for actual collection of Penny sales tax revenues were obtained from the Florida Department of Revenue.

Information regarding the bond market were obtained from financial advisors that work with the Pasco County School Board.

PREPARED BY: Ray Gadd 3-13-06
[Must be signed by Preparer] Date

TITLE: Assistant Superintendent for Support Services

REPRESENTING: District School Board of Pasco County

PHONE: (813-794-2776)

E-Mail Address: rgadd@pasco.k12.fl.us

1 A bill to be entitled
2 An act relating to Pasco County; providing that a
3 resolution of the District School Board of Pasco County
4 which provides for receipt of proceeds from the local
5 government infrastructure surtax authorized under s.
6 212.055(2), F.S., may include a covenant to limit the levy
7 of capital local school property taxes; ratifying and
8 confirming a referendum; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Resolution regarding local government
13 infrastructure surtax for the Pasco County School District.--The
14 resolution of the District School Board of Pasco County
15 providing for the receipt of proceeds of the local government
16 infrastructure surtax authorized under section 212.055(2),
17 Florida Statutes, may include a covenant by the board to
18 decrease the capital local school property tax levied pursuant
19 to section 1011.71(2), Florida Statutes, and to maintain that
20 tax at the reduced millage as long as the surtax is in effect.
21 Finally, if the surtax revenues are pledged to service bonded
22 indebtedness, the board may covenant not to levy the capital
23 property tax under section 1011.71(2), Florida Statutes, at a
24 millage rate in excess of the reduced millage rate promised in
25 the resolution.
26 Section 2. This act shall take effect upon becoming a law
27 but shall ratify and confirm the referendum held in Pasco County
28 in March 2004.

HB 1203

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1203 St. Johns Water Control District, Indian River County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Smith T.L.S.	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

The St. Johns Water Control District (District) is an independent district located in Indian River County. The District was created in 1962 through circuit court decree and derives its statutory authority from s. 298, F.S. The District imposes maintenance taxes and has the power to issue bonds.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill deletes outdated language and organizes previously authorized powers of the District. The bill also makes minor, stylistic changes to some of the language of the charter.

The bill deletes specified provisions relating to the District board and officers and general and special powers of the District. The bill provides for the District's powers and authority to be in accordance with chapter 298, F.S.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (includes local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

St. Johns Water Control District

The St. Johns Water Control District (District) is an independent district located in Indian River County. The District was created in 1962 through circuit court decree and derives it statutory authority from ch. 298, F.S. The District imposes maintenance taxes and has the power to issue bonds.

Changes to the St. Johns Water Control District Charter

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill deletes outdated language and organizes previously authorized powers of the District. The bill also makes minor, stylistic changes to some of the language of the charter.

The bill deletes specified provisions relating to the District board and officers and general and special powers of the District. The bill provides for the District's powers and authority to be in accordance with chapter 298, F.S.

Charter of District

This bill recreates and reenacts the District's charter as follows:

Section 1: Provides for boundaries of the District.[1]

Section 2: Declares the provisions of s. 298, F.S. to be applicable to the District.[2]

Section 3: Provides for taxes to be levied and apportioned as provided by s. 298, F.S., and to be collected during each year at the same time that county taxes are due and collected in Indian River County.[3]

Section 4: Provides for apportionment of maintenance tax pursuant to s. 298.54, F.S.[4]

Section 5: Provides for collection and enforcement of all taxes levied to coincide with collection of county taxes.[5]

Section 6: Provides for taxes to become delinquent in the same manner as county taxes.[6]

Section 7: Provides for the salaries and services of the County Property Appraiser and the County Tax Collector.[7]

Section 8: Provides for tax liens.[8]

Section 9: Authorizes the Board of Supervisors to issue bonds pursuant to s. 298, F.S.[9]

Section 10: Authorizes the issuance of warrants, negotiable notes, or other evidences of indebtedness.[10]

Section 11: Excludes the District from the application of bond provisions in s. 298.73, F.S.[11]

Section 12: Provides for the powers and duties of the Board of Supervisors regarding bond issuance.[12]

Section 13: Provides for the powers and duties of the Board of Supervisors regarding the payment of expenses and recurring services and costs from maintenance taxes.[13]

Section 14: Grants the District the right to protect against surface waters.[14]

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[1] *See* ch. 65-812, L.O.F. § 1, ch. 69-1162, L.O.F. § 1.
[2] *See* ch. 65-812, L.O.F. § 2.
[3] *See* ch. 65-812, L.O.F. § 3.
[4] *See* ch. 65-812, L.O.F. § 4.
[5] *See* ch. 65-812, L.O.F. § 5.
[6] *See* ch. 65-812, L.O.F. § 6.
[7] *See* ch. 65-812, L.O.F. § 7.
[8] *See* ch. 65-812, L.O.F. § 8.
[9] *See generally* ch. 65-812, L.O.F. §§ 13 and 14.
[10] *See* ch. 65-812, L.O.F. § 10.
[11] *See* ch. 65-812, L.O.F. § 12.
[12] *See* ch. 65-812, L.O.F. § 13.
[13] *See* ch. 65-812, L.O.F. § 14.

Section 15: Provides for compensation of the Board of Supervisors.[15]

Section 16: Prohibits any person, firm, or corporation from connecting or maintaining a connection of any farm ditch with any of the canals, ditches, laterals, or waterways, constructed, controlled, or maintained by the District; provides penalty.

Section 17: Authorizes the District to construct, install, and maintain locks, dams, and other works and facilities in the canals, ditches, and drains within the District.

Section 18: Authorizes the District to grant permits allowing any access over, under, or across its lands.

Section 19: Provides severability.

C. SECTION DIRECTORY:

Section 1: Provides that the reenactment of existing law in this bill may not be construed as a grant of additional authority; provides legislative intent.

Section 2: Codifies, reenacts, amends and repeals chapters 65-812 and 69-1162, L.O.F.

Section 3: Recreates and reenacts the charter of the District.

Section 4: Repeals chapters 65-812and 69-1162, L.O.F.

Section 5: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? November 7, 2005.

WHERE? *Scripps Treasure Coast Newspapers*, Vero Beach, Indian River County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

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[14] *See* ch. 65-812, L.O.F. § 15.
[15] *See* ch. 65-812, L.O.F. § 16.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 1423 (2005 Legislative Session), relating to the St. Johns Water Control District, Indian River County, was vetoed by the Governor on June 20, 2005.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

SCRIPPS TREASURE COAST NEWSPAPERS

Vero Beach Press Journal

1801 U.S. 1, Vero Beach, FL 32960

AFFIDAVIT OF PUBLICATION

SCRIPPS HOWARD

NOTICE OF IN TENT TO SEEK LEGI LATION TO WHOM T MAY CONCE IN:

Notice is herel y given of intent to ap ly to the 2006 Legislat re for passage of an ac relating to the St. Jol ns Water Control Dist ict Indian River County providing for codificati n of special acts rel ing to St. Johns Wat r Control District, a spe ial tax district created and incorporated by D cree of the Circuit Court in and for the Ninth J dicial Circuit, Indian iver County, Florida, entered in Case No. 57 6 on May 14, 1962, ursuant to Section 189. 29, Florida Statutes.

Dated this 3rd day of November, 2005

BOARD OF DIR CTORS ST. JOHNS W ATER CONTROL DISTRI T

By: Michael C 'Haire, Secretary

Publish: Nov mber 7 , 2005

1262118

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Before the undersigned authority personally appeared, S. Darlene Mailing, who on oath says that she is Classified Inside Sales Manager of the Vero Beach Press Journal, a daily newspaper published at Vero Beach in Indian River County, Florida: that the attached copy of advertisement was published in the Vero Beach Press Journal in the following issues below. Affiant further says that the said Vero Beach Press Journal is a newspaper published in Vero Beach in said Indian River County, Florida, and that said newspaper has heretofore been continuously published in said Indian River County, Florida, daily and distributed in Indian River County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid or promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. The Vero Beach Press Journal has been entered as Periodical Matter at the Post Offices in Vero Beach, Indian River County, Florida and has been for a period of one year next preceding the first publication of the attached copy of advertisement.

Customer	Ad Number	Pub Date	Copyline	PO #
OHAIRE QUINN & CANDLER	1262118	11/7/2005	NOTICE OF INTENT	NOTICE OF INTENT

Subscribed and sworn to me before this date:

November 07, 2005

S. Darlene Mailing

Mary T Byrne

Notary Public

MARY T. BYRNE
Notary Public - State of Florida
My Commission Expires Aug 2, 2006
Commission # DD132804
Bonded By National Notary Assn.

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: **HB 1203**

SPONSOR(S): Rep. Ralph Poppell

RELATING TO: **St. Johns Water Control District**

[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Indian River County

CONTACT PERSON: Andrew Grogan

PHONE # and E-Mail: (850) 488-3006 andrew.grogan@myfloridahouse.gov

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [x] NO [ ]

(2) Has a public hearing been held? YES [x] NO [ ]

Date hearing held: 11/30/2005

Location: Vero Beach City Hall, 1053 20th Place Vero Beach, FL 32961

(3) Was this bill formally approved by a majority of the delegation members?
YES [x] NO [ ] UNIT RULE [ ] UNANIMOUS [x]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [ ] DATE [11/7/2005]

Where? Vero Beach Press Journal County Indian River

Referendum in lieu of publication: YES [ ] NO [x]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [x] NO [ ] NOT APPLICABLE [ ]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

3/21/08

Delegation Chair (*Original Signature*) **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: 1203

SPONSOR(S): Representative Ralph Poppell

RELATING TO: St. Johns Water Control District

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	0	0
State:	0	0
Local:	0	0

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:	0	0
Disadvantages:	0	0

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

N/A - Codification of existing laws.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

N/A

PREPARED BY: _____ 11/10/05
[Must be signed by Preparer] Date

TITLE: Gregg M. Casalino, Esq., District Attorney

REPRESENTING: St. Johns Water Control District

PHONE: ((772) 231-6900)

E-Mail Address: gcasalino@oqc-law.com

1 A bill to be entitled
2 An act relating to the St. Johns Water Control District,
3 Indian River County; codifying, amending, and reenacting
4 special acts relating to the district; fixing and
5 prescribing boundaries of said district; making the
6 provisions of chapter 298, F.S., applicable thereto;
7 providing for the levy, collection, and enforcement of
8 installment and maintenance taxes by said district at the
9 same time and in like manner as county taxes; providing
10 that said taxes shall be extended by the county on the
11 county tax roll and shall be collected by the tax
12 collector in the same manner and time as county taxes;
13 providing for the same discounts and penalties as county
14 taxes; providing for the compensation of the county and
15 tax collector; providing that district taxes shall be a
16 lien on lands against which taxes are levied of equal
17 dignity with county and other taxes; providing that the
18 approval of the board of drainage commissioners is not
19 required to issue bonds; providing for floating
20 indebtedness of the district; providing that payment of
21 taxes in advance is not authorized; providing that use of
22 bonds and interest coupons in payment of taxes is not
23 authorized; providing that the board may enter into
24 certain covenants and agreements with holders of bonds;
25 providing that water is a common enemy; providing for
26 compensation of the board of supervisors; providing
27 additional powers of the board; providing for severability
28 of the provisions of the act; repealing chapters 65-812

29 and 69-1162, Laws of Florida, relating to the district;
30 providing an effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. (1) The reenactment of existing law in this
35 act shall not be construed as a grant of additional authority to
36 nor to supersede the authority of any entity pursuant to law.
37 Exceptions to law contained in any special act that are
38 reenacted pursuant to this act shall continue to apply.
39 (2) The reenactment of existing law in this act shall not
40 be construed to modify, amend, or alter any covenants,
41 contracts, or other obligations of the district with respect to
42 bonded indebtedness. Nothing pertaining to the reenactment of
43 existing law in this act shall be construed to affect the
44 ability of the district to levy and collect taxes, assessments,
45 fees, or charges for the purpose of redeeming or servicing
46 bonded indebtedness of the district.
47 Section 2. Chapters 65-812 and 69-1162, Laws of Florida,
48 are codified, reenacted, amended, and repealed as provided in
49 this act.
50 Section 3. The St. Johns Water Control District is re-
51 created, and the charter for such district is re-created and
52 reenacted to read:
53 Section 1. The decree of the Circuit Court in and for the
54 Ninth Judicial Circuit, Indian River County, Florida, entered in
55 Case No. 5736 on May 14, 1962, creating and incorporating the
56 St. Johns Water Control District, an independent special

57 district, under chapter 298, Florida Statutes, and the decree of
58 said court revising and correcting the boundaries of the
59 district entered on October 25, 1963, and an order correcting a
60 clerical error in the decree revising and correcting the
61 boundaries of the district on December 27, 1963, and all
62 subsequent proceedings taken in said circuit court concerning
63 said district are hereby ratified, confirmed, and approved,
64 including its territorial boundaries as follows:
65
66 From the center of Section 5, township 33 South, Range
67 38 East, run West along the centerline of Highway 60
68 through Sections 5 and 6, and in Township 33 South,
69 Range 37 East continue west along the centerline of
70 State Highway 60 through Sections 1, 2, 3, 4, 5 and 6
71 to the West boundary of Section 6; thence South along
72 the West boundary of Sections 6, 7, 18 and 19 to the
73 Southwest corner of Section 19; thence East along the
74 south boundary of Section 19 to the Southeast corner
75 of said Section 19; thence South along the West
76 boundary of Sections 29 and 32 to the Southwest corner
77 of Section 32; thence Easterly along the South
78 boundary of Sections 32, 33, 34, 35 and 36 to the
79 Southeast corner of Section 36, all lying in Township
80 33 South, Range 37 East; thence in Township 33 South,
81 Range 38 East, run Easterly along the South boundary
82 of Sections 31 and 32 to the Southeast corner of
83 Section 32; thence run North to the Northeast corner
84 of Section 29, Township 33 South, Range 38 East;

85 thence run Easterly to the Southeast corner of Section
86 21, Township 33 South, Range 38 East; thence Northerly
87 along the East boundaries of Sections 21 and 16 to the
88 Northeast corner of the Southeast one-quarter (SE 1/4)
89 of Section 16, Township 33 South, Range 38 East;
90 thence Westerly to the center of Section 16; thence
91 Northerly to the Northeast corner of the Northwest
92 one-quarter (NW 1/4) of Section 16; thence Westerly to
93 the Southeast corner of Section 8; thence North to the
94 Northeast corner of Section 8; thence Westerly to the
95 Southeast corner of the Southwest one-quarter (SW 1/4)
96 of Section 5; thence North to the center of Section 5
97 and the point of beginning. Including 27,743.40
98 acres.
99
100 Section 2. The provisions of the general drainage laws of
101 Florida applicable to drainage districts or subdrainage
102 districts which are embodied in chapter 298, Florida Statutes,
103 and all of the laws amendatory thereof, now existing or
104 hereafter enacted, so far as not inconsistent with this act, are
105 hereby declared to be applicable to said St. Johns Water Control
106 District.
107 Section 3. Taxes shall be levied and apportioned as
108 provided for in the general drainage laws of Florida (chapter
109 298, Florida Statutes, and amendments thereto), except as
110 otherwise provided herein. The board of supervisors shall
111 determine, order, and levy the amount of the annual installments
112 of the total taxes levied under sections 298.50 and 298.54,

113 Florida Statutes, which shall become due and be collected during
114 each year at the same time that county taxes are due and
115 collected, which said annual installment and levy shall be
116 evidenced to and certified by the said board not later than
117 August 1 of each year, to Indian River County. Said tax shall be
118 extended by the county on the county tax roll and shall be
119 collected by the tax collector in the same manner and time as
120 county taxes, and the proceeds thereof paid to said district.
121 Said tax shall be a lien until paid on the property against
122 which assessed, and enforceable in like manner as county taxes.
123 Section 4. Maintenance taxes as provided for under section
124 298.54, Florida Statutes, shall be apportioned upon the basis of
125 the net assessments of benefits assessed as accruing for
126 original construction, and shall be evidenced to and certified
127 by the board of supervisors not later than August 31 of each
128 year, to Indian River County, and shall be extended by the
129 county on the county tax roll and shall be collected by the tax
130 collector in the same manner and time as county taxes and the
131 proceeds therefrom paid to said district. Said tax shall be a
132 lien until paid on the property against which assessed and
133 enforceable in like manner as county taxes.
134 Section 5. The collection and enforcement of all taxes
135 levied by said district shall be at the same time and in like
136 manner as county taxes, and the provisions of the Florida
137 Statutes relating to the sale of lands for unpaid and delinquent
138 county taxes, the issuance, sale, and delivery of tax
139 certificates for such unpaid and delinquent county taxes, the
140 redemption thereof, the issuance to individuals of tax deeds

141 based thereon, and all other procedures in connection therewith,
142 shall be applicable to said district and the delinquent and
143 unpaid taxes of said district to the same extent as if said
144 statutory provisions were expressly set forth in this act. All
145 taxes shall be subject to the same discounts as county taxes.
146 All discounts allowed shall be a charge against the maintenance
147 tax only.
148 Section 6. All taxes levied by the district shall be and
149 become delinquent and bear penalties on the amount of said taxes
150 in the same manner as county taxes.
151 Section 7. (1) Indian River County shall be paid annually
152 an amount equal to 1 percent of the total taxes of the district
153 and the Tax Collector of Indian River County shall be paid
154 annually an amount equal to 1 percent of the total taxes of the
155 district collected, for their respective services to the St.
156 Johns Water Control District in said county for respectively
157 assessing and collecting said drainage district taxes, provided,
158 however, that the total amount to be paid to said county and
159 said tax collector in any one year shall not exceed the sum of
160 $1,500 to each. All compensation paid the property appraiser and
161 the tax collector shall be paid from the proceeds of the
162 maintenance tax.
163 (2) The services of said county and said county tax
164 collector in assessing and collecting said drainage district
165 taxes are hereby declared to be special services performed
166 directly for said district and the amounts paid therefor shall
167 not be considered a part of the general income of their
168 respective offices, nor shall it come under the provisions of

169 sections 116.03, 145.10, and 145.11, Florida Statutes. The
170 personnel required to do said special work shall be paid for
171 such special services by the county or the tax collector, as the
172 case may be, from the receipts provided for such purpose.
173 Section 8. All drainage taxes levied by the district,
174 together with all penalties for default in payment of the same
175 and all costs in collecting the same, shall constitute a lien of
176 equal dignity with the liens for county taxes, and other taxes
177 of equal dignity with county taxes, upon all the lands against
178 which said taxes shall be levied. A sale of any of the lands
179 within the district for county or other taxes shall not operate
180 to relieve or release the lands so sold from the lien for
181 subsequent installments of district taxes, which lien may be
182 enforced against such lands as though no such sale thereof had
183 been made.
184 Section 9. The board of supervisors may issue bonds under
185 the provisions of chapter 298, Florida Statutes, without the
186 approval of the Board of Drainage Commissioners of the State of
187 Florida, as provided for in section 298.47, Florida Statutes.
188 Section 10. (1) After the levy of maintenance taxes for
189 any year, the board of supervisors may from time to time issue
190 warrants or negotiable notes or other evidences of indebtedness
191 of the district, which shall be payable solely from such
192 maintenance taxes and shall not be issued in an amount greater
193 than the amount of such maintenance taxes then unpaid less the
194 amount of any of such notes then outstanding. All such notes
195 shall mature not later than 1 year from the date of issuance
196 thereof, shall bear interest at a rate or rates not exceeding 6

197 percent per annum, and shall have such other details as shall be
198 provided in the resolution or resolutions of the board of
199 supervisors authorizing the issuance thereof.
200 (2) After the authorization of any bonds under the
201 provisions of chapter 298, Florida Statutes, the board of
202 supervisors may from time to time issue bond anticipation notes
203 in anticipation of the issuance of such bonds, and the amount
204 thereof shall not exceed the amount of bonds authorized and not
205 issued. Such notes shall all mature not later than 1 year after
206 the date thereof and may be renewed for a further period not
207 exceeding 1 year, but all of such notes, including the renewals
208 thereof, shall mature not later than 2 years from the date
209 thereof. Such bond anticipation notes shall be paid from the
210 proceeds of such bonds when issued, or from any taxes levied for
211 the payment of such bonds which have been authorized, but in
212 such case a like amount of the bonds authorized shall not be
213 issued. The proceeds of any bond anticipation notes shall be
214 used solely for the purposes provided in the resolution which
215 authorized the issuance of the bonds in anticipation of which
216 bond anticipation notes are issued.
217 Section 11. The provisions of section 298.73, Florida
218 Statutes, and amendments and successors thereof, relating to the
219 use of bonds and obligations in payment of drainage taxes, shall
220 not be applicable to said district and its bonds, obligations,
221 and taxes.
222 Section 12. The board of supervisors of the district shall
223 have the power, in the resolution or other proceedings
224 authorizing the issuance of any bonds, to enter into valid and

225 legally binding covenants and agreements with the holders of
226 such bonds as to the custody and security of the proceeds of
227 said bonds, or of any bond anticipation notes issued in
228 anticipation thereof, the custody and security of any debt
229 service funds, including reserves, and the appointment of banks
230 or trust companies as trustee to hold such construction funds
231 and debt service and reserve funds, the rank or priority as
232 between the bonds originally issued by the district, and any
233 bonds thereafter issued and terms and conditions under which any
234 bonds can be issued by the district after the original bonds or
235 notes have been issued to finance the cost of the drainage
236 improvements or works, and such other covenants and conditions
237 as shall be deemed necessary and advisable by the board of
238 supervisors in accordance with bond market practices and in
239 order to better secure the payment of such bonds and the
240 marketability thereof. All such covenants and agreements shall
241 be and constitute valid and legally binding obligations of the
242 district and the state does hereby covenant that it will not by
243 any legislation hereafter in any manner repeal, modify, or
244 impair the rights, remedies, and security of the holders of any
245 bonds or other obligations issued by the district.
246 Section 13. The district shall also have power to covenant
247 and agree with the holders of such bonds that all of the fees
248 and expenses for the levy and collection of taxes in said
249 district and of any trustees or other custodians of the bond
250 proceeds or of the construction funds or debt service funds or
251 reserves therefor, or the cost of the expenses of any annual
252 audits or of any other annually recurring services or costs

253 shall be paid from the maintenance taxes to be collected in each
254 year with said district and not from the proceeds of any bonds
255 or other obligations issued by said district.
256 Section 14. It is hereby declared that, in said district,
257 surface waters, which shall include rainfall and the overflow of
258 rivers and streams, are a common enemy, and the said district
259 and any individual or agency holding a permit to do so from said
260 district shall have the right to dike, dam, and construct levees
261 to protect the said district or any part thereof, or the
262 property of said individual or agency against the same, and
263 thereby divert the course and flow of such surface water and or
264 pump the water from within such dikes and levees.
265 Section 15. Each supervisor shall be paid for his or her
266 services a per diem of $25 for each day actually engaged in work
267 pertaining to the said district; but the said supervisors shall
268 not in any one month be paid more than $100 each, except that in
269 addition to the said per diem, they shall be paid 10 cents per
270 mile for each mile actually traveled in going to and from their
271 place of residence to the place of meeting.
272 Section 16. It shall be unlawful for any person, firm, or
273 corporation to connect or to maintain a connection of any farm
274 ditch with any of the canals, ditches, laterals, or waterways
275 constructed, controlled, or maintained by St. Johns Water
276 Control District in Indian River County, except in accordance
277 with plans and specifications showing the method of such
278 connection as prescribed by the board of supervisors of said
279 district. Any violation of this act shall be punished as
280 prescribed by the general law for punishment of misdemeanors.

281 The board of supervisors shall also have the right and power to
282 cause any such connection constructed or maintained in violation
283 of this act to be blocked or stopped up.
284 Section 17. The Board of Supervisors of St. Johns Water
285 Control District in Indian River County, in order to effect the
286 drainage, reclamation, and protection of lands in said district,
287 is hereby authorized to construct, install, and maintain locks,
288 dams, and other works and facilities in the canals, ditches, and
289 drains in said district and elsewhere.
290 Section 18. The St. Johns Water Control District is hereby
291 authorized to grant such permits as it shall deem proper in
292 allowing any access over, under, or across its lands.
293 Section 19. In case any one or more of the sections or
294 provisions of this act or the application of such sections or
295 provisions to any situation, circumstance, or person shall for
296 any reason be held to be unconstitutional, such
297 unconstitutionality shall not affect any other sections or
298 provisions to any other situation, circumstance, or person, and
299 it is intended that this law shall be construed and applied as
300 if such section or provision had not been included herein for
301 any unconstitutional application.
302 Section 4. Chapters 65-812 and 69-1162, Laws of Florida,
303 are repealed.
304 Section 5. This act shall take effect upon becoming a law.

HB 1205

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1205 Indian River Farms Water Control District, Indian River County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Smith T.L.S.	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Indian River Farms Water Control District (District) is an independent special district located in Indian River County. The District was created under ch. 6458 (1913), L.O.F., a general law relating to the creation, organization, and maintenance of drainage districts. The decree of the circuit court for the Fifteenth Judicial Circuit, in St. Lucie County, created the District under ch. 6458 (1913), L.O.F., which has been amended by subsequent special acts. The District was originally in St. Lucie County. Indian River County was established in 1925 by ch. 19148 (1925), L.O.F., from land previously in St. Lucie County.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority. The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- Deleting specified provisions relating to the District board and officers, general and special powers of the District, maximum amount of negotiable notes or certificates of indebtedness outstanding at any one time, bond issuance and valuations, taxation, non-ad valorem assessments, and user fees. The bill provides for the District's powers and authority to be in accordance with chapters 189 and 298, F.S.
- Providing legal boundaries of the District.
- Providing a maximum payment of the county tax collector from the proceeds of the maintenance tax.
- Authorizing the District to enter into valid and legally binding covenants and agreements with bondholders.
- Providing that a quorum will consist of land owners and proxy holders of district acreage who are present at a noticed landowners' meeting.
- Providing for per diem and mileage for board supervisors.
- Authorizing the District to levy fines for the introduction of pollutants into the waters of the District, and legal prosecution proceedings.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

This bill may provide an exemption from the provisions of general law. Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (includes local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

Indian River Farms Water Control District

The Indian River Farms Water Control District (District) is an independent special district located in Indian River County. The District was created under ch. 6458 (1913), L.O.F., a general law relating to the creation, organization, and maintenance of drainage districts. The decree of the circuit court for the Fifteenth Judicial Circuit, in St. Lucie County, created the District under ch. 6458 (1913), L.O.F., which has been amended by subsequent special acts. The District was originally in St. Lucie County. Indian River County was established in 1925 by ch. 19148 (1925), L.O.F., from land previously in St. Lucie County. The District has three elected board members. The District only levies non ad-valorem assessments.

Changes to the Indian River Farms Water Control District Charter

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- Deleting specified provisions relating to the District board and officers, general and special powers of the District, maximum amount of negotiable notes or certificates of indebtedness outstanding at any one time, bond issuance and valuations, taxation, non-ad valorem assessments, and user fees. The bill provides for the District's powers and authority to be in accordance with chapters 189 and 298, F.S.
- Providing legal boundaries of the District [Please see III. COMMENTS].
- Providing a maximum payment of the county tax collector from the proceeds of the maintenance tax.
- Authorizing the District to enter into valid and legally binding covenants and agreements with bondholders.
- Providing that a quorum will consist of land owners and proxy holders of district acreage who are present at a noticed landowners' meeting.
- Providing for per diem and mileage for board supervisors.
- Authorizing the District to levy fines for the introduction of pollutants into the waters of the District, and legal prosecution proceedings.

Charter of the District

Section 1: Provides for the creation of the District; provides for the legal boundaries of the District.

Section 2: Ratifies, approves, validates, and confirms all of the acts and proceedings prior to August 2, 1921 (the effective date of chapter 8882 (1921), L.O.F.) of the board of supervisors and all officers and agents of Indian River Farms Water Control District in Indian River County acting for and on behalf of said District.

Section 3: Provides for the District's powers and authority to be in accordance with ch. 298, F.S., except as otherwise provided.

Section 4: Provides taxes will be levied and apportioned pursuant to ch. 298, F.S., and amendments thereto, except as otherwise provided herein.

Section 5: Provides for maintenance taxes per general law; provides for the collection of the taxes; provides said taxes will be a lien on the property until paid and enforced as are county taxes.[1]

Section 6: Provides all taxes levied by the district that become delinquent shall bear penalties in the same manner as county taxes.[2]

Section 7: Provides the District must pay the County annually an amount equal to 1 percent of the total taxes of the district, and the Tax Collector of Indian River County must be paid annually an amount equal to 1 percent of the total taxes of the district collected, for their respective services to the District for respectively assessing

[1] *See* ch. 67-843, L.O.F. § 2.
[2] *See* ch. 67-843, L.O.F. § 4.

and collecting the taxes, provided, however, that the total amount to be paid to the county and tax collector in any one year must not exceed the sum of $1,500 to each; provides all compensation paid the county and the tax collector must be paid from the proceeds of the maintenance tax; provides the services of the county and the county tax collector in assessing and collecting the taxes are declared to be special services performed directly for the District and the amounts paid will not be considered a part of the general income of their respective offices, nor will it come under the provisions of ss. 116.03, 145.10, and 145.11, F.S.; provides the personnel required to do the special work must be paid for the special services by the county or the tax collector, as the case may be, from the receipts provided for the purpose.

Section 8: Provides all drainage taxes levied by the District, together with all penalties for default in payment of the taxes and all costs in collecting the taxes, must constitute a lien of equal dignity with the liens for county taxes, and other taxes of equal dignity with county taxes, and all the lands against which taxes must be levied; provides a sale of any of the lands within the District for county or other taxes must not operate to relieve or release the lands sold from the lien for subsequent installments of District taxes, which lien may be enforced against the lands as though no sale had been made.[3]

Section 9: Provides for the issuance of bonds by the board of supervisors, without the approval of the board of drainage commissioners as provided for in s. 298.47, F.S.

Section 10: Authorizes the District to issue warrants or negotiable notes or other evidences of indebtedness or bond anticipation notes.

Section 11: Provides for the District tax book.[4]

Section 12: Provides the secretary of the District may describe each tract of land according to any plat or subdivision, or by metes and bounds, or by any other convenient and feasible manner, stating the actual number of acres contained in the tract to the best of his or her knowledge, and the owner is required to pay taxes only by the acreage as shown by the District tax book.[5]

Section 13: Provides for the annual landowners' meeting.[6]

Section 14: Provides that it is unlawful for any person, firm, or corporation to connect or to maintain a connection of any farm ditch with any of the canals, ditches, laterals, or waterways constructed, controlled, or maintained by the District, except in accordance with plans and specifications showing method of the connection as prescribed by the board of supervisors; provides any violation of this act will be punished by the general law for punishment of misdemeanors; provides the board of supervisors will have the right and power to cause any connection constructed or maintained in violation of this act to be blocked or stopped up.[7]

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[3] *See* ch. 67-843, L.O.F. § 5.
[4] *See* ch. 9988, L.O.F., 1923, § 2.
[5] *See* ch. 9988, L.O.F., 1923, § 3.
[6] *See* ch. 9988, L.O.F., 1923, § 5.
[7] *See* ch. 10693, L.O.F., 1925, § 1. [Note.-The district was originally in St. Lucie County. Indian River County was established in 1925 by ch. 10148, L.O.F., 1925, from land previously in St. Lucie County.]

Section 15: Authorizes the District to construct, install, and maintain locks, dams, and other works and facilities in the canals, ditches, and drains in the District and elsewhere.[8]

Section 16: Provides for raising money to pay for the cost of constructing and installing the water control and water conservation works and facilities, and to pay the principal of and interest on any bonds or other obligations which may be issued to provide funds; authorizes the board of supervisors to levy, assess, and cause to be collected an annual tax on all lands in the District subject to taxation; provides the tax must be at a uniform rate for all lands within the District and must be assessed against each acre, fraction, or fractional interest therein.[9]

Section 17: Provides the District is for public purposes, and the works and facilities of the District are declared to confer benefits on all lands equal to the taxes levied on said lands.[10]

Section 18: Provides no landowner in the District will be permitted to vote at any landowners' meeting of the District for any lands in the District on which the drainage taxes are delinquent at the time of the meeting.[11]

Section 19: Provides for a quorum; provides for the election of board supervisors.[12]

Section 20: Authorizes the board to assess and levy a minimum drainage tax.[13]

Section 21: Authorizes and empowers the board of supervisors to expend the funds of the District.[14]

Section 22: Prohibits acquisition of property of the District by eminent domain.[15]

Section 23: Defines "absolute necessity," relating to the District's exercise of eminent domain.[16]

Section 24: Authorizes the District to grant permits as it deems proper in allowing any access over, under, or across its lands.[17]

Section 25: Authorizes the District to enter into valid and legally binding covenants and agreements with the bond holders.

Section 26: Grants the District the power to covenant and agree with the holders of the bonds that all of the fees and expenses for the levy and collection of taxes in the District and of any trustees or other custodians of the bond proceeds or of the construction funds or debt service funds or reserves or the cost of the expenses of any annual audits or of any other annually recurring services or costs must be paid from the maintenance taxes.

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[8] *See* ch. 23906, L.O.F., 1947, § 1.
[9] *See generally* ch. 23906, L.O.F., 1947, § 2.
[10] *See* ch. 23906, L.O.F., 1947, § 5.
[11] *See* ch. 28403, L.O.F., 1953, § 1.
[12] *See generally* ch. 28403, L.O.F., 1953, § 2.
[13] *See* ch. 57-1104, L.O.F. § 3.
[14] *See* ch. 57-1104, L.O.F. § 4.
[15] *See* ch. 63-832, L.O.F. § 2.
[16] *See* ch. 63-832, L.O.F. § 1.
[17] *See* ch. 63-832, L.O.F. § 3.

Section 27: Declares surface waters, which shall include rainfall and the overflow of rivers and streams, are a common enemy of the District. Provides the District, and any person holding a permit from the District, to have the right to take actions to divert or pump water to protect property.

Section 28: Provides for per diem and mileage for the board.

Section 29: Provides for severability.

C. SECTION DIRECTORY:

Section 1: Provides that the reenactment of existing law in this bill may not be construed as a grant of additional authority; provides legislative intent.

Section 2: Codifies, reenacts, amends and repeals chapters 8882 (1921), 9988 (1923), 10693 (1925), 12057 (1927), 12058 (1927), 14737 (1931), 16048 (1933), 17066 (1935), 19188 (1939), 23906 (1947), 28403 (1953), 57-1104, 63-832, and 67-843, L.O.F.

Section 3: Recreates the District and recreates and reenacts the charter of the District.

Section 4: Repeals chapters 8882 (1921), 9988 (1923), 10693 (1925), 12057 (1927), 12058 (1927), 14737 (1931), 16048 (1933), 17066 (1935), 19188 (1939), 23906 (1947), 28403 (1953), 57-1104, 63-832, and 67-843, L.O.F.

Section 5: Provides for the bill to take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? November 7, 2005.

WHERE? *Scripps Treasure Coast Newspapers*, Vero Beach, Indian River County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the Authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Notice

The published notice of intent to seek legislation states that this act provides for codification of the existing charter of the Indian River Farms Water Control District (of Indian River County) as required by section 189.429, F.S.; the notice does not state that the charter is being amended.

Exemption to General Law

Current law states that "the board of supervisors may, if in their judgment it seems best, issue bonds not to exceed 90 percent of the total amount of the non-ad valorem assessments, exclusive of the amount for interest, levied under the provisions of s. 298.305, in denominations of not less than $100, bearing interest from date at rate as provided by general law, payable semiannually, to mature at annual intervals within 30 years, commencing after a period of years not later than 10 years, to be determined by the board of supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the president of the board of supervisors, attested with the seal of said district and by the signature of the secretary of the said board. Section 12, Art. VII of the State Constitution shall be complied with as to all such bonds as are within its purview. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of supervisors may deem necessary to meet the payments for the works and improvements in the district. Said treasurer shall, at the time of the receipt by him or her of said bonds, execute and deliver to the president of the board of said district, a bond with good and sufficient sureties to be approved by the said board of supervisors, conditioned that the treasurer shall account for and pay over, as required by law and as ordered to do by said board of supervisors, any and all money received by him or her on the sale of such bonds, or any of them, and that the treasurer will only sell and deliver such bonds to the purchaser or purchasers thereof, under and according to the terms herein prescribed, and that the treasurer will return, duly canceled, any and all bonds not sold to the board of supervisors when ordered by said board so to do, which said surety bond shall remain in the custody of the said president of said board of supervisors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do."[18]

Section 9 of the charter states that the board of supervisors may issue bonds without the approval of the board of drainage commissioners, as provided in s. 298.47, F.S.

Other Comments

Mr. Gregg M. Casalino, Esq., with O'haire, Quinn, Candler & Casalino, representing the District, sent the following letter relating to the boundaries of the District:

> The lengthy legal description of the boundaries of the Indian River Farms Water Control District comes from two sources: First, the District was originally established by Circuit Court Order in 1913 when the District was incorporated by an agricultural developer which at the time owned virtually all of the lands within the District. Subsequently, in 1921, the District was expanded and the legal description was amended to include additional lands through a condemnation proceeding in the Circuit Court. Today the District makes up 50,000 acres including most of the City of Vero Beach.

HB 1421 (2005 Legislative Session), relating to the Indian River Farms Water Control District, Indian River County, was vetoed by the Governor on June 20, 2005. According to the veto letter, the bill expanded the district's powers by allowing the district to levy fines against those who pollute the district's canals and those who violate Florida law, the federal Clean Water Act, and the federal National Pollutant Discharge Elimination System.

[18] *See* s. 297.47, F.S, (2005).

Drafting Issues

On line 416 of the bill, an obsolete term 'drainage commissioners' should be amended to 'supervisors.'

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

1205

SCRIPPS TREASURE COAST NEWSPAPERS

Vero Beach Press Journal

1801 U.S. 1, Vero Beach, FL 32960

AFFIDAVIT OF PUBLICATION

SCRIPPS HOWARD

NOTICE OF INTENT TO SEEK LEGISLATION TO WHOM IT MAY CONCERN:

Notice is hereby given of intent to apply to the 2006 Legislature for passage of an act relating to the Indian River Farms Water Control District, Indian River County; providing for codification of special acts relating to Indian River Farms Water Control District, a special tax district created and incorporated by Decree of the Circuit Court in and for the Fifteenth Judicial Circuit. St. Lucie County, Florida, entered on May 6, 1919, pursuant to Section 189.429, Florida Statutes.

Dated this 3rd day of November, 2005.

BOARD OF DIRECTORS
INDIAN RIVER FARMS WATER CONTROL DISTRICT
By: Michael O'Haire, District Attorney

Publish: November 7, 2005
1262114

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Before the undersigned authority personally appeared, S. Darlene Mailing, who on oath says that she is Classified Inside Sales Manager of the Vero Beach Press Journal, a daily newspaper published at Vero Beach in Indian River County, Florida: that the attached copy of advertisement was published in the Vero Beach Press Journal in the following issues below. Affiant further says that the said Vero Beach Press Journal is a newspaper published in Vero Beach in said Indian River County, Florida, and that said newspaper has heretofore been continuously published in said Indian River County, Florida, daily and distributed in Indian River County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid or promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. The Vero Beach Press Journal has been entered as Periodical Matter at the Post Offices in Vero Beach, Indian River County, Florida and has been for a period of one year next preceding the first publication of the attached copy of advertisement.

Customer	Ad Number	Pub Date	Copyline	PO #
OHAIRE QUINN & CANDLER	1262114	11/7/2005	NOTICE OF INTENT	NOTICE OF INTENT

Subscribed and sworn to me before this date:

November 07, 2005

S. Darlene Mailing

Mary T Byrne

Notary Public

MARY T. BYRNE
Notary Public - State of Florida
My Commission Expires Aug 2, 2008
Commission # DD132804
Bonded By National Notary Assn.

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: **HB 1205**

SPONSOR(S): Rep. Ralph Poppell

RELATING TO: **Indian River Farms Water Control District**

[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Indian River County

CONTACT PERSON: Andrew Grogan

PHONE # and E-Mail: (850) 488-3006 andrew.grogan@myfloridahouse.gov

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [x] NO [ ]

(2) Has a public hearing been held? YES [x] NO [ ]

Date hearing held: 11/30/2005

Location: Vero Beach City Hall, 1053 20th Place Vero Beach, FL 32961

(3) Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [x]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [ ] DATE [11/7/2005]

Where? Vero Beach Press Journal County Indian River

Referendum in lieu of publication: YES [ ] NO [x]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [x] NO [ ] NOT APPLICABLE [ ]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

3/21/06

Delegation Chair *(Original Signature)* **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: 1205

SPONSOR(S): Representative Ralph Poppell

RELATING TO: Indian River Farms Water Control District

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	0	0
State:	0	0
Local:	0	0

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:	0	0
Disadvantages:	0	0

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

N/A - Codification of existing laws.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

N/A

PREPARED BY: _____ 11/10/05
[Must be signed by Preparer] Date

TITLE: Gregg M. Casalino, Esq., District Attorney

REPRESENTING: Indian River Farms Water Control Distric

PHONE: ((772) 231-6900)

E-Mail Address: gcasalino@oqc-law.com

1 A bill to be entitled
2 An act relating to Indian River Farms Water Control
3 District, Indian River County; codifying, amending,
4 reenacting, and repealing special acts relating to the
5 district; providing territorial boundaries of the
6 district; making the provisions of ch. 298, F.S.,
7 applicable thereto; providing for the levy, collection,
8 and enforcement of installment and maintenance taxes by
9 said district at the same time and in like manner as
10 county taxes; providing that said taxes shall be extended
11 by the county on the county tax roll and shall be
12 collected by the tax collector in the same manner and time
13 as county taxes; providing for the same discounts and
14 penalties as county taxes; providing for the compensation
15 of the tax collector; providing that district taxes shall
16 be a lien on lands against which taxes are levied of equal
17 dignity with county and other taxes; providing that the
18 approval of the board of drainage commissioners is not
19 required to issue bonds; providing for floating
20 indebtedness of the district; providing that payment of
21 taxes in advance is not authorized; providing that use of
22 bonds and interest coupons in payment of taxes is not
23 authorized; providing that water is a common enemy;
24 providing for compensation of the board of supervisors;
25 providing for severability; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. (1) The reenactment of existing law in this
30 act shall not be construed as a grant of additional authority to
31 nor to supersede the authority of any entity pursuant to law.
32 Exceptions to law contained in any special act that are
33 reenacted pursuant to this act shall continue to apply.
34 (2) The reenactment of existing law in this act shall not
35 be construed to modify, amend, or alter any covenants,
36 contracts, or other obligations of the district with respect to
37 bonded indebtedness. Nothing pertaining to the reenactment of
38 existing law in this act shall be construed to affect the
39 ability of the district to levy and collect taxes, assessments,
40 fees, or charges for the purpose of redeeming or servicing
41 bonded indebtedness of the district.
42 Section 2. Chapters 8882 (1921), 9988 (1923), 10693
43 (1925), 12057 (1927), 12058 (1927), 14737 (1931), 16048 (1933),
44 17066 (1935), 19188 (1939), 23906 (1947), 28403 (1953), 57-1104,
45 63-832, and 67-843, Laws of Florida, are codified, reenacted,
46 amended, and repealed as provided in this act.
47 Section 3. The Indian River Farms Water Control District
48 is re-created, and the charter for such district is re-created
49 and reenacted to read:
50 Section 1. The decree of the Circuit Court in and for the
51 Fifteenth Judicial Circuit, St. Lucie County, entered in the
52 case captioned "In re: Indian River Farms Drainage District" on
53 May 6, 1919, creating and incorporating the Indian River Farms
54 Water Control District, an independent special district, under
55 chapter 6458 (1913), Laws of Florida, and the order of said
56 court approving the report of the district commissioners entered

57 on August 18, 1921, and all subsequent proceedings taken in said
58 circuit court concerning said district are hereby ratified,
59 confirmed, and approved, including its territorial boundaries as
60 follows:
61
62 Begin at the Northwest corner of Township 32 S. R. 39
63 E.; Thence East to the northwest corner of northeast
64 quarter of Section 5, Township 32 S. R. 39 E; Thence
65 North to the northwest corner of northeast quarter of
66 Section 32, Township 31 S. R. 39 E.; Thence East to
67 the northwest corner of Section 33, Township 31 S. R.
68 39 E.; Thence South to the northwest corner of the
69 southwest quarter of the northwest quarter of Section
70 33, Township 31 S. R. 39 E.; Thence East to the
71 Northeast corner of the southwest quarter to the
72 northwest quarter of said Section 33; Thence South to
73 the northeast corner of the northwest quarter of the
74 southwest quarter of said Section 33; Thence East to
75 the northeast corner of the west half of the northeast
76 quarter of the southwest quarter of said Section 33;
77 Thence South to the southeast corner of the west half
78 of the northeast quarter of the northwest quarter of
79 said Section 33; Thence East to the northeast corner
80 of the southeast quarter of the southwest quarter of
81 said Section 33; Thence South to the southeast corner
82 of the northeast quarter of the northwest quarter of
83 Section 4, Township 32 S. R. 39 E.; Thence East to the
84 northeast corner of the west half of the southwest

85 quarter of the northeast quarter of said Section 4;
86 Thence South to the southeast corner of the west half
87 of the northwest quarter of the southeast quarter of
88 said Section 4; Thence East to the northeast corner of
89 the southwest quarter of the southeast quarter of said
90 Section 4; Thence South to the southeast corner of the
91 southwest quarter of the southeast quarter of said
92 Section 4; thence East to the northeast corner of the
93 west half of the northeast quarter of the northeast
94 quarter of Section 9, Township 32 S. R. 39 E.; Thence
95 South to the southeast corner of the west half of the
96 northeast quarter of the northeast quarter of said
97 Section 9; Thence East to the northeast corner of the
98 southeast quarter of the northeast quarter of said
99 Section 9; Thence South to the southeast corner of the
100 southeast quarter of the northeast quarter of said
101 Section 9; Thence East to the northeast corner of the
102 west half of the northwest quarter of the southwest
103 quarter of Section 10, Township 32 S. R. 39 E.; Thence
104 South to the southeast corner of the west half of the
105 northwest quarter of the southwest quarter of said
106 Section 10; Thence East to the northeast corner of the
107 southwest quarter of the southwest quarter of said
108 Section 10; Thence South to the southeast corner of
109 the southwest quarter of the southwest quarter of said
110 Section 10; Thence East to the northeast corner of the
111 west half of the northeast quarter of the northwest
112 quarter of Section 15, Township 32 S. R. 39 E.; Thence

113 South to the southeast corner of the west half of the
114 northeast quarter of the northwest quarter of said
115 Section 15; Thence East to the northeast corner of the
116 southeast quarter of the northwest quarter of said
117 Section 15; Thence South to the southeast corner of
118 the northwest quarter of said Section 15; Thence East
119 to the northeast corner of the west half of the
120 northwest quarter of the southeast quarter of said
121 Section 15; Thence South to the southeast corner of
122 the west half of the northwest quarter of the
123 southeast quarter of said Section 15; Thence East to
124 the northeast corner of the southwest quarter of the
125 southeast quarter of said Section 15; Thence South to
126 the southeast corner of the northwest quarter of the
127 northeast quarter of Section 22, Township 32 S. R. 39
128 E.; Thence East to the northeast corner of the west
129 half of southeast quarter of northeast quarter of said
130 Section 22; Thence South to the southeast corner of
131 west half of southeast quarter of southeast quarter of
132 said Section 22; Thence East to the northeast corner
133 of Section 27, Township 32 S. R. 39 E.; Thence South
134 to the southeast corner of northeast quarter of
135 northeast quarter of said Section 27; Thence East to
136 the northeast corner of west half of the southwest
137 quarter of the northwest quarter of Section 26,
138 Township 32 S R. 39 E.; Thence South to the southeast
139 corner of the west half of southwest quarter of the
140 northwest quarter of said Section 26; Thence East to

141 the northeast corner of the northwest quarter of the
142 southwest quarter of said Section 26; Thence South to
143 the southeast corner of the southwest quarter of the
144 southwest quarter of said Section 26; Thence East to
145 the northeast corner of west half of the northeast
146 quarter of northwest quarter of Section 35, Township
147 32 S. R. 39 E.; Thence South to the southeast corner
148 of the west half of northeast quarter of the northwest
149 quarter of said Section 35; Thence East to the
150 northeast corner of the southeast quarter of northwest
151 quarter of said Section 35; Thence South to the
152 southeast corner of northwest quarter of said Section
153 35; Thence East on the center line of Sections 35 and
154 36, Township 32 S. R. 39 E., and along the center line
155 of Section 31, Township 32 S. R. 40 E. to the water's
156 edge of Indian River; Thence southerly along the
157 water's edge of the Indian River to the north line of
158 Township 33 S. R. 40 E.; Thence West along said
159 township line to the northeast corner of the west half
160 of the west half of Section 1, Township 33 S. R. 39
161 E.; Thence South to the southeast corner of west half
162 of west half of said Section 1; Thence west to the
163 northwest corner of Section 12, Township 33 S. R. 39
164 E.; Thence South to the southwest corner of the
165 northwest quarter of the northwest quarter of said
166 Section 12; Thence East to the northeast corner of the
167 west half of the southwest quarter of the northwest
168 quarter of said Section 12; Thence South to the

169 southeast corner of the west half of the northwest
170 quarter of the southwest quarter of said Section 12;
171 Thence East to the northeast corner of southwest
172 quarter of the southwest quarter of said Section 12;
173 Thence South to the southeast corner of the northwest
174 quarter of the northwest quarter of Section 13,
175 Township 33 S. R. 39 E.; Thence East to the northeast
176 corner of the west half of the southeast quarter of
177 the northwest quarter of said Section 13; Thence South
178 to the southeast corner of west half of the southeast
179 quarter of the northwest quarter of said Section 13;
180 Thence East to the northeast corner of the southwest
181 quarter of said Section 13; Thence South to the
182 southeast corner of the northeast quarter of the
183 southwest quarter of said Section 13; Thence East to
184 the northeast corner of the west half of the southwest
185 quarter of the southeast quarter of said Section 13;
186 Thence South to the southeast corner of the west half
187 of the northwest quarter of the northeast quarter of
188 Section 24, Township 33 S. R. 39 E.; Thence East to
189 the northeast corner of southwest quarter of the
190 northeast quarter of said Section 24; Thence South to
191 the southeast corner of the southwest quarter of the
192 northeast quarter of said Section 24; Thence East to
193 the northeast corner of the west half of the northeast
194 quarter of the southeast quarter of said Section 24;
195 Thence South to the southeast corner of the west half
196 of the southeast quarter of the northeast quarter of

197 Section 25, Township 33 S. R. 39 E.; Thence East to
198 the northeast corner of the southeast quarter of said
199 Section 25; Thence South to the southeast corner of
200 the northeast quarter of the southeast quarter of said
201 Section 25; Thence East to the northeast corner of the
202 west half of the southwest quarter of the southwest
203 quarter of Section 30, Township 33 S. R. 40 E.; Thence
204 South to the southeast corner of west half of the
205 southwest quarter of the southwest quarter of said
206 Section 30; Thence East to the northeast corner of the
207 northwest quarter of the northwest quarter of Section
208 31, Township 33 S. R. 40 E.; Thence South to the
209 southeast corner of the southwest quarter of the
210 northwest quarter of said Section 31; Thence East to
211 the northeast corner of the west half of the northeast
212 quarter of the southwest quarter of said Section 31;
213 Thence South to the southeast corner of the west half
214 of the northeast quarter of the southwest quarter of
215 said Section 31; Thence East to the northeast corner
216 of the southeast quarter of the southwest quarter of
217 said Section 31; Thence South to the southeast corner
218 of the southwest quarter of said Section 31, Township
219 33 S. R. 40 E.; Thence West along Township lines nine
220 miles more or less to the southwest corner of the
221 southeast quarter of Section 34, Township 33 S. R. 38
222 E.; Thence North to the northwest corner of the
223 northeast quarter of Section 34, Township 33 S. R. 38
224 E.; Thence West to the southwest corner of Section 27,

225 Township 33 S. R. 38 E.; Thence North to the southeast
226 corner of Section 9, Township 33 S. R. 38 E.; Thence
227 West to the southwest corner of Section 9, Township 33
228 S. R. 38 E.; Thence North to the southeast corner of
229 Section 5, Township 33 S. R. 38 E.; Thence West to the
230 southwest corner of southeast quarter of Section 5,
231 Township 33 S. R. 38 E.; Thence North on center line
232 of Section 5 to northwest corner of northeast quarter
233 of Section 5, Township 33 S. R. 38 E.; Thence East
234 along Township line to the northwest corner of
235 Township 33 S. R. 39 E.; Thence North to the northwest
236 corner of Township 32 S. R. 39 E., being the point of
237 beginning.
238
239 The foregoing boundaries containing and including the
240 following lands, to wit:
241 The East half of Section 32, Township 31 S. R. 39 E.;
242
243 The Southwest quarter of northwest quarter; the
244 northwest quarter of southwest quarter; the west half
245 of northeast quarter of southwest quarter; the south
246 half of southwest quarter; all in Section 33, Township
247 31 S. R. 39 E.;
248
249 Sections 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 27, 28,
250 29, 30, 31, 32, 33, and 34, all in Township 32 S. R.
251 39 E;
252

253 The West half of Section 4, Township 32 S. R. 39 E.;
254
255 The West half of southwest quarter of northeast
256 quarter; the west half of northwest quarter of
257 southeast quarter; the southwest quarter of southeast
258 quarter; all in Section 4, Township 32 S. R. 39 E.;
259
260 All of Section 9, Township 32 S. R. 39 E., except the
261 east half of northeast quarter of northeast quarter of
262 said section;
263
264 The West half of northwest quarter of southwest
265 quarter; and the southwest quarter of southwest
266 quarter; all in Section 10, Township 32 S. R. 39 E.;
267
268 All of the West half of Section 15, Township 32 S. R.
269 39 E., except the east half of the northeast quarter
270 of northwest quarter of said Section;
271
272 The West half of northwest quarter of southeast
273 quarter; and the southwest quarter of the southeast
274 quarter; all in Section 15, Township 32 S. R. 39 E.;
275
276 The West half of Section 22; the west half of the
277 northeast quarter of Section 22, and the west half of
278 the southeast quarter of Section 22; all in the
279 township 32 S. R. 39 E.;
280

281 The West half of southeast quarter of the northeast
282 quarter; and the west half of the east half of the
283 southeast quarter; all in Section 22, Township 32 S.
284 R. 39 E.;
285
286 The West half of southwest quarter of northwest
287 quarter; and the west half of southeast quarter; all
288 in Section 26, Township 32 S. R. 39 E.;
289
290 The West half of Section 35, Township 32 S. R. 39 E.;
291 except the east half of the northeast quarter of
292 northwest quarter of said Section;
293
294 The Southeast quarter of Section 35, Township 32, S.
295 R. 39 E.;
296
297 The South half of Section 36, Township 32 S. R. 39 E.;
298
299 Lots 5 and 6 of Section 31, Township 32 S. R. 40 E.;
300
301 Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16,
302 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31,
303 32, 33, 34, 35 and 36, all in Township 33 S. R. 39 E;
304
305 The West half of west half of Section 1, Township 33
306 S. R. 39 E.;
307
308 The West half of southwest quarter of northwest

309 quarter; the west half of northwest quarter of
310 southwest quarter; the southwest quarter of southwest
311 quarter; all in Section 12, Township 33 S. R. 39 E.;
312
313 The West half of northwest quarter; the west half of
314 southeast quarter of northwest quarter; the southwest
315 quarter; the west half of southwest quarter of
316 southeast quarter; all in Section 13, Township 33, S.
317 R. 39 E.;
318
319 The Northwest quarter; the southwest quarter; the west
320 half of the northwest quarter of northeast quarter;
321 the southwest quarter of northeast quarter; the west
322 half of southeast quarter; the west half of northeast
323 quarter of southeast quarter; the west half of
324 southeast quarter of southeast quarter; all in Section
325 24, Township 33 S. R. 39 E.;
326
327 All of Section 25, Township 33 S. R. 39 E., except the
328 east half of the east half of the northeast quarter of
329 said Section;
330
331 The West half of the southwest quarter of the
332 southwest quarter of Section 30, Township 33 S. R. 40
333 E.;
334
335 The West half of the northwest quarter; the west half
336 of the southwest quarter; the west half of the

337 northeast quarter of the southwest quarter; the
338 southeast quarter of the southwest quarter; all in
339 Section 31, Township 33 S. R. 40 E.
340
341 Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 22,
342 23, 24, 25, 26, 27, 35 and 36, all in Township 33 S.
343 R. 38 E.;
344
345 The East half of Section 5, Township 33 S. R. 38 E.;
346
347 The East half of Section 34, Township 33 S. R. 38 E.
348
349 Section 2. All of the acts and proceedings of the board of
350 supervisors and all officers and agents of Indian River Farms
351 Water Control District in Indian River County acting for and on
352 behalf of said district prior to August 2, 1921, the effective
353 date of chapter 8882 (1921), Laws of Florida, be and they are
354 hereby ratified, approved, validated, and confirmed.
355 Section 3. The provisions of the general drainage laws of
356 this state applicable to drainage districts or subdrainage
357 districts which are embodied in chapter 298, Florida Statutes,
358 and all of the laws amendatory thereof, now existing or
359 hereafter enacted, so far as not inconsistent with this act, are
360 hereby declared to be applicable to said Indian River Farms
361 Water Control District, except as may be otherwise herein
362 provided.
363 Section 4. Taxes shall be levied and apportioned as
364 provided for in the general drainage laws of this state, which

365 are embodied in chapter 298, Florida Statutes, and amendments
366 thereto, except as otherwise provided herein.
367 Section 5. Maintenance taxes as provided for under section
368 298.54, Florida Statutes, shall be apportioned upon the basis of
369 the net assessments of benefits assessed as accruing for
370 original construction, shall be evidenced to and certified by
371 the board of supervisors, not later than August 31 of each year,
372 to the Property Appraiser of Indian River County, shall be
373 extended by the county on the county tax roll, and shall be
374 collected by the tax collector in the same manner and time as
375 county taxes and the proceeds therefrom paid to said district.
376 Said tax shall be a lien until paid on the property against
377 which assessed and enforceable in like manner as county taxes.
378 Section 6. All taxes levied by the district shall be and
379 become delinquent and bear penalties on the amount of said taxes
380 in the same manner as county taxes.
381 Section 7. (1) Indian River County shall be paid annually
382 an amount equal to 1 percent of the total taxes of the district
383 and the Tax Collector of Indian River County shall be paid
384 annually an amount equal to 1 percent of the total taxes of the
385 district collected for their respective services to the Indian
386 River Farms Water Control District in said county for
387 respectively assessing and collecting said drainage district
388 taxes, provided, however, that the total amount to be paid to
389 said county and tax collector in any one year shall not exceed
390 the sum of $1,500 to each. All compensation paid the county and
391 the tax collector shall be paid from the proceeds of the
392 maintenance tax.

393 (2) The services of said county and said county tax
394 collector in assessing and collecting said drainage district
395 taxes are hereby declared to be special services performed
396 directly for said district and the amounts paid therefor shall
397 not be considered a part of the general income of their
398 respective offices, nor shall it come under the provisions of
399 sections 116.03, 145.10, and 145.11, Florida Statutes. The
400 personnel required to do said special work shall be paid for
401 such special services by the county or the tax collector, as the
402 case may be, from the receipts provided for such purpose.
403 Section 8. All drainage taxes levied by the district,
404 together with all penalties for default in payment of the same
405 and all costs in collecting the same, shall constitute a lien of
406 equal dignity with the liens for county taxes, and other taxes
407 of equal dignity with county taxes, upon all the lands against
408 which said taxes shall be levied. A sale of any of the lands
409 within the district for county or other taxes shall not operate
410 to relieve or release the lands so sold from the lien for
411 subsequent installments of district taxes, which lien may be
412 enforced against such lands as though no such sale thereof had
413 been made.
414 Section 9. The board of supervisors may issue bonds under
415 the provisions of chapter 298, Florida Statutes, without the
416 approval of the board of drainage commissioners, as provided for
417 in section 298.47, Florida Statutes.
418 Section 10. (1) After the levy of maintenance taxes for
419 any year, the board of supervisors may from time to time issue
420 warrants or negotiable notes or other evidences of indebtedness

421 of the district, which shall be payable solely from such
422 maintenance taxes and shall not be issued in an amount greater
423 than the amount of such maintenance taxes then unpaid less the
424 amount of any of such notes then outstanding. All such notes
425 shall mature not later than 1 year after the date of issuance
426 thereof, shall bear interest at a rate or rates not exceeding 6
427 percent per annum, and shall have such other details as shall be
428 provided in the resolution or resolutions of the board of
429 supervisors authorizing the issuance thereof.
430 (2) After the authorization of any bonds under the
431 provisions of chapter 298, Florida Statutes, the board of
432 supervisors may from time to time issue bond anticipation notes
433 in anticipation of the issuance of such bonds and the amount
434 thereof shall not exceed the amount of bonds authorized and not
435 issued. Such notes shall all mature not later than 1 year after
436 the date thereof and may be renewed for a further period of not
437 exceeding 1 year, but all of such notes, including the renewals
438 thereof, shall mature not later than 2 years after the date
439 thereof. Such bond anticipation notes shall be paid from the
440 proceeds of such bonds when issued, or from any taxes levied for
441 the payment of such bonds which have been authorized, but in
442 such case a like amount of the bonds authorized shall not be
443 issued. The proceeds of any bond anticipation notes shall be
444 used solely for the purposes provided in the resolution which
445 authorized the issuance of the bonds in anticipation of which
446 bond anticipation notes are issued.
447 Section 11. In preparing the drainage tax book of said
448 Indian River Farms Water Control District from year to year, the

449 secretary of said district shall insert opposite the description
450 of the tract of land to be assessed the name of the person or
451 persons or corporation owning said tract on the first day of the
452 preceding January to the best of the knowledge and belief of
453 said secretary, but any failure to insert the name of the right
454 owner shall not invalidate such assessment.
455 Section 12. In preparing the drainage tax book of said
456 Indian River Farms Water Control District from year to year, the
457 secretary of said district may describe each tract of land
458 according to any plat or subdivision thereof, or by metes and
459 bounds, or by any other convenient and feasible manner, stating
460 the actual number of acres contained in the tract to the best of
461 his or her knowledge, and the owner shall be required to pay
462 taxes only upon the acreage as shown by said district tax book.
463 Section 13. Beginning with the year 1924, the annual
464 landowners' meeting for said Indian River Farms Water Control
465 District shall be held in the month of February in each
466 successive year, on such day as the board of supervisors of said
467 district may fix from time to time.
468 Section 14. It shall be unlawful for any person, firm, or
469 corporation to connect or to maintain a connection of any farm
470 ditch with any of the canals, ditches, laterals, or waterways
471 constructed, controlled, or maintained by Indian River Farms
472 Water Control District in Indian River County, except in
473 accordance with plans and specifications showing method of such
474 connection as prescribed by the board of supervisors of said
475 district. Any violation of this act shall be punished as
476 prescribed by the general law for punishment of misdemeanors.

477 The board of supervisors shall also have the right and power to
478 cause any such connection constructed or maintained in violation
479 of this act to be blocked or stopped up.
480 Section 15. The Board of Supervisors of Indian River Farms
481 Water Control District in Indian River County, in order to
482 effect the drainage, reclamation, and protection of lands in the
483 district, is hereby authorized to construct, install, and
484 maintain locks, dams, and other works and facilities in the
485 canals, ditches, and drains in said district and elsewhere.
486 Section 16. In order to raise money to pay the cost of
487 constructing and installing the water control and water
488 conservation works and facilities herein authorized, and to pay
489 the principal of and interest on any bonds or other obligations
490 which may be issued to provide funds for such purposes, the
491 board of supervisors of the district is hereby authorized and
492 required to levy, assess, and cause to be collected an annual
493 tax on all lands in said district subject to taxation. Such tax
494 shall be at a uniform rate for all lands within the district and
495 shall be assessed against each acre, fraction, or fractional
496 interest therein.
497 Section 17. It has been ascertained and determined and it
498 is hereby declared that the water control and conservation works
499 and facilities authorized to be constructed, installed, and
500 maintained pursuant to the provisions of this act are for a
501 public purpose and will confer benefits upon all lands within
502 Indian River Farms Water Control District in an amount at least
503 equal to the taxes authorized by the provisions of this act to
504 be levied and that all lands in said district will be benefited

505 equally by said works and facilities.
506 Section 18. No landowner in the Indian River Farms Water
507 Control District in Indian River County shall be permitted to
508 vote at any landowners' meeting of said district for any lands
509 in the district on which the drainage taxes are delinquent at
510 the time of such meeting.
511 Section 19. The owners and proxy holders of district
512 acreage who are present at a duly noticed landowners' meeting
513 shall constitute a quorum at any landowners' meeting in said
514 district. A majority of the landowners present and voting shall
515 elect the supervisors of said district and shall pass any motion
516 and after such passage the same shall constitute the action of
517 the landowners.
518 Section 20. The board of supervisors of said district is
519 hereby authorized to assess and levy a minimum drainage tax,
520 which said minimum drainage tax shall be at a rate not less than
521 the 1-acre tax rate as established by the district from time to
522 time. Said minimum drainage tax shall apply to any one parcel
523 separately assessed on the tax rolls of said tax district.
524 Section 21. The Indian River Farms Water Control District
525 is herewith authorized and empowered to expend the funds of said
526 district as shall be from time to time determined by the board
527 of supervisors in clearing, cleaning, and maintaining any and
528 all parts of the Indian River and the swamped and submerged
529 lands adjacent to any of the canals and works of said district
530 in order to improve and facilitate the operations and functions
531 of said district.
532 Section 22. No entity vested with the power of eminent

533 domain shall be permitted to take, by eminent domain
534 proceedings, for any purpose whatsoever, any property, whether
535 in fee, easement, or otherwise, belonging to the Indian River
536 Farms Water Control District unless the absolute necessity for
537 such taking shall be shown. However, this act shall not apply to
538 the United States Government or any of its agencies, to the
539 government of the state or any of its agencies, to the
540 government of Indian River County or any of its agencies, and to
541 the government of the City of Vero Beach or any of its agencies.
542 Section 23. For the purposes of this act, the term
543 "absolute necessity" shall mean that there is no alternative
544 route open to the condemning authority or that the cost of the
545 alternative route would be prohibitive in comparison to the
546 overall cost of the proposed project.
547 Section 24. The Indian River Farms Water Control District
548 is hereby authorized to grant such permits as it shall deem
549 proper in allowing any access over, under, or across its lands.
550 Section 25. The board of supervisors of the district shall
551 have power, in the resolution or other proceedings authorizing
552 the issuance of any bonds, to enter into valid and legally
553 binding covenants and agreements with the holders of such bonds
554 as to the custody and security of the proceeds of said bonds, or
555 of any bond anticipation notes issued in anticipation thereof,
556 the custody and security of any debt service funds, including
557 reserves, and the appointment of banks or trust companies as
558 trustee to hold such construction funds and debt service and
559 reserve funds, the rank or priority as between the bonds
560 originally issued by the district and any bonds thereafter

561 issued and terms and conditions under which any bonds can be
562 issued by the district after the original bonds or notes have
563 been issued to finance the cost of the drainage improvements or
564 works, and such other covenants and conditions as shall be
565 deemed necessary and advisable by the board of supervisors in
566 accordance with bond market practices and in order to better
567 secure the payment of such bonds and the marketability thereof.
568 All such covenants and agreements shall be and constitute valid
569 and legally binding obligations of the district, and the state
570 does hereby covenant that it will not by any legislation
571 hereafter in any manner repeal, modify, or impair the rights,
572 remedies, and security of the holders of any bonds or other
573 obligations issued by the district.
574 Section 26. The district shall also have power to covenant
575 and agree with the holders of such bonds that all of the fees
576 and expenses for the levy and collection of taxes in said
577 district and of any trustees or other custodians of the bond
578 proceeds or of the construction funds or debt service funds or
579 reserves therefor or the cost of the expenses of any annual
580 audits or of any other annually recurring services or costs
581 shall be paid from the maintenance taxes to be collected in each
582 year with said district and not from the proceeds of any bonds
583 or other obligations issued by said district.
584 Section 27. It is hereby declared that in said district,
585 surface waters, which shall include rainfall and the overflow of
586 rivers and streams, are a common enemy, and the said district
587 and any individual or agency holding a permit to do so from said
588 district shall have the right to dike, dam, and construct levees

589 to protect the said district or any part thereof, or the
590 property of said individual or agency against the same, and
591 thereby divert the course and flow of such surface water and/or
592 pump the water from within such dikes and levees.
593 Section 28. Each supervisor shall be paid for his or her
594 services a per diem of $50 for each day actually engaged in work
595 pertaining to the said district, but the supervisors shall not
596 in any one month be paid more than $200 each, except that in
597 addition to the said per diem they shall be paid 10 cents per
598 mile for each mile actually traveled in going to and from their
599 places of residence to the place of meeting.
600 Section 29. If any provision of this act or the
601 application thereof to any person or circumstance is held
602 invalid, the invalidity shall not affect other provisions or
603 applications of the act which can be given effect without the
604 invalid provision or application, and to this end the provisions
605 of this act are declared severable.
606 Section 4. Chapters 8882 (1921), 9988 (1923), 10693
607 (1925), 12057 (1927), 12058 (1927), 14737 (1931), 16048 (1933),
608 17066 (1935), 19188 (1939), 23906 (1947), 28403 (1953), 57-1104,
609 63-832, and 67-843, Laws of Florida, are repealed.
610 Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1207 Indian River Mosquito Control District, Indian River County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Smith T.L.S.	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Indian River Mosquito Control District (District) was first established in 1925, with the stated purpose of controlling and eradicating mosquitoes and sand flies in designated areas of Indian River County. In 1947, the original enabling act, ch. 11128, L.O.F. (1925), was repealed, and a new law re-establishing the district and revising its authority was enacted.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority. The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- providing for a three member board of commissioners until the next election, stating three persons' names that will compose the commissioners until that time;
- clarifying charter provisions pertaining to terms in office for District Commissioners;
- amending provisions governing the compensation of District Commissioners; and
- updating language referring to the State of Florida's Comptroller; deleting Comptroller, adding Chief Financial Officer.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2006-07 or 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (includes local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

Indian River Mosquito Control District

The Indian River Mosquito Control District (District) was first established in 1925, with the stated purpose of controlling and eradicating mosquitoes and sand flies in designated areas of Indian River County. In 1947, the original enabling act, ch. 11128, L.O.F. (1925), was repealed, and a new law re-establishing the district and revising its authority was enacted.[1]

Changes to the Indian River Mosquito Control District Charter

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

[1] Ch. 24600, L.O.F., (1947).

The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- provides for a three member board of commissioners until the next election, states three names that will compose the commissioners until that time, naming: Janice Broda, David Foster, and Keith D. Hedin;

- clarifies charter provisions pertaining to terms in office; states that commissioners will be elected for 4 year terms and that the one commissioner is to elected in a given general election by the highest number of votes and the remaining two commissioners are elected by the first and second highest number of votes cast a the next ensuing general election.

- amends provisions governing the compensation of District Commissioners; declares that commissioners will be paid for each day's service and for each mile traveled in going to and from the Board of Commissioners office according to per diem compensation expense and mileage rates established under general law or special act. Also declares that commissioners will be compensated for regular duties at the rate of $400 per month;

- updates language referring to the State of Florida's Comptroller; deletes Comptroller, adds Chief Financial Officer; and

- adds a severability clause to the district charter.

Charter of the District

This bill recreates and renacts the District's charter as follows:

Section 1: Recreates the Indian River Mosquito Control District.

Section 2: Provides for a District governing body to be called the Board of Commissioners (Board); the Board is to be composed of three members; establishes the powers of the Board; provides for four staggered terms.[2]

Section 3: Requires all District Commissioners to provide a surety bond of $5,000; failure to provide bond within 30 days of election will result in a vacancy on the Board. The Governor will then be allowed to appoint someone to that vacancy.[3]

Section 4: Provides for a commission chair, vice chair, and secretary to be chosen at the first practical time after an election.[4]

Section 5: Provides for compensation and payment for time traveled.

Section 6: Grants the District authority to invest funds in interest-bearing depositories as prescribed by Florida law.[5]

Section 7: Declares purpose of the District.[6]

Section 8: Declares the general powers of the District.[7]

Section 9: Declares powers of the District as they pertain to purchasing.[8]

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[2] *See generally* ch. 24600, L.O.F., (1947) § 2, ch. 63-1433, L.O.F. § 1.
[3] *See* ch. 24600, L.O.F., (1947) § 3.
[4] *See* ch. 24600, L.O.F., (1947) § 4.
[5] *See* ch. 73-497, L.O.F. § 2.
[6] *See* ch. 24600, L.O.F., (1947) § 6.
[7] *See* ch. 24600, L.O.F., (1947) § 7.

Section 10: Authorizes the District to levy an ad valorem tax on all real and personal taxable property; provides provisions for the collection of those taxes through the county tax collector.[9]

Section 11: Requires the Board to provide adequate insurance for property damage, bodily injury, or death.[10]

Section 12: Provides the District abolishment provisions pursuant to s. 9, ch. 24600, 1947, L.O.F.[11]

Section 13: Provides that willful damage to district projects, property, and work will be seen as a misdemeanor and can be punished as stated by general law.[12]

Section 14: Authorizes the Board to provide life and health insurance to all District employees, including all Board members, the District Director, the families of said employees, and the families of the District Director and the Assistant District Director.[13]

Section 15: Provides severability.

C. SECTION DIRECTORY:

Section 1: Provides that the reenactment of existing law in this bill may not be construed as a grant of additional authority; provides legislative intent.

Section 2: Codifies, reenacts, amends and repeals chapters 11128 (1925), 14381 (1929), 20114 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-1433, 73-497, 76-388, 78-531, and 91-337, L.O.F.

Section 3: Recreates and reenacts the charter of the District.

Section 4: Repeals chapters 11128 (1925), 14381 (1929), 20114 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-1433, 73-497, 76-388, 78-531, and 91-337, L.O.F.

Section 5: Provides an effective date of July 1, 2006.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? November 7, 2005.

WHERE? *Scripps Treasure Coast Newspapers*, Vero Beach, Indian River County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

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[8] *See* ch. 61-2278, L.O.F. § 3, ch. 78-531, L.O.F. § 1, ch. 91-337, L.O.F. § 3.
[9] *See* ch. 24600, L.O.F., (1947) § 8.
[10] *See* ch. 61-2278, L.O.F. § 4.
[11] *See* ch. 24600, L.O.F., (1947) § 9.
[12] *See* ch. 24600, L.O.F., (1947) § 11.
[13] *See* ch. 61-2278, L.O.F. § 5, ch. 73-497, L.O.F. § 1.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1207

SCRIPPS TREASURE COAST NEWSPAPERS

Vero Beach Press Journal

1801 U.S. 1, Vero Beach, FL 32960

AFFIDAVIT OF PUBLICATION

SCRIPPS HOWARD

NOTICE OF INTENT TO SEEK LEGISLATION
TO WHOM IT MAY CONCERN:

Notice is hereby given of intent to apply to the 2006 Legislature for passage of an act relating to Indian River Mosquito Control District, Indian River County; modify and reenacting provisions of Chapters 11 128, laws of Florida, acts of the 1925 Legislature and acts amendatory thereof; providing for codification of special acts relating to Indian River Mosquito Control District, a special tax district created pursuant to Chapter 1 1128, laws of Florida, acts of the 1925 Legislature, pursuant to Section 189.429, Florida Statutes.

Dated this 3rd day of November, 2005.

BOARD OF DIRECTORS
INDIAN RIVER MOSQU
CONTROLDISTRICT
By: Michael O'Haire, District Attorney

Publish November 7, 2005
1262089

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Before the undersigned authority personally appeared, S. Darlene Mailing, who on oath says that she is Classified Inside Sales Manager of the Vero Beach Press Journal, a daily newspaper published at Vero Beach in Indian River County, Florida: that the attached copy of advertisement was publshed in the Vero Beach Press Journal in the following issues below. Affiant further says that the said Vero Beach Press Journal is a newspaper published in Vero Beach in said Indian River County, Florida, and that said newspaper has heretofore been continuously published in said Indian River County, Florida, daily and distributed in Indian River County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid or promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. The Vero Beach Press Journal has been entered as Periodical Matter at the Post Offices in Vero Beach, Indian River County, Florida and has been for a period of one year next preceding the first publication of the attached copy of advertisement.

Customer	Ad Number	Pub Date	Copyline	PO #
OHAIRE QUINN & CANDLER	1262089	11/7/2005	NOTICE OF INTENT	NOTICE OF INTENT

Subscribed and sworn to me before this date:

November 07, 2005

S. Darlene Mailing

Mary T Byrne

Notary Public

MARY T. BYRNE
Notary Public - State of Florida
My Commission Expires Aug 2, 2008
Commmission # DD132804
Bonded By National Notary Assn.

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: HB 1207

SPONSOR(S): Rep. Ralph Poppell

RELATING TO: **Indian River Mosquito Control District**

[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Indian River County

CONTACT PERSON: Andrew Grogan

PHONE # and E-Mail: (850) 488-3006 andrew.grogan@myfloridahouse.gov

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [x] NO [ ]

(2) Has a public hearing been held? YES [x] NO [ ]

Date hearing held: **11/30/2005**

Location: **Vero Beach City Hall, 1053 20th Place Vero Beach, FL 32961**

(3) Was this bill formally approved by a majority of the delegation members?
YES [x] NO [ ] UNIT RULE [ ] UNANIMOUS [x]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [ ] DATE [11/7/2005]

Where? Vero Beach Press Journal County Indian River

Referendum in lieu of publication: YES [ ] NO [x]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [x] NO [ ] NOT APPLICABLE [ ]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

3/21/06

Delegation Chair *(Original Signature)* **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: 1207

SPONSOR(S): Representative Ralph Poppell

RELATING TO: Indian River Mosquito Control District

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	0	0
State:	0	0
Local:	0	0

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:	0	0
Disadvantages:	0	0

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

N/A - Codification of existing laws.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

N/A

PREPARED BY: [Must be signed by Preparer] 11/10/05 Date

TITLE: Gregg M. Casalino, Esq., District Attorney

REPRESENTING: Indian River Farms Water Control Distri

PHONE: ((772) 231-6900)

E-Mail Address: gcasalino@oqc-law.com

1 A bill to be entitled
2 An act relating to Indian River Mosquito Control District,
3 Indian River County; codifying, amending, reenacting, and
4 repealing special acts relating to the district; fixing
5 and prescribing the boundaries of said district; providing
6 for the government and administration of the district;
7 naming the commissioners thereof and providing for
8 election of their successors; providing and defining the
9 powers and purposes of such district and of the board of
10 commissioners thereof; authorizing and empowering said
11 board to construct and maintain canals, ditches, drains,
12 and dikes and to fill depressions, lakes, ponds, or
13 marshes in order to eliminate breeding places of
14 mosquitoes and sandflies and to control and eradicate
15 mosquitoes and sandflies; providing for spraying or
16 otherwise disbursing substances and materials over the
17 area of such district for the purpose of controlling and
18 eradicating mosquitoes and sandflies and diseases
19 transmitted by the same; authorizing said board to do any
20 and all acts or things necessary for the control and
21 complete elimination of mosquitoes and sandflies in said
22 district; authorizing and providing for the levy and
23 collection of taxes upon all the real and personal taxable
24 property in said district for carrying out the purposes of
25 this act; authorizing the borrowing by the board of
26 commissioners of said district in any one tax year of a
27 sum not to exceed 80 percent of the estimated taxes to be
28 collected on behalf of said district within such year and

29 to evidence the indebtedness represented by any money so
30 borrowed by written obligation of the district and
31 providing for the payment of interest thereon and for the
32 repayment thereof prior to the borrowing of any further
33 sums in any subsequent year; limiting the amount of taxes
34 that may be so levied by said board upon the taxable
35 property within such district; prohibiting injury to any
36 works controlled under or in pursuance of this act, to be
37 punishable as provided by general law; legalizing and
38 validating the acts of the Indian River Mosquito Control
39 District herewith abolished and making all contracts of
40 said Indian River Mosquito Control District so abolished
41 binding upon the new Indian River Mosquito Control
42 District; authorizing and prescribing generally the powers
43 and duties of the Board of Commissioners of said new
44 Indian River Mosquito Control District; providing for
45 severability; providing an effective date.
46
47 Be It Enacted by the Legislature of the State of Florida:
48
49 Section 1. (1) The reenactment of existing law in this
50 act shall not be construed as a grant of additional authority to
51 nor to supersede the authority of the district pursuant to law.
52 Exceptions to law contained in any special act that are
53 reenacted pursuant to this act shall continue to apply.
54 (2) The reenactment of existing law in this act shall not
55 be construed to modify, amend, or alter any covenants,
56 contracts, or other obligations of the district with respect to

57 bonded indebtedness. Nothing pertaining to the reenactment of
58 existing law in this act shall be construed to affect the
59 ability of the district to levy and collect taxes, assessments,
60 fees, or charges for the purpose of redeeming or servicing
61 bonded indebtedness of the district.
62 Section 2. Chapters 11128 (1925), 14381 (1929), 20114
63 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-
64 1433, 73-497, 76-388, 78-531, and 91-337, Laws of Florida, are
65 codified, reenacted, amended, and repealed as provided in this
66 act.
67 Section 3. The Indian River Mosquito Control District is
68 re-created, and the charter for such district is re-created and
69 reenacted to read:
70 Section 1. The Indian River Mosquito Control District is
71 re-created, and the special taxing district now existing and
72 known and designated as Indian River Mosquito Control District,
73 as created and incorporated by chapter 11128 (1925), Laws of
74 Florida, as amended, is hereby abolished, and a new special
75 taxing district in Indian River County, to be known and
76 designated as Indian River Mosquito Control District, is hereby
77 created, established, and incorporated to succeed said former
78 special taxing district known and designated as Indian River
79 Mosquito Control District, and which new special taxing district
80 hereby created and incorporated, to be known as Indian River
81 Mosquito Control District, shall embrace and include all that
82 territory and area situated and being in Indian River County,
83 within the following territorial boundaries, to wit:
84

85 All that part of Indian River County, Florida, lying
86 East of the following described line:
87
88 Beginning at the South one-quarter corner of Section
89 36, Township 33 South, Range 36 East, said point lying
90 on the South Township line and the South boundary line
91 of Indian River County, a political subdivision of the
92 State of Florida; thence run North along the one-
93 quarter Section lines of Sections 36 and 25, Township
94 33 South, Range 36 East to the North line of Section
95 25, Township 33 South, Range 36 East; thence run East
96 along said North line of Section 25, Township 33
97 South, Range 36 East to the Northeast corner of
98 Section 25, said point lying on the Range line of
99 Ranges 36 and 37; thence run North along the Range
100 line to the intersection of the North right-of-way of
101 State Road 60; thence run East along the said North
102 right-of-way a distance of 732.15 feet to the East
103 right-of-way of Lateral "S" Canal as shown on the plat
104 of the Fellsmere Farms Company Subdivision of the
105 Unsurveyed Township 32 South, Range 37 East, as
106 recorded in Plat Book 2, Page 8, St. Lucie County
107 Public Records; thence run North along said East
108 right-of-way of Lateral "S" Canal to the intersection
109 of the North boundary line of said Indian River County
110 and the point of ending.
111
112 All of which lands hereinabove described and the owners thereof

113 shall be entitled to all benefits and subject to all burdens and
114 obligations as prescribed and set forth herein.
115 Section 2. The governing body of said Indian River
116 Mosquito Control District shall be known and designated as the
117 "Board of Commissioners of Indian River Mosquito Control
118 District." Said governing body shall be composed of three
119 members, and, until the next election, the following named
120 persons shall be and are hereby designated to compose the Board
121 of Commissioners of said Indian River Mosquito Control District:
122 Janice Broda, David Foster, and Keith D. Hedin. Said governing
123 body shall have all the powers of a body corporate, including
124 the power to sue and be sued as a corporation in said name in
125 any court; to contract; to adopt and use a common seal and alter
126 the same at pleasure; to purchase, hold, lease, and convey such
127 real estate and personal property as said board may deem proper
128 to carry out the purposes of this act; to appoint a chief
129 engineer, a consulting engineer, and an attorney for said board
130 and such other agents and employees as said board may require;
131 to borrow money and to issue negotiable promissory notes or
132 bonds therefor; and to enable it to carry out the provisions of
133 this act. The persons herein named and designated shall serve as
134 commissioners of said Indian River Mosquito Control District
135 until their successors are elected and qualified. After 2000,
136 and in subsequent general elections, the commissioners shall be
137 elected in a nonpartisan election for 4-year terms so that one
138 commissioner is elected at one general election by the highest
139 number of votes cast and two commissioners are elected by the
140 first and second highest number of votes cast at the next

141 ensuing general election.
142 Section 3. Each commissioner under this act, before he or
143 she assumes office, shall be required to give to Indian River
144 Mosquito Control District a good and sufficient surety bond in
145 the sum of $5,000, conditioned for the faithful performance of
146 the duties of his or her office, said bond to be approved by and
147 filed with the Clerk of the Circuit Court of Indian River
148 County. Said bond shall also be recorded in the minutes of said
149 Board of Commissioners of said Indian River Mosquito Control
150 District. The failure of any person so elected as commissioner
151 of Indian River Mosquito Control District within 30 days after
152 his or her election to give bond shall create a vacancy as to
153 such commissioner, and such vacancy shall be filled by the
154 Governor appointing a person duly qualified to hold such office,
155 which manner of filling such office shall obtain in the case of
156 resignation, death, or removal from said district of any
157 commissioner during his or her term of office. No person shall
158 be qualified to hold office as a commissioner under this act
159 unless such person shall be a duly qualified elector of said
160 district.
161 Section 4. As soon as practicable after each general
162 election, the commissioners of Indian River Mosquito Control
163 District, after their qualification as such, shall meet and
164 organize by the election, from among their number, of a chair, a
165 vice chair, and a secretary. Two members of the board shall
166 constitute a quorum. The vote of two members shall be necessary
167 to transact business. The chair and vice chair shall vote at all
168 meetings of the board.

169 Section 5. The commissioners under this act shall be paid
170 for each day's service and for each mile actually traveled in
171 going to and from the office of the Board of Commissioners of
172 Indian River Mosquito Control District according to per diem
173 compensation expense and mileage rates established from time to
174 time for officials and employees of the state. The per diem
175 herein provided for shall apply to services rendered for
176 inspection of work performed for the district or other services
177 under this act. Additionally, commissioners shall be compensated
178 for regular duties, as provided by general law or special act,
179 at the rate of $400 per month or such greater amount as may be
180 permitted by general law or special act.
181 Section 6. The board is hereby authorized to invest its
182 funds from time to time in interest-bearing depositories as
183 prescribed by Florida law.
184 Section 7. Said board is hereby authorized and empowered
185 to do any and all things necessary for the control and complete
186 elimination of all species of mosquitoes and sandflies and
187 diseases transmitted by the same in said district and, for this
188 purpose, is hereby authorized and empowered to construct and
189 thereafter to maintain canals, ditches, drains, and dikes; to
190 fill in all depressions, lakes, and ponds or marshes that are
191 the breeding places of mosquitoes and sandflies, insofar as said
192 work does not interfere with the water supply of any city or
193 community; and to employ engineers, scientists, helpers, and all
194 other servants, agents, and employees as may be necessary for
195 the purpose of controlling and eliminating all species of
196 mosquitoes and sandflies in said district. Said board is hereby

197 authorized and empowered to spray or otherwise disburse, or
198 cause to be sprayed or otherwise disbursed, chemicals,
199 substances, and materials of every nature upon and over the area
200 of said district as shall be deemed necessary or desirable for
201 the purpose of controlling and eliminating all species of
202 mosquitoes and sandflies in said district and, for such
203 purposes, may contract for and purchase such chemicals,
204 substances, and materials and may contract for the spraying or
205 disbursing thereof over the area of said district or may employ
206 such agents, servants, and employees for such purpose as the
207 commissioners of said district may deem necessary or advisable;
208 to do any and all things that may be necessary from the
209 standpoint of public health and comfort to control or eliminate
210 mosquitoes and sandflies or their larvae in said district; and
211 to promulgate such rules and regulations not inconsistent with
212 the provisions of this act and with any of the laws of said
213 state which, in their judgment, may be necessary for the proper
214 carrying into effect and enforcement of this act.
215 Section 8. Said board shall have power and authority to
216 hold, control, and acquire by gift or purchase such real or
217 personal property, and to condemn such lands or easements, as
218 may be necessary for the carrying out of any of the purposes of
219 this act or for the material to be used for any of said purposes
220 and for the preservation of the works constructed or to be
221 constructed by said board under this act. Said board is
222 authorized to exercise the right of eminent domain for the use
223 of said district, in the manner prescribed by law, over such
224 lands, easements, rights-of-way, riparian rights, and personal

225 property that may be necessary for the purpose of said board in
226 said construction, and the only prerequisite for the exercise of
227 said power of eminent domain shall be the adoption by said board
228 of a resolution specifying the property sought to be condemned
229 and the purpose for which it is to be used. Said board is
230 authorized to sell any real or personal property acquired or
231 owned by it when the same shall be determined to be no longer
232 useful to or suitable for the purposes of said board.
233 Section 9. Said board is hereby authorized and empowered
234 to purchase goods, supplies, or material for the use of said
235 district without the necessity of advertising any notice or
236 calling for bids regarding said purchase when the amount to be
237 paid therefor by said district does not exceed $10,000 or when
238 the goods, supplies, or materials to be purchased are obtainable
239 from only one source or supplier.
240 Section 10. Said board is hereby authorized and empowered
241 to levy upon all the real and personal taxable property in said
242 district a special tax not exceeding 10 mills on the dollar for
243 the year 1947 and for each and every year thereafter, to be used
244 solely in carrying out the purposes of this act. Said levy shall
245 be made not later than the 15th of July of each year by
246 resolution of said board, or a majority thereof, duly entered at
247 large upon its minutes. A certified copy of such resolution
248 executed in the name of said board by its chair and secretary
249 and under its corporate seals shall be delivered or transmitted
250 to the Board of County Commissioners of Indian River County, and
251 a copy shall be transmitted by mail to the Chief Financial
252 Officer not later than August 1 of each year. It shall be the

253 duty of the Board of County Commissioners of Indian River County
254 to order the property appraiser of said county to assess and the
255 collector of said county to collect the amount of said tax so
256 assessed by the Board of Commissioners of said district upon all
257 the taxable property, real or personal, in said district at the
258 rate of taxation adopted by said board for said year, but not
259 exceeding 10 mills on the dollar and as specified in said
260 resolution, and said levy shall be included in the warrant to
261 the tax collector and the property appraiser which is attached
262 to the assessment roll of taxes for said county each year. The
263 property appraiser shall make such assessment and the tax
264 collector shall collect such taxes so levied in the manner as
265 other taxes are assessed and collected and shall pay the same
266 when collected, within the time and in the manner prescribed by
267 law for the payment of other taxes, to the secretary of said
268 Board of Commissioners. It shall be the duty of said Chief
269 Financial Officer to assess and levy on all the railroad lines
270 and railroad property, telegraph lines and telegraph property,
271 and telephone lines and telephone property the amount of every
272 such levy herewith provided in this section, and as in the case
273 of other state and county taxes, and said taxes so levied by the
274 Chief Financial Officer shall be collected as provided for other
275 similar taxes, and the proceeds thereof shall be remitted to the
276 secretary of said board in the same manner as such remittances
277 are made in the collection of other taxes. If any such taxes so
278 assessed are not paid, the said property shall be sold by said
279 tax collector and certificates issued and tax deeds issued in
280 the same manner and under the same laws relating to the sales,

281 issuance of certificates, and deeds with reference to all other
282 state and county taxes. The Board of Commissioners of the Indian
283 River Mosquito Control District is herewith authorized to borrow
284 in any one tax year a sum not to exceed 80 percent of the
285 estimated taxes to be collected on behalf of said district
286 within such year and to evidence such loan made to said district
287 by its tax anticipation note or notes bearing interest at a rate
288 not to exceed 10 percent per annum, and which notes shall be
289 payable at a time not greater than 1 year from the date of the
290 borrowing of such moneys; the sums so borrowed shall be repaid
291 out of the next taxes collected by said district to the extent
292 necessary for the repayment thereof, together with such interest
293 at a rate not to exceed 6 percent per annum; and no sums shall
294 be borrowed as herewith provided in any subsequent year unless
295 all moneys so borrowed in any preceding year shall have been
296 entirely paid as to both principal and interest.
297 Section 11. Said board is hereby required to secure and
298 keep in force in companies duly authorized to do business in
299 Florida insurance covering liability for property damage or
300 bodily injury or death resulting therefrom to all persons and
301 property by reason of the ownership, maintenance, operation, or
302 use of any vehicle, dragline, dredge, tractor, and related
303 equipment being used for and in the interest of the purpose of
304 said board in amounts not less than $50,000 for bodily injury or
305 death resulting therefrom to any one person, and not less than
306 $100,000 for bodily injury or death resulting therefrom for any
307 one accident, and not less than $25,000 for damage to property.
308 Section 12. The title to and jurisdiction over all

309 property of Indian River Mosquito Control District herewith
310 abolished, of every kind, nature, or description, is herewith
311 transferred to and vested in the new Indian River Mosquito
312 Control District herewith created. All lawful debts or
313 obligations of the old Indian River Mosquito Control District
314 herewith abolished are herewith made the debts and obligations
315 of the new district herewith created, and all claims, demands,
316 or credits held by said old district are herewith transferred to
317 and made the claims, demands, and credits of said new district.
318 No obligation or contract of said old district shall be impaired
319 by this act, but rather all obligations or contracts of said old
320 district are herewith made the obligations and contracts of the
321 new district herewith created. All acts of the Board of
322 Commissioners of the old Indian River Mosquito Control District
323 herewith abolished and of the agents, servants, and employees of
324 said Board of Commissioners of said old district and of said
325 district are herewith ratified and confirmed.
326 Section 13. Whoever shall willfully damage any ditch,
327 canal, drain, dike, or other work established or constructed
328 under this act or who shall willfully interfere with or injure
329 any property, work, or facility established or constructed under
330 this act or who shall willfully interfere with the acts of any
331 commissioner of said district or any person lawfully authorized
332 or employed by the Board of Commissioners of this district in
333 carrying out the provisions of this act commits a misdemeanor
334 and, upon conviction thereof, shall be punished as provided by
335 general law.
336 Section 14. (1) The Board of Commissioners of the Indian

337 River Mosquito Control District is hereby authorized, empowered,
338 and permitted to provide for life, health, accident, and
339 hospitalization insurance, or an annuity insurance, or all or
340 any of such insurance for employees of said district, for the
341 director or assistant director, or for members of said board, or
342 for the families of such employees, for the family of the
343 director or assistant director, or for the families of the
344 members of the board, and to that end to enter into agreements
345 with insurance companies to provide such insurance. The election
346 to exercise the authority granted by this act shall be evidenced
347 by resolution duly recorded in the minutes of the Board of
348 Commissioners of Indian River Mosquito Control District.
349 (2) The Board of Commissioners of Indian River Mosquito
350 Control District is authorized to budget from and pay out of
351 appropriate funds any portion of the cost of such insurance and
352 to deduct from the wages of employees, the director and
353 assistant director, and the members of the board who in writing
354 make request for such insurance the balance of such cost and to
355 pay or remit the same directly to the insurance company issuing
356 such insurance.
357 (3) The participation in such insurance by any employee,
358 director or assistant director, or member of said board shall be
359 entirely voluntary at all times. Any enrolled member of such
360 insurance plan may, upon any pay day, withdraw or retire from
361 such plan upon giving the Board of Commissioners written notice
362 thereof and directing the discontinuance of deductions from
363 wages in payment of such premiums.
364 Section 15. In case any one or more of the sections or

365 provisions of this act or the application of such sections or
366 provisions to any situation, circumstance, or person shall for
367 any reason be held to be unconstitutional, such
368 unconstitutionality shall not affect any other sections or
369 provisions to any other situation, circumstance, or person, and
370 it is intended that this law shall be construed and applied as
371 if such section or provision had not been included herein for
372 any unconstitutional application.
373 Section 4. Chapters 11128 (1925), 14381 (1929), 20114
374 (1939), 20494 (1941), 21048 (1941), 24600 (1947), 61-2278, 63-
375 1433, 73-497, 76-388, 78-531, and 91-337, Laws of Florida, are
376 repealed.
377 Section 5. This act shall take effect July 1, 2006.

HB 1219

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1219 City of Tampa, Hillsborough County
SPONSOR(S): Joyner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Governmental Operations Committee			
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

All permanent city employees hired after October 1, 1981, and those Division (A) employees who elected to change, are Division (B) employees under the City of Tampa General Employees' Pension Plan. After at least 6 years of service and attaining the age of 62, a Division (B) employee is entitled to a money pension payable for life equal to 1.15 percent of the Average Monthly Salary multiplied by years of service.

This bill increases the multiplier of Division (B) employees by 0.05 percent, raising it from 1.15 percent to 1.20 percent.

This bill would take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government: This bill increase permanent city, Division (B) employees' retirement benefits.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION:

Section 14, art. X of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

Part VII, ch. 112, F. S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of s. 14, art. X, State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. The act is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

Section 112.63, F.S., provides that no unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement, Department of Management Services. The statement is also required to indicate whether the proposed changes are in compliance with s. 14, art. X, State Constitution, and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

All permanent city employees hired after October 1, 1981, and any Division (A) employees who elected to change, are Division (B) employees under the City of Tampa General Employees' Pension Plan.1 After at least 6 years of service and attaining the age of 62, a Division (B) employee is entitled to a money pension payable for life equal to 1.15 percent of the Average Monthly Salary multiplied by years of service. The Average Monthly Salary is the total compensation received during the 3 years out of the last 6 years of continuous service which produces the highest average, divided by 36.2

The multiplier was raised 0.05, from 1.1 percent to 1.15 percent in 2005.3 As of January 1, 2005, there were 2, 682 active Division (B) employees.4

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[1] General Employees' Pension Plan for the City of Tampa, Actuarial Impact Statement as of January 1, 2005.
[2] General Employees' Pension Plan for the City of Tampa, Actuarial Impact Statement as of January 1, 2005.
[3] Chapter 2005-326, L.O.F.
[4] General Employees' Pension Plan for the City of Tampa, Actuarial Impact Statement as of January 1, 2005.

EFFECT OF BILL:

This bill increases the multiplier of Division (B) employees by 0.05 percent, raising it from 1.15 percent to 1.20 percent. This bill would entitle an eligible Division (B) employee to a monthly pension plan equal to 1.20 percent of his or her Average Monthly Salary multiplied by his or her years of service.

C. SECTION DIRECTORY:

Section 1: Amends ss. (1) and (2), of s. 8 of chapter 23559. L.O.F., as amended by chapter 2005-326, L.O.F., to increase the longevity retirement multiplier.

Section 2: Provides an effective date of October 1, 2006.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? *January 12, 2006.*

WHERE? *Tampa Tribune, Tampa, Hillsborough County, Florida.*

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, no fiscal impact is expected FY 2005-06. A fiscal impact of $900,000 in the form of implementation costs is expected for FY 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Hillsborough County Legislative Delegation Explanatory Memorandum:

"A negotiated increase in the pension multiplier of .05 percent to 1.2 for Division B employees was approved by the Amalgamated Transit Union on November 10, 2005 and ratified by Tampa City Council on November 17, 2005."

"[The] Proposed change would make the City of Tampa Pension Plan Division B more consistent with the Florida Retirement System (FRS)."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1219

THE TAMPA TRIBUNE

Published Daily

Tampa, Hillsborough County, Florida

State of Florida }
County of Hillsborough } ss.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Supervisor of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of advertisement being a

LEGAL NOTICE IN THE TAMPA TRIBUNE

in the matter of NOTICE OF LEGISLATION

was published in said newspaper in the issues of

JANUARY 12, 2006

Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.

C Pugh

Sworn to and subscribed by me, this 25 day of JANUARY, A.D. 2006

Personally Known ✓ or Produced Identification ____
Type of Identification Produced ____

Tanya Patrick

NOTARY PUBLIC STATE OF FLORIDA
OFFICIAL NOTARY SEAL
TANYA PATRICK
COMMISSION NUMBER
DD 136745
MY COMMISSION EXP.
JULY 7, 2006

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned intends to apply to the Legislature of the State of Florida at its regular session held in the year 2006, or at a subsequent special session, for passage of a bill to be entitled

An act relating to the City of Tampa, Hillsborough County; amending s. 8, Chapter 23559, Laws of Florida, 1945, as amended; revising longevity retirement provisions to provide for a multiplier of 1.20 percent for employees in Division B, as amended; providing an effective date.

DATED at Tampa, Florida, the 12th day of January, 2006.

Senator Jim Sebesta/Rep. Arthenia Joyner
Hillsborough County Legislative Delegation
P. O. Box 1110
Tampa, FL 33601

2806 1/12/06

City of TPA Gen. Emp.

(2)

1-7-06

Representative Kevin Ambler

ABSENT

Representative Frank Peterman

Representative Trey Treviesa

Representative Faye Culp

#58

Representative Bob Henriquez

Representative Arthenia Joyner

Representative Ed Homan

#61

Representative Ken Littlefield

Representative Rich Glorioso

Representative Dennis Ross

Representative Ron Reagan

Representative Bill Galvano

City of Tampa pension

Joyner

Michelle Pettiman

by request

er + mailed David 1/11/06

HOUSE LOCAL GOVERNMENT & VETERANS' AFFAIRS COMMITTEE

2006 LOCAL BILL CERTIFICATION

BILL #:
SPONSOR(S): Rep. Arthenia Joyner
RELATING TO: City of Tampa general employees' pension fund
[Indicate Area Affected (City, County, Special District) and Subject]
NAME OF DELEGATION: Hillsborough County Legislative Delegation
CONTACT PERSON: Candace G. Hundley, Director
SUNCOM or PHONE #: 813-272-5865 SunCom 543-5865 or Hundleyc@hillsboroughcounty.org

I. *House policy requires that, before the House Committee on Local Government & Veterans' Affairs or its subcommittees considers a local bill, three things must occur: (1) The members of the local legislative delegation must certify that the bill's purpose cannot be accomplished at the local level; (2) a public hearing must be held in the area affected; and (3) at or after any public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by the legislative delegation.* ***Local bills will not be considered by a subcommittee or the Committee without a completed, original Local Bill Certification Form.***

Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

Has a public hearing been held? YES [X] NO [ ]

Date hearing held: January 7, 2006

Location: Hillsborough Community College Brandon Campus, 10414 E. Columbus Drive, Tampa, FL

Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [ ] The 16-member Hillsborough Delegation requires that a minimum of 4 of its Senators and 8 of its House members vote favorably for the bill to be filed in Tallahassee. This bill was passed with 4 Senators voting "Yes," 11 Representatives voting "Yes," and 1 member absent.

II. *Article VIII, Section 10, of the State Constitution prohibits passage of any special act unless the bill has been advertised in advance (as provided in s. 11.02, F. S.) or is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this Constitutional requirement been met?

Notice published: YES [X] NO [ ]

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

IV. *House policy requires that economic impact statements for local bills be prepared at the local level.*

Kevin C. Arthur

Delegation Chair (*Original Signature*) Date 01/10/06

Revised 8/05

House Committee on Community Affairs

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is files.

BILL#:
SPONSOR(S): Senator Jim Sebesta/Representative Arthenia Joyner
RELATING TO: City of Tampa
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 05-06	FY06-07
Implementation Costs:	$0	$900,000

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 05-06	FY06-07
Federal:	None	None
State:	None	None
Local: Taxes, Water, Sewer, and Other Revenues	$0	$900,000

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 05-06	FY06-07
Revenues:	None	

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: The benefit increase demonstrates the City's desire to improve employees' retirement benefits.

Disadvantages: None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

The increased benefit improves the City's ability to attract and retain talented employees.

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA):

The City provides payroll and benefit information on active and retired employees to its actuary (AON). The actuary uses the Entry Age Normal with Frozen Initial Liability method to determine costs. The City's actuary performed the preliminary cost study for this benefit improvement and will provide a detailed impact statement prior to December 31, 2005.

PREPARED BY: Lee Huffstutler 11/17/05
Date

TITLE: Chief Accountant

REPRESENTING: City of Tampa

PHONE: 813-274-8631

RECEIVED
NOV 17 2005

Revised 8/05

02

Date Received: _____
Local Bill No. 02

HILLSBOROUGH COUNTY LEGISLATIVE DELEGATION
EXPLANATORY MEMORANDUM
PROPOSED LOCAL LEGISLATION

Attach a copy of Explanatory Memorandum and Economic Impact Statement form to the face of your local bill, then run and submit 35 copies, including the forms with original signatures. See additional instructions relating to electronic filing at the end of the form.

I. Authority/Individual Submitting Proposed Legislation:

A. Name of Applicant: City of Tampa
B. Contact: Jeanette LaRussa Fenton, Director of Intergovernmental Relations
C. Address: 306 E. Jackson Street, 7th Floor, EW, Tampa, FL 33602
D. Telephone: (813) 274-7427
E. Bill Prepared by/Telephone: Salvatore Territo – (813) 274-7312
F. Explanatory Memorandum Prepared by/Telephone:

II. Signature of Delegation Member Sponsoring Proposal:

Senator: _____ District No. 16

OR

Representative: _____ District No. 59

III. Summary Title: City of Tampa General Employees Pension Plan

IV. Current Situation:

The City of Tampa General Employees Pension Plan provides benefits for all permanent city employees who are covered under either Division A, which was closed in 1981, or Division B. The pension multiplier for Division B employees is currently 1.15 percent. A negotiated increase in the pension multiplier of .05 percent to 1.2 percent for Division B employees was approved by the Amalgamated Transit Union on November 10, 2005 and ratified by Tampa City Council on November 17, 2005. Enactment of this change requires an amendment to s. 8, Chapter 23559, Laws of Florida, 1945, as amended.

V. Effect of Proposed Changes:

This special Act will make the following change to the City of Tampa's General Employees Pension Plan: Increases the multiplier by .05 percent, from 1.15 to 1.20 percent for Plan B employees. This change will take effect on October 1, 2006.

Proposed change would make the City of Tampa Pension Plan Division B more consistent with the Florida Retirement System (FRS).

VI. Fiscal Analysis & Economic Impact Statement: Attached as House Local Government Committee Fiscal Impact Statement.

Please see the attached.

VII. Other

A. Constitutional Issues:

1. Applicability of Municipality/County Mandates Provisions:

The General Employees Pension Plan for the City of Tampa has been governed by a Special Act of the Florida Legislature since 1945. As such, it may only be amended by a Special Act of the Legislature. This proposed amendment accomplishes this mandate.

2. Other

B. Rule Making Authority: N/A

VIII. Drafting Issues or Other Comments.

1 A bill to be entitled
2 An act relating to the City of Tampa, Hillsborough County;
3 amending s. 8, chapter 23559, Laws of Florida, 1945, as
4 amended; revising longevity retirement provisions to
5 provide for a multiplier of 1.20 percent for employees in
6 Division B, as amended; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 8 of chapter 23559, Laws of Florida,
11 1945, as amended by chapter 2005-326, Laws of Florida, is
12 amended to read:
13 Section 8. Longevity Retirement Benefits.
14 (A) Division A Employees: An Employee in Division A whose
15 employment terminates on or after his or her Normal Retirement
16 Date shall receive a monthly pension benefit equal to 2 percent
17 of his or her Average Monthly Salary multiplied by his or her
18 Service, plus an additional .5 percent of his or her Average
19 Monthly Salary for each additional year of Service for
20 employment after 15 years for years served on or after January
21 1, 1975, until a maximum of 30 years of Service is reached.
22 (B) Division B Employees:
23 1. An Employee in Division B whose employment terminates
24 on or after his or her Normal Retirement Date shall receive a
25 monthly pension benefit equal to 1.20 ~~1.15~~ percent of his or her
26 Average Monthly Salary multiplied by his or her Service.
27 2. An Employee in Division B who was previously a member
28 of Division A whose employment terminates on or after his or her

29 Normal Retirement Date shall receive a pension calculated as in
30 subsection (B) 1. of this section subject to the following
31 minimum benefits: said Employee shall not receive less than his
32 or her Accrued Pension in Division A (calculated as in (A)
33 above), plus 1.20 ~~1.15~~ percent of his or her Average Monthly
34 Salary multiplied by his or her Service after his or her Date of
35 Election. For the purposes of determining an Employee's Accrued
36 Pension in Division A under this subsection, his or her Average
37 Monthly Salary shall be calculated as of the Date of Election
38 and his or her Service shall be Service prior to the Date of
39 Election.
40 Section 2. This act shall take effect October 1, 2006.

HB 1253

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1253 Broward County, Florida
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:** HB 1083

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Fiscal Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) conducts an in-depth review of every property appraiser's assessment rolls at least every two years. DOR creates a report on each assessment roll. Included in the report is DOR's confidence level in the property appraiser's rolls based on DOR's use of various statistical and analytical measures, which are also included in the report. DOR then forwards this report to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the property appraiser. Once DOR presents the property appraiser with its report, the report becomes a public record.

This bill requires that the Broward County Property Appraiser forward a copy of DOR's report to the Mayor of Broward County, each county commissioner, and the county auditor.

This bill would take effect upon becoming law.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the duties of the Broward County Property Appraiser by requiring them to the forward a copy of the reports they receive from the Department of Revenue to the Mayor of Broward County, each county commissioner, and the county auditor.

B. EFFECT OF PROPOSED CHANGES:

Current Situation in Assessment Rolls:

Property appraisers[1] are required to assess all property in their county and prepare assessment rolls for all real property and tangible personal property.[2] An assessment roll is a record of all taxable property within the tax district which is completed, verified, and reported to the Department of Revenue (DOR) by the property appraiser. DOR has supervisory authority over property appraisers under chapter 195, F.S. DOR prescribes forms, rules and regulations for assessing and collecting taxes, establishment of standards of value, manual of instructions, classification of property, budgetary processes, and review of assessment rolls.

Each assessment roll is submitted to DOR for review. The purpose of the review is to determine that the rolls meet the appropriate requirements of law relating to form and just value.[3] DOR is required to conduct an in-depth review of the assessment rolls for each county no less than once every two years. At a minimum, DOR is to review the level of assessment for the county in relation to just value of each of the various classifications of property found in s. 195.0969(3)(a), F.S. The in-depth review may include review of the proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

Within 120 days after receiving a county's assessment roll, or within 10 days after approving it, whichever is later, DOR is to finalize its review and forward its findings to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the appropriate property appraiser. DOR is to include in its findings a statement of the confidence interval for the median, other measures studied, and the roll as a whole[4], and related statistical and analytical information.[5] DOR's report becomes a public record, subject to chapter 119, F.S., once it is released to the property appraiser.[6]

Effect of Bill:

This local bill requires the Broward County Property Appraiser to forward a copy of the report to the Mayor of Broward County, each of the nine county commissioners, and the county auditor, within 90 days of receiving the report from DOR. The report shall include the same results provided to the Broward County Property Appraiser by DOR. The copy is required to include:

- All statistical and analytical measures taken for the real property assessment roll as a whole and the personal property assessment roll as a whole.

---

[1] Property Appraisers are independently elected, constitutional officers. Art. VII, section 1(d), Florida Constitution.
[2] Sections 192.011 and 193.114, F.S.
[3] Section 193.1142(1), F.S.
[4] The confidence interval is a statistical measure of the reliability of DOR's sample. E-mail from David Beggs of DOR (March 8, 2006).
[5] Section 195.096(2)(f), F.S.
[6] Section 195.096(2)(e), F.S.

- The results of any audit or review of procedures the county property appraiser used to appraise the property, listed independently for each class or sub class of real property studied.

For the years in which Broward County is not under in-depth review, the report forwarded by the property appraiser must include any value-weighted mean level of assessment projected for that year pursuant to state law.[7]

C. SECTION DIRECTORY:

Section 1: Requires Broward County Property Appraiser to forward copies of the Department of Revenue's report.

Section 2: Provides an effective of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 10, 2006

WHERE? *Sun-Sentinel*, Broward/Palm Beach/Miami Dade County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

[7] These projections are made by DOR and based upon the best information available, utilizing professionally accepted methodology, and separately allocate changes in total assessed value to: new construction, additions, and deletions, changes in the value of the dollar, changes in the market value of property, and the level of assessment. Section 195.096(3)(b), F.S.

According to the Economic Impact Statement, the advantage of this bill is the public scrutiny and examination improves public performance. When the present Broward County Property Appraiser, a former County Commissioner and School Board Member, took office, she was unaware of these reports. When she became aware of these reports, she requested copies from the Department of Revenue. The reports showed that Broward County had not been in compliance for years. Her position is that had these reports been known, the property appraiser would have had to fix the problem or the audits would have been used against them during elections.[8]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[8] E-mail from Lori N. Parrish, March 20, 2006.

1253

SUN-SENTINEL
PUBLISHED DAILY
FORT LAUDERDALE, BROWARD COUNTY, FLORIDA
BOCA RATON, PALM BEACH COUNTY, FLORIDA
MIAMI, MIAMI DADE COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF BROWARD/PALM BEACH/MIAMI DADE
BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED

_____ WHO, ON OATH, SAYS THAT HE/SHE IS A DULY AUTHORIZED REPRESENTATIVE OF THE CLASSIFIED DEPARTMENT OF THE SUN-SENTINEL, DAILY NEWSPAPER PUBLISHED IN BROWARD/PALM BEACH/MIAMI DADE COUNTY, FLORIDA, AND THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A:

NOTICE OF LEGISLATION

IN THE MATTER OF:

Property Appraiser

IN THE CIRCUIT COURT, WAS PUBLISHED IN SAID NEWSPAPER IN THE ISSUES OF:

1/10,1X 12667476

AFFIANT FURTHER SAYS THAT THE SAID SUN-SENTINEL IS A NEWSPAPER PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI DADE COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS HERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI DADE COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MATTER AT THE POST OFFICE IN FORT LAUDERDALE, IN SAID BROWARD COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT HE/SHE HAS NEITHER PAID, NOR PROMISED, ANY PERSON, FIRM, OR CORPORATION, ANY DISCOUNT, REBATE, COMMISSION, OR REFUND, FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN SAID NEWSPAPER.

_____
(SIGNATURE OF AFFIANT)

SWORN TO AND SUBSCRIBED BEFORE ME
ON: **10-January-2006**, A.D.

_____
(SIGNATURE OF NOTARY PUBLIC)

NOTARY PUBLIC STATE OF FLORIDA
Idella M. Johnson
Commission # DD326508
Expires June 6, 2008
Bonded Thru Fain - Insurance, Inc. 800-385-7019

_____
(NAME OF NOTARY, TYPED, PRINTED, OR STAMPED)

PERSONALLY KNOWN ✓ OR

PRODUCED IDENTIFICATION _____

NOTICE OF LEGISLATION
Notice is hereby given that the following bill will be presented to the 2006 Legislative Session of the Florida Legislature for consideration and enactment.

A bill to be entitled
An Act relating to Broward County, Florida; requiring the Property Appraiser of Broward County to forward a copy of the findings of the Department of Revenue of the Broward County Assessment Roll to the Mayor of Broward County, and each County Commissioner, and the County Auditor; providing an effective date.
BROWARD COUNTY LEGISLATIVE DELEGATION
REPRESENTATIVE
ELEANOR SOBEL, CHAIR
CONTACT: Sandy Harris
(954-357-6555)
January 10, 2006

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: HB 1253

SPONSOR(S): Rep. Eleanor Sobel

RELATING TO: Property Appraise Audits, Broward County

[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Broward County Legislative Delegation

CONTACT PERSON: Sandy Harris

PHONE # and E-Mail: 922-9833 saharris@broward.org

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: 12-15-05

Location: Governmental Center Broward County

(3) Was this bill formally approved by a majority of the delegation members?
YES [X] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [1-10-06 **]**

Where? Sun-Sentinel **County** Broward

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Eleanor Sobel 3/2/06

Delegation Chair *(Original Signature)* **Date**

House Committee on Local Government

2005 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House Community Affairs Committee that no bill will be considered by the Committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this for must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the House Community Affairs Committee as soon as possible after the bill is filed.

BILL #: HB 1253

SPONSOR (S): Rep. Eleanor Sobel

RELATING TO: Broward County – Requiring the Property Appraiser of Broward County to forward a copy of the findings of the Florida Department of Revenue of the Broward County Assessment Rolls to the Mayor, County Commissioners, and County Auditor.

I. **ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:**

Expenditures:	FY 05-06	FY 06-07
	- 0 -	- 0 -

ANTICIPATED SOURCES (S) OF FUNDING:

	FY 05-06	FY 06-07
Federal	- 0 -	- 0 -
State	- 0 -	- 0 -
Local	- 0 -	- 0 -

III **ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:**

	FY 05-06	FY 06-07
Revenues	- 0 -	- 0 -

IV **ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

Advantages: Under current law, Department of Revenue audit findings are only sent to the Property Appraiser and the House/Senate Finance Committees. Past audits of the Broward County Property Appraiser's Office often found procedural, statistical

and analytical errors that we never made public. This proposal seeks to improve assessment standards and practices with the belief that public scrutiny and examination improves public performance.

Disadvantages: None

Economic Impact Statement
Page 2

V ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT: None

VI DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCES[S] OF DATA): None

Prepared by: Robert L. Wolfe, Jr.

Title: Government Relations Deputy

Representing: Lori Parrish, Broward County Property Appraiser

Phone: 954.445.5732 or media@bcpa.net

1 A bill to be entitled
2 An act relating to Broward County, Florida; requiring the
3 Property Appraiser of Broward County to forward a copy of
4 the findings of the Florida Department of Revenue
5 regarding the Broward County Assessment Rolls to the Mayor
6 of Broward County, each county commissioner, and the
7 county auditor; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. The Property Appraiser of Broward County shall,
12 within 90 days after receipt of the findings of the Florida
13 Department of Revenue regarding the Broward County Assessment
14 Rolls, forward a copy of the findings to the Mayor of Broward
15 County, each county commissioner, and the county auditor. The
16 results furnished to the Mayor of Broward County, each county
17 commissioner, and the county auditor shall include the same
18 results as furnished to the county property appraiser, such as
19 all statistical and analytical measures computed for the real
20 property assessment roll as a whole, the personal property
21 assessment roll as a whole, and, independently for the real
22 property classes and subclasses studied, results of any audit or
23 review of procedures used by the county property appraiser, and,
24 if Broward County is not being studied in the current year, any
25 value-weighted mean levels of assessment projected for that year
26 pursuant to state law.
27 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 Areas of Critical State Concern
SPONSOR(S): Sorensen
TIED BILLS: **IDEN./SIM. BILLS:** SB 2098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Camechis	Hamby
2) Fiscal Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs, and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development. Current law also establishes a process for removing the designation as an area of critical state concern upon the approval of the Administration Commission.

This bill:

- Creates a new process for removing the designation of the Florida Keys Area as an area of critical state concern if approved by the Administration Commission;
- Allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section;
- Provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the local government infrastructure surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation;
- Allows a land authority to acquire property when necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area. However, the land authority may only acquire property located within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation;
- Provides that a land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to exist and exercise all powers granted by law until terminated by law or action of the governing board;
- Allows an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to enact an ordinance governing sewerage systems; and
- Preserves existing state liability, if any, in regulatory takings cases if local regulations are unchanged.

The bill does not prohibit the future redesignation as an area of critical state concern if determined necessary by the Administration Commission.

This bill preserves existing taxing authority for certain areas of critical state concern, and preserves state liability, if any, in regulatory takings cases in the Florida Keys Area. The fiscal impact of these provisions is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides for the continued levy of taxes after designation as an area of critical state concern is removed.

Provide limited government: This bill may reduce the administrative burden on the Department of Community Affairs and the local governments in the Florida Keys Area of Critical State Concern.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Keys Area of Critical State Concern Generally

Florida's area of critical state concern program (ACSC) was created in 1972 as part of the Environmental Land and Water Management Act of 1972.[1] In 1979, the Legislature enacted s. 380.0552, F.S., designating by statute the Florida Keys Area of Critical State Concern.[2] In 1986, the Legislature substantially amended s. 380.0552, F.S., designating the section as the "Florida Keys Area Protection Act" and including provisions to provide legislative intent, ratify the administrative designation of the Florida Keys Area as an area of critical state concern, establish a process for removal of the designation, provide principles for guiding development, and establish a process for modifying comprehensive plans and land development regulations. The legislative intent of the Act is:

- To establish a land use management system that protects the natural environment of the Florida Keys.
- To establish a land use management system that conserves and promotes the community character of the Florida Keys.
- To establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services.
- To provide for affordable housing in close proximity to places of employment in the Florida Keys.
- To establish a land use management system that promotes and supports a diverse and sound economic base.
- To protect the constitutional rights of property owners to own, use, and dispose of their real property.
- To promote coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

Section 380.0552(9), F.S., provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element does not become effective until reviewed and approved by the Department of Community Affairs (DCA). Any local development regulation or comprehensive plan must be in compliance with the principles for guiding development set forth in s. 380.0552(7), F.S.

Section 380.0552(7), F.S., establishes principles for guiding development in the Florida Keys Area of Critical State Concern. State, regional, and local agencies and units of government in the Florida Keys Area must coordinate their plans and conduct their programs and regulatory activities consistent with the following principles for guiding development:

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[1] ch. 72-317, L.O.F.
[2] ch. 79-73, L.O.F.

- To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.
- To limit the adverse impacts of development on the quality of water throughout the Florida Keys.
- To enhance natural scenic resources, promote the aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.
- To protect the historical heritage of the Florida Keys.
- To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

    - The Florida Keys Aqueduct and water supply facilities;
    - Sewage collection and disposal facilities;
    - Solid waste collection and disposal facilities;
    - Key West Naval Air Station and other military facilities;
    - Transportation facilities;
    - Federal parks, wildlife refuges, and marine sanctuaries;
    - State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
    - City electric service and the Florida Keys Electric Co-op; and
    - Other utilities, as appropriate.

- To limit the adverse impacts of public investments on the environmental resources of the Florida Keys.
- To make available adequate affordable housing for all sectors of the population of the Florida Keys.
- To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan.
- To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

A process for removing the designation as an area of critical state concern is provided in s. 380.0552(4), F.S. Under this provision, the Department of Community Affairs (DCA) must recommend to the Administration Commission (Commission) the removal of the designation if the DCA determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area, continue to carry out the legislative intent, and are in compliance with the principles for guiding development. If the Commission concurs with the recommendations of the DCA to remove the designation, the Commission must, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The DCA must make this determination annually until the designation is removed.

Generally, the DCA reviews three basic requirements to determine whether to recommend to the Governor and Cabinet the repeal of the designation of an area of critical state concern:

- Adoption of adequate comprehensive plans consistent with the Principles for Guiding Development and the periodic evaluation of the plans;
- Adoption of adequate land development regulations to implement the plan and the Principles for Guiding Development; and
- Administration of the plans and regulations in a manner that ensures protection of the resources and the demonstration of proper implementation based upon the DCA's review and monitoring of the issuance of permits and development orders and the lack of any legal action filed by the DCA.

Administration Commission rule 28-20.110, F.A.C., establishes a 10-year work plan that, in effect, is an amendment to the county comprehensive plan. In 2003, the rule was amended to focus the plan on four issues: (1) habitat protection; (2) wastewater treatment; (3) storm water treatment; and (4) affordable housing. Currently, the county is in Year Nine of the workplan, which ends on July 12, 2006. The workplan objectives for Year Nine include initiation of the process to obtain bond financing secured by connection fees and securing sites for wastewater facilities. The objectives for Year Ten, which ends on July 12, 2007, relate exclusively to the construction, financing, and operation of wastewater treatment facilities. Pursuant to the rule, Monroe County and the DCA must report to the Commission on an annual basis documenting the degree to which the 10-year work program objectives have been achieved. The Commission must consider the findings and recommendations provided in the reports and determine whether substantial progress has been achieved toward accomplishing the tasks of the work program. On January 31, 2006, the Commission found that substantial progress had been made through Years Seven and Year Eight of the workplan.

In its 2005 Annual Report to the Administration Commission, the DCA identified four remaining critical needs in the Keys Area:

- Water quality improvement;
- Habitat protection;
- Affordable housing; and
- Hurricane evacuation.

In its report, the DCA indicated that "[t]he critical planning challenges still remaining in the Florida Keys continue to include funding for construction of wastewater treatment facilities, land acquisition for conservation purposes and affordable housing sites, elimination of direct discharge storm water outfalls, storm water retrofits for US Highway 1 and hurricane evacuation capability."

EFFECT OF PROPOSED CHANGES -- Section-by-Section Analysis

Section 1.

Current Situation

Currently, s. 125.0108, F.S., provides that any county creating a land authority pursuant to s. 380.0663(1), F.S., is authorized to levy by ordinance, in the area of the county designated as an area of critical state concern, a tourist impact tax, or throughout the county if the area or areas of critical state concern are greater than 50 percent of the land area of the county. The tax is not be effective unless and until land development regulations and a local comprehensive plan that meet the requirements of ch. 380, F.S., become effective and the tax is approved by referendum of the voters. The tourist impact tax must be levied at the rate of 1 percent of each dollar and major fraction thereof of the total consideration charged for such taxable privilege. Every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such establishment is exempt from the tax imposed

by s. 212.03, F.S., is exercising a taxable privilege. When receipt of consideration is by way of property other than money, the tax must be levied and imposed on the fair market value of such nonmonetary consideration.

All tax revenues generated by the tourist impact tax, less administrative costs, must be distributed as follows:

- Fifty percent must be transferred to the land authority to be used to purchase property in the area of critical state concern for which the revenue is generated. An amount not to exceed 5 percent may be used for administration and other costs incident to such purchases.
- Fifty percent must be distributed to the governing body of the county where the revenue was generated and must be used to offset the loss of ad valorem taxes due to acquisitions provided for by this act.

Effect of Proposed Changes

This section amends s. 125.0108, F.S., to allow a county that has levied the tourist impact tax authorized by this section in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section.

Section 2.

Current Situation

Section 212.055(2), F.S., authorizes the governing authority in each county to levy a discretionary sales surtax of 0.5 percent or 1 percent, also known as the Local Government Infrastructure Surtax. The levy of the surtax must be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and takes effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of the surtax may be extended only by approval of a majority of the electors of the county voting in a referendum.

The proceeds of the surtax and any interest accrued thereto must be expended by the school district or within the county and municipalities within the county or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection. Neither the proceeds nor any interest accrued thereto may be used for operational expenses of any infrastructure, except that any county with a population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection may use the proceeds or any interest

Under s. 212.055(2)(f), F.S., a county designated as an area of critical state concern on the effective date of the section, and that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

- The debt service obligations for any year are met;
- The county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S.; and

- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the surtax proceeds and interest.

In addition, those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section.

Effect of Proposed Changes

This bill amends s. 212.055(2)(f), F.S., to provide that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section after the removal of the designation.

Section 3.

Current Situation

A process for removing the designation as an area of critical state concern is provided in s. 380.0552(4), F.S. Under this provision, the DCA must recommend to the Administration Commission the removal of the designation if the DCA determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area, continue to carry out the legislative intent, and are in compliance with the principles for guiding development. If the Commission concurs with the recommendations of the DCA to remove the designation, the Commission must, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The DCA must make this determination annually until the designation is removed.

Effect of Proposed Changes

This bill amends s. 380.0552(4), F.S., to provide a new procedure for dedesignating the Florida Keys Area as an area of critical state concern. Under the new procedure, between July 12, 2007, and August 30, 2007, the DCA must submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. Subsequent to receipt of the report, the Commission must determine, prior to October 1, 2007, whether substantial progress has been achieved toward accomplishing the tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section is removed on October 1, 2007, unless the Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Commission must initiate rulemaking to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If, after receipt of the DCA's report, the Commission finds that substantial progress toward accomplishing the tasks of the work program has not been achieved, the Commission must provide a written report to the Monroe County Commission within 30 days after making such finding detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

If the designation of the Florida Keys Area as an area of critical state concern is not removed, the DCA must submit a written annual report to the Commission on November 1 of each year, until such time as the designation is removed, describing the progress of the Florida Keys Area toward accomplishing remaining tasks under the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. The Commission must determine, within 45 days after receipt of the annual report, whether substantial progress has been achieved toward accomplishing the remaining tasks of the work program. The designation of the

Florida Keys Area as an area of critical state concern under this section is removed unless the Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Commission must initiate rulemaking to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If the Commission finds that substantial progress has not been achieved, the Commission must provide to the Monroe County Commission, within 30 days after making its finding, a report detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

The term "work program" means the 10-year work program set forth in ch. 28-20.110, F.A.C., on January 1, 2006, excluding amendments to the work program that take effect after January 1, 2006.

Judicial review of the Administration Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program must be sought in the circuit court where the Commission maintains its headquarters or in the circuit court with jurisdiction over the Florida Keys Area. All proceedings must be initiated in accordance with the Florida Rules of Civil Procedure within 30 days after the Commission renders its determination. The Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program is not subject to administrative review under ch. 120, F.S., the Florida Administrative Procedure Act.

Section 4.

Current Situation

Section 380.0663, F.S., authorizes each county in which one or more areas of critical state concern are located to create, by ordinance, a land authority to be governed by the county commission. Section 380.0666, F.S., grants powers to these authorities, including the power to acquire and dispose of real and personal property or any interest therein when acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to very-low-income, low-income, or moderate-income persons, as defined in s. 420.0004[3], or provide access to management of acquired lands; to acquire interests in land by means of land exchanges; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority may make such acquisition only if:

- The acquisition is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;
- The property acquired is within an area designated as an area of critical state concern at the time of acquisition; and
- The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for

[3] "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

acquisition, to coordinate the acquisition and disposition of such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for eventual resale to other public land acquisition programs.

Effect of Proposed Changes

The bill amends s. 380.0666, F.S., to allow a land authority to acquire property when necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area. However, the land authority may only acquire property located within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation.

Section 5.

Current Situation

Section 380.0674, F.S., provides that the land authority and its corporate existence continue until terminated by law or action of the governing board of the county that established it; however, no such law or action may take effect so long as the land authority has bonds outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of the land authority, all its rights and properties in excess of its obligations pass to and be vested in the state.

Effect of Proposed Changes

This bill amends s. 380.0674, F.S., to provide that a land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to exist and exercise all powers granted by this chapter until terminated by law or action of the governing board.

Section 6.

Current Situation

Chapter 99-395, L.O.F., provides that notwithstanding any provision of ch. 380, part I, F.S., to the contrary, a local government within the Florida Keys Area of critical state concern may enact an ordinance that:

- Requires connection to a central sewerage system within 30 days of notice of availability of services; and
- Provides a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

Effect of Proposed Changes

This bill amends ch. 99-395, L.O.F., to allow an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to enact such an ordinance.

Section 7.

This bill provides that, if the designation of the Florida Keys Area as an area of critical state concern is removed, the state remains liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in ch. 28-29, F.A.C., and

adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), F.S. If, after the designation of the Florida Keys Area as an area of critical state concern is removed, an inverse condemnation action is initiated based upon land use regulations that were not adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission and in effect on the date of the designation's removal, the state's liability in the inverse condemnation action shall be determined by the courts in the manner in which the state's liability is determined in areas that are not areas of critical state concern. The state is provided standing to appear in any inverse condemnation action.

Section 8.

This section provides that the bill is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 125.0108, F.S.; authorizing the continued levy of the tourist impact tax in areas of critical state concern removed from designation.

Section 2. Amends s. 212.055, F.S.; authorizing certain counties to continue the use of a portion of local government infrastructure surtax proceeds for certain purposes after removal of designation of an area as an area of critical state concern.

Section 3. Amends s. 380.0552, F.S.; providing requirements, procedures, and criteria for Administration Commission removal of designation of the Florida Keys Area as an area of critical state concern; requiring removal of the designation under certain circumstances; providing for judicial review of Administration Commission determinations.

Section 4. Amends s. 380.0666, F.S.; revising the powers of a land authority in an area of critical state concern to acquire property to provide affordable housing; providing for continued power of a land authority to acquire property within an area of critical state concern removed from designation.

Section 5. Amends s. 380.0674, F.S.; providing for the continuation of a land authority in an area of critical state concern after removal of the designation.

Section 6. Amends s.4, ch. 99-395, L.O.F.; authorizing local governments in areas of critical state concern removed from designation to continue to enact ordinances relating to central sewerage systems.

Section 7. Provides for continuation of existing state liability in certain inverse condemnation actions related to the Florida Keys Area after removal of designation.

Section 8. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: This bill preserves existing state liability, if any, in regulatory takings cases if local regulations are unchanged. The fiscal impact of this provision, if any, is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section. The bill also provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation.

2. Expenditures: The reduction in administrative review requirements may reduce the costs to local governments of obtaining approval of comprehensive plans, plan amendments, and land use regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section. The bill also provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill does not appear to be subject to the provisions of Art. XII, s. 8(a)(b)or (c), State constitution, regarding mandates.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill requires the Administration Commission to initiate rulemaking to repeal rules related to the Florida Keys Area of Critical State Concern upon removal of its designation as an area of critical state concern.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Representative Sorensen may offer amendments at the Local Government Council meeting for the purpose of:

- Modifying the provision governing appeals of Administration Commission decisions to the circuit court for clarification purposes and to establish venue in Leon County;
- Requiring, after designation as an area of critical state concern is removed, review of future proposed comprehensive plans and plan amendments for compliance with the adoption of construction schedules for wastewater facilities improvements in the annually adopted Capital

Improvements Element and adoption of standards for the construction of wastewater treatment facilities, as well as compliance with the adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours;

- Allowing the county to continue levying the tourist impact tax after 20 years only if the county adopts an ordinance reauthorizing levy of the tax and the continued levy of the tax is approved by referendum; and
- Allowing a county to continue using up to 10 percent of the Local Infrastructure Surtax proceeds for any public purpose other than for infrastructure only if the county adopts an ordinance providing for such continued use of the surtax proceeds.

1 A bill to be entitled
2 An act relating to areas of critical state concern;
3 amending s. 125.0108, F.S.; authorizing the continued levy
4 of the tourist impact tax in areas of critical state
5 concern removed from designation; amending s. 212.055,
6 F.S.; authorizing certain counties to continue the use of
7 a portion of local government infrastructure surtax
8 proceeds for certain purposes after removal of designation
9 of an area as an area of critical state concern; amending
10 s. 380.0552, F.S.; providing requirements, procedures, and
11 criteria for Administration Commission removal of
12 designation of the Florida Keys Area as an area of
13 critical state concern; requiring removal of the
14 designation under certain circumstances; providing for
15 judicial review of Administration Commission
16 determinations; amending s. 380.0666, F.S.; revising the
17 powers of a land authority in an area of critical state
18 concern to acquire property to provide affordable housing;
19 providing for continued power of a land authority to
20 acquire property within an area of critical state concern
21 removed from designation; amending s. 380.0674, F.S.;
22 providing for the continuation of a land authority in an
23 area of critical state concern after removal of the
24 designation; amending s.4, ch. 99-395, Laws of Florida;
25 authorizing local governments in areas of critical state
26 concern removed from designation to continue to enact
27 ordinances relating to central sewerage systems; providing
28 for continuation of existing state liability in certain

29 inverse condemnation actions related to the Florida Keys
30 Area after removal of designation; providing an effective
31 date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Paragraph (g) is added to subsection (1) of
36 section 125.0108, Florida Statutes, to read:
37 125.0108 Areas of critical state concern; tourist impact
38 tax.--
39 (1)
40 (g) A county that has levied the tourist impact tax
41 authorized by this section in an area or areas designated as an
42 area of critical state concern for at least 20 consecutive years
43 prior to removal of the designation may continue to levy the
44 tourist impact tax in accordance with this section.
45 Section 2. Paragraph (f) of subsection (2) of section
46 212.055, Florida Statutes, is amended to read:
47 212.055 Discretionary sales surtaxes; legislative intent;
48 authorization and use of proceeds.--It is the legislative intent
49 that any authorization for imposition of a discretionary sales
50 surtax shall be published in the Florida Statutes as a
51 subsection of this section, irrespective of the duration of the
52 levy. Each enactment shall specify the types of counties
53 authorized to levy; the rate or rates which may be imposed; the
54 maximum length of time the surtax may be imposed, if any; the
55 procedure which must be followed to secure voter approval, if
56 required; the purpose for which the proceeds may be expended;

57 and such other requirements as the Legislature may provide.
58 Taxable transactions and administrative procedures shall be as
59 provided in s. 212.054.
60 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--
61 (f)1. Notwithstanding paragraph (d), a county that has a
62 population of 50,000 or less on April 1, 1992, or any county
63 designated as an area of critical state concern on the effective
64 date of this act, and that imposed the surtax before July 1,
65 1992, may use the proceeds and interest of the surtax for any
66 public purpose if:
67 a. The debt service obligations for any year are met;
68 b. The county's comprehensive plan has been determined to
69 be in compliance with part II of chapter 163; and
70 c. The county has adopted an amendment to the surtax
71 ordinance pursuant to the procedure provided in s. 125.66
72 authorizing additional uses of the surtax proceeds and interest.
73 2. A municipality located within a county that has a
74 population of 50,000 or less on April 1, 1992, or within a
75 county designated as an area of critical state concern on the
76 effective date of this act, and that imposed the surtax before
77 July 1, 1992, may not use the proceeds and interest of the
78 surtax for any purpose other than an infrastructure purpose
79 authorized in paragraph (d) unless the municipality's
80 comprehensive plan has been determined to be in compliance with
81 part II of chapter 163 and the municipality has adopted an
82 amendment to its surtax ordinance or resolution pursuant to the
83 procedure provided in s. 166.041 authorizing additional uses of
84 the surtax proceeds and interest. Such municipality may expend

85 the surtax proceeds and interest for any public purpose
86 authorized in the amendment.
87 3. Those counties designated as an area of critical state
88 concern which qualify to use the surtax for any public purpose
89 may use only up to 10 percent of the surtax proceeds for any
90 public purpose other than for infrastructure purposes authorized
91 by this section. A county that was designated as an area of
92 critical state concern for at least 20 consecutive years prior
93 to removal of the designation, and that qualified to use the
94 surtax for any public purpose at the time of the removal of the
95 designation, may continue to use up to 10 percent of the surtax
96 proceeds for any public purpose other than for infrastructure
97 purposes authorized by this section after the removal of the
98 designation.
99 Section 3. Subsection (4) of section 380.0552, Florida
100 Statutes, is amended to read:
101 380.0552 Florida Keys Area; protection and designation as
102 area of critical state concern.--
103 (4) REMOVAL OF DESIGNATION.--
104 (a) Between July 12, 2007, and August 30, 2007, the state
105 land planning agency shall submit a written report to the
106 Administration Commission describing in detail the progress of
107 the Florida Keys Area toward accomplishing the tasks of the work
108 program as defined in paragraph (c) and providing a
109 recommendation as to whether substantial progress toward
110 accomplishing the tasks of the work program has been achieved.
111 Subsequent to receipt of the report, the Administration
112 Commission shall determine, prior to October 1, 2007, whether

113 substantial progress has been achieved toward accomplishing the
114 tasks of the work program. The designation of the Florida Keys
115 Area as an area of critical state concern under this section
116 shall be removed October 1, 2007, unless the Administration
117 Commission finds, after receipt of the state land planning
118 agency report, that substantial progress has not been achieved
119 toward accomplishing the tasks of the work program. If the
120 designation of the Florida Keys Area as an area of critical
121 state concern is removed, the Administration Commission, within
122 60 days after removal of the designation, shall initiate
123 rulemaking pursuant to chapter 120 to repeal any rules relating
124 to the designation of the Florida Keys Area as an area of
125 critical state concern. If, after receipt of the state land
126 planning agency's report, the Administration Commission finds
127 that substantial progress toward accomplishing the tasks of the
128 work program has not been achieved, the Administration
129 Commission shall provide a written report to the Monroe County
130 Commission within 30 days after making such finding detailing
131 the tasks under the work program that must be accomplished in
132 order for substantial progress to be achieved within the next 12
133 months.
134 (b) If the designation of the Florida Keys Area as an area
135 of critical state concern is not removed in accordance with
136 paragraph (a), the state land planning agency shall submit a
137 written annual report to the Administration Commission on
138 November 1 of each year, until such time as the designation is
139 removed, describing the progress of the Florida Keys Area toward
140 accomplishing remaining tasks under the work program and

141 providing a recommendation as to whether substantial progress
142 toward accomplishing the tasks of the work program has been
143 achieved. The Administration Commission shall determine, within
144 45 days after receipt of the annual report, whether substantial
145 progress has been achieved toward accomplishing the remaining
146 tasks of the work program. The designation of the Florida Keys
147 Area as an area of critical state concern under this section
148 shall be removed unless the Administration Commission finds that
149 substantial progress has not been achieved toward accomplishing
150 the tasks of the work program. If the designation of the Florida
151 Keys Area as an area of critical state concern is removed, the
152 Administration Commission, within 60 days after removal of the
153 designation, shall initiate rulemaking pursuant to chapter 120
154 to repeal any rules relating to the designation of the Florida
155 Keys Area as an area of critical state concern. If the
156 Administration Commission finds that substantial progress has
157 not been achieved, the Administration Commission shall provide
158 to the Monroe County Commission, within 30 days after making its
159 finding, a report detailing the tasks under the work program
160 that must be accomplished in order for substantial progress to
161 be achieved within the next 12 months.
162 (c) For purposes of this subsection, the term "work
163 program" means the 10-year work program as set forth in chapter
164 28-20.110, Florida Administrative Code, on January 1, 2006,
165 excluding amendments to the work program that take effect after
166 January 1, 2006.
167 (d) Judicial review of the Administration Commission's
168 determination as to whether substantial progress has been made

169 toward accomplishing the tasks of the work program shall be
170 sought in the circuit court where the Administration Commission
171 maintains its headquarters or in the circuit court with
172 jurisdiction over the Florida Keys Area as described in chapter
173 28-29, Florida Administrative Code. All proceedings shall be
174 initiated in accordance with the Florida Rules of Civil
175 Procedure within 30 days after the Administration Commission
176 renders its determination. The Administration Commission's
177 determination as to whether substantial progress has been made
178 toward accomplishing the tasks of the work program shall not be
179 subject to administrative review under chapter 120. ~~The state~~
180 ~~land planning agency, following July 15, 1990, shall recommend~~
181 ~~to the Administration Commission the removal of the designation~~
182 ~~specified in subsection (3) if it determines that all local land~~
183 ~~development regulations and local comprehensive plans and the~~
184 ~~administration of such regulations and plans are adequate to~~
185 ~~protect the Florida Keys Area and continue to carry out the~~
186 ~~legislative intent incorporated in subsection (2) and are in~~
187 ~~compliance with the principles for guiding development~~
188 ~~incorporated in subsection (7). If the Administration Commission~~
189 ~~concurs with the recommendations of the state land planning~~
190 ~~agency to remove the designation, it shall, within 45 days of~~
191 ~~receipt of the recommendation, initiate rulemaking to remove the~~
192 ~~designation. The state land planning agency shall thereafter~~
193 ~~make said determination annually, until such time as the~~
194 ~~designation is removed.~~
195 Section 4. Subsection (3) of section 380.0666, Florida
196 Statutes, is amended to read:

197 380.0666 Powers of land authority.--The land authority
198 shall have all the powers necessary or convenient to carry out
199 and effectuate the purposes and provisions of this act,
200 including the following powers, which are in addition to all
201 other powers granted by other provisions of this act:
202 (3) To acquire and dispose of real and personal property
203 or any interest therein when such acquisition is necessary or
204 appropriate to protect the natural environment, provide public
205 access or public recreational facilities, preserve wildlife
206 habitat areas, provide affordable housing to families whose
207 income does not exceed 160 percent of the median family income
208 for the area ~~very low-income, low-income, or moderate-income~~
209 ~~persons, as defined in s. 420.0004~~, or provide access to
210 management of acquired lands; to acquire interests in land by
211 means of land exchanges; and to enter into all alternatives to
212 the acquisition of fee interests in land, including, but not
213 limited to, the acquisition of easements, development rights,
214 life estates, leases, and leaseback arrangements. However, the
215 land authority shall make such acquisition only if:
216 (a) Such acquisition is consistent with land development
217 regulations and local comprehensive plans adopted and approved
218 pursuant to this chapter;
219 (b) The property acquired is within an area designated as
220 an area of critical state concern at the time of acquisition or
221 is within an area that was designated as an area of critical
222 state concern for at least 20 consecutive years prior to removal
223 of the designation; and

224 (c) The property to be acquired has not been selected for
225 purchase through another local, regional, state, or federal
226 public land acquisition program. Such restriction shall not
227 apply if the land authority cooperates with the other public
228 land acquisition programs which listed the lands for
229 acquisition, to coordinate the acquisition and disposition of
230 such lands. In such cases, the land authority may enter into
231 contractual or other agreements to acquire lands jointly or for
232 eventual resale to other public land acquisition programs.
233 Section 5. Section 380.0674, Florida Statutes, is amended
234 to read:
235 380.0674 Corporate existence.--
236 (1) The land authority and its corporate existence shall
237 continue until terminated by law or action of the governing
238 board of the county that established it; however, no such law or
239 action shall take effect so long as the land authority shall
240 have bonds outstanding unless adequate provision has been made
241 for the payment thereof. Upon termination of the existence of
242 the land authority, all its rights and properties in excess of
243 its obligations shall pass to and be vested in the state.
244 (2) A land authority created by a county in which one or
245 more areas have been designated as an area of critical state
246 concern for at least 20 consecutive years prior to removal of
247 the designation shall continue to exist and exercise all powers
248 granted by this chapter until terminated by law or action of the
249 governing board pursuant to subsection (1).
250 Section 6. Section 4 of chapter 99-395, Laws of Florida,
251 is amended to read:

252 Section 4. Notwithstanding any provision of chapter 380,
253 part I, to the contrary, a local government within the Florida
254 Keys area of critical state concern or an area that was
255 designated as an area of critical state concern for at least 20
256 consecutive years prior to removal of the designation may enact
257 an ordinance that:
258 (1) Requires connection to a central sewerage system
259 within 30 days of notice of availability of services; and
260 (2) Provides a definition of onsite sewage treatment and
261 disposal systems that does not exclude package sewage treatment
262 facilities if such facilities are in full compliance with all
263 regulatory requirements and treat sewage to advanced wastewater
264 treatment standards or utilize effluent reuse as their primary
265 method of effluent disposal.
266 Section 7. If the designation of the Florida Keys Area as
267 an area of critical state concern is removed, the state shall be
268 liable in any inverse condemnation action initiated as a result
269 of Monroe County land use regulations applicable to the Florida
270 Keys Area as described in chapter 28-29, Florida Administrative
271 Code, and adopted pursuant to instructions from the
272 Administration Commission or pursuant to administrative rule of
273 the Administration Commission, to the same extent that the state
274 was liable on the date the Administration Commission determined
275 that substantial progress had been made toward accomplishing the
276 tasks of the work program as defined in s. 380.0552(4)(c),
277 Florida Statutes. If, after the designation of the Florida Keys
278 Area as an area of critical state concern is removed, an inverse
279 condemnation action is initiated based upon land use regulations

280 that were not adopted pursuant to instructions from the
281 Administration Commission or pursuant to administrative rule of
282 the Administration Commission and in effect on the date of the
283 designation's removal, the state's liability in the inverse
284 condemnation action shall be determined by the courts in the
285 manner in which the state's liability is determined in areas
286 that are not areas of critical state concern. The state shall
287 have standing to appear in any inverse condemnation action.
288 Section 8. This act shall take effect July 1, 2006.

Bill No. **HB 1299**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government Council
2 Representative(s) Sorensen offered the following:
3
4 **Amendment**
5 Remove line(s) 37-98 and insert:
6 125.0108 Areas of critical state concern; tourist impact
7 tax.--
8 (1)
9 (g) A county that has levied the tourist impact tax
10 authorized by this section in an area or areas designated as an
11 area of critical state concern for at least 20 consecutive years
12 prior to removal of the designation may continue to levy the
13 tourist impact tax in accordance with this section for 20 years
14 following removal of the designation. After expiration of the 20
15 year period, a county may continue to levy the tourist impact
16 tax authorized by this section if the county adopts an ordinance
17 reauthorizing levy of the tax and the continued levy of the tax
18 is approved by referendum as provided for in subsection (5).
19 Section 2. Paragraph (f) of subsection (2) of section
20 212.055, Florida Statutes, is amended to read:

21 212.055 Discretionary sales surtaxes; legislative intent;
22 authorization and use of proceeds.--It is the legislative intent
23 that any authorization for imposition of a discretionary sales
24 surtax shall be published in the Florida Statutes as a
25 subsection of this section, irrespective of the duration of the
26 levy. Each enactment shall specify the types of counties
27 authorized to levy; the rate or rates which may be imposed; the
28 maximum length of time the surtax may be imposed, if any; the
29 procedure which must be followed to secure voter approval, if
30 required; the purpose for which the proceeds may be expended;
31 and such other requirements as the Legislature may provide.
32 Taxable transactions and administrative procedures shall be as
33 provided in s. 212.054.
34 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--
35 (f)1. Notwithstanding paragraph (d), a county that has a
36 population of 50,000 or less on April 1, 1992, or any county
37 designated as an area of critical state concern on the effective
38 date of this act, and that imposed the surtax before July 1,
39 1992, may use the proceeds and interest of the surtax for any
40 public purpose if:
41 a. The debt service obligations for any year are met;
42 b. The county's comprehensive plan has been determined to
43 be in compliance with part II of chapter 163; and
44 c. The county has adopted an amendment to the surtax
45 ordinance pursuant to the procedure provided in s. 125.66
46 authorizing additional uses of the surtax proceeds and interest.
47 2. A municipality located within a county that has a
48 population of 50,000 or less on April 1, 1992, or within a
49 county designated as an area of critical state concern on the
50 effective date of this act, and that imposed the surtax before

51 July 1, 1992, may not use the proceeds and interest of the
52 surtax for any purpose other than an infrastructure purpose
53 authorized in paragraph (d) unless the municipality's
54 comprehensive plan has been determined to be in compliance with
55 part II of chapter 163 and the municipality has adopted an
56 amendment to its surtax ordinance or resolution pursuant to the
57 procedure provided in s. 166.041 authorizing additional uses of
58 the surtax proceeds and interest. Such municipality may expend
59 the surtax proceeds and interest for any public purpose
60 authorized in the amendment.
61 3. Those counties designated as an area of critical state
62 concern which qualify to use the surtax for any public purpose
63 may use only up to 10 percent of the surtax proceeds for any
64 public purpose other than for infrastructure purposes authorized
65 by this section. A county that was designated as an area of
66 critical state concern for at least 20 consecutive years prior
67 to removal of the designation, and that qualified to use the
68 surtax for any public purpose at the time of the removal of the
69 designation, may continue to use up to 10 percent of the surtax
70 proceeds for any public purpose other than for infrastructure
71 purposes for 20 years following removal of the designation
72 notwithstanding (2)(a)2. After expiration of the 20 year
73 period, a county may continue to use up to 10 percent of the
74 surtax proceeds for any public purpose other than for
75 infrastructure if the county adopts an ordinance providing for
76 such continued use of the surtax proceeds.

Bill No. **HB 1299**

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)
ADOPTED AS AMENDED __ (Y/N)
ADOPTED W/O OBJECTION __ (Y/N)
FAILED TO ADOPT __ (Y/N)
WITHDRAWN __ (Y/N)
OTHER ____

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1 Council/Committee hearing bill: Local Government Council
2 Representative(s) Sorensen offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 167-179 and insert:
6 (d) The determination of the Administration Commission as
7 to whether substantial progress has been made toward
8 accomplishing the tasks of the work program may be judicially
9 reviewed pursuant to chapter 86. All proceedings shall be
10 conducted in the circuit court where the Administration
11 Commission maintains its headquarters, and shall be initiated
12 within 30 days after rendition of the Administration Commission
13 determination. The Administration Commission's determination as
14 to whether substantial progress has been made toward
15 accomplishing the tasks of the work program shall be upheld if
16 it is fairly debatable and shall not be subject to
17 administrative review under chapter 120.
18 (e) After removal of the designation as an area of
19 critical state concern, the state land planning agency shall
20 review proposed local comprehensive plans, and any amendments to
21 existing comprehensive plans, which are applicable to the

22 Florida Keys Area, the boundaries of which were described in
23 chapter 28-29, Florida Administrative Code, as of January 1,
24 2006, for compliance with subparagraphs 1. and 2. in addition to
25 reviewing proposed local comprehensive plans and amendments for
26 compliance as defined in s. 163.3184. All procedures and
27 penalties described in s. 163.3184 shall be applicable to the
28 review conducted pursuant to this paragraph.
29 1. Adoption of construction schedules for wastewater
30 facilities improvements in the annually adopted Capital
31 Improvements Element and adoption of standards for the
32 construction of wastewater treatment facilities that meet or
33 exceed the criteria of Chapter 99-395, Laws of Florida.
34 2. Adoption of goals, objectives, and policies to protect
35 public safety and welfare in the event of a natural disaster by
36 maintaining a hurricane evacuation clearance time for permanent
37 residents of no more than 24 hours. The hurricane evacuation
38 clearance time shall be determined by a hurricane evacuation
39 study conducted in accordance with a professionally accepted
40 methodology and approved by the state land planning agency. ~~The~~
41 ~~state~~
42
43 ========== T I T L E A M E N D M E N T ==========
44 Remove line 16 and insert:
45 determinations; requiring review of proposed comprehensive
46 plans and amendments to existing plans after removal of
47 designation and providing review criteria; amending s. 380.0666,
48 F.S.; revising the
49

HB 1303

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1303 Hardee County Economic Development Authority, Hardee County
SPONSOR(S): Troutman
TIED BILLS: **IDEN./SIM. BILLS:** SB 2758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Smith T.L.S.	Hamby
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Hardee County Economic Development Authority (authority) was created in 2004 by chapter 2004-394, L.O.F., in accordance with section 211.3103(3)(b)3., F.S. The purpose of the authority is to solicit, rank, and fund projects that provide economic development opportunities and infrastructure within the geographic boundaries of Hardee County and to otherwise maximize the use of federal, local, and private resources as provided by section 211.3103(5), F.S. The authority consists of nine members serving staggered terms.

HB 1303 revises the membership of the Hardee County Economic Development Authority by removing the Secretary of the Florida Department of Community Affairs and replacing the member of the Authority with the director of the Agency for Workforce Innovation or its successor agency or the director's designee.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Hardee County Economic Development Authority (authority) was created in 2004 by chapter 2004-394, L.O.F., in accordance with section 211.3103(3)(b)3., F.S. The purpose of the authority is to solicit, rank, and fund projects that provide economic development opportunities and infrastructure within the geographic boundaries of Hardee County and to otherwise maximize the use of federal, local, and private resources as provided by section 211.3103(5), F.S., and for its administrative and other costs as provided by its enabling law.

The authority consists of nine members serving staggered terms and selected in the following manner:

- The President of the Hardee County Farm Bureau or the president's designee for an initial term of 3 years;
- The Secretary of the Florida Department of Community Affairs or the secretary's designee for an initial term of 2 years;
- The chairman of Enterprise Florida or the chairman's designee for an initial term of 2 years;
- The chairman of the Florida Phosphate Council or the chairman's designee for an initial term of 3 years;
- The president of the Hardee County Chamber of Commerce or the president's designee for an initial term of 3 years; and
- Four members appointed by the commission.

After completion of the initial term, each appointed member serves a term of 3 years. The members select a chair from their members for a period of 2 years and may elect other officers as they designate in the written bylaws of the authority. Each member of the authority serves without compensation, except that members who reside outside the county may be reimbursed for travel and per diem expenses as provided by general law.

Effect of Proposed Changes

The bill revises the membership of the Hardee County Economic Development Authority by removing the Secretary of the Florida Department of Community Affairs and replacing the member of the Authority with the director of the Agency for Workforce Innovation or its successor agency or the director's designee.

C. SECTION DIRECTORY:

Section 1: Amends paragraph (b) of subsection (1) of section 3 of chapter 2004-394, relating to the composition of the Hardee County Economic Development Authority board members.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 26, 2006.

WHERE? *The Herald-Advocate*, Wauchula, Hardee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

AFFIDAVIT OF PUBLICATION

The Herald-Advocate

Published Weekly at Wauchula, Florida

STATE OF FLORIDA,
COUNTY OF HARDEE

Before the undersigned authority personally appeared Denise Moye who on oath says he is the bookkeeper of The Herald-Advocate, a newspaper published at Wauchula, in Hardee County, Florida; that the attached copy of advertisement, being a Notice of legislation in the matter of Hardee Co. Economic Dev. Authority in the _____ Court, was published in said newspaper in the issues of January 26, 2006

Affiant further says that the said Herald-Advocate is a newspaper published at Wauchula, in said Hardee County, Florida, and that the said newspaper has heretofore been continuously published in said Hardee County, Florida, each week and has been entered as second class mail matter at the post office in Wauchula, in said Hardee County, Florida, for a period of one year next preceding the publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Denise Moye

Sworn to and subscribed before me this 26 day of January A.D. 20 06.

Amy Faye Brown
Notary Public

My Commission Expires June 22, 20 08

AMY FAYE BROWN
Notary Public - State of Florida
My Commission Expires Jun 22, 2008
Commission # DD328603
Bonded By National Notary Assn.

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned intends to apply to the 2006 Legislature of the State of Florida at its regular session held in the year 2006, or at a subsequent special session, for passage of an act to be entitled:

An act relating to Hardee County Economic Development Authority, Hardee County; amending Chapter 2004-394, Laws of Florida; revising the membership of the Hardee County Economic Development Authority; providing an effective date.

Dated at Wauchula, Florida, this 26th day of January, 2006.

Senator J. D. Alexander
Representative Baxter Troutman

01:26

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: 1303

SPONSOR(S): Senator Alexander / Rep. Troutman

RELATING TO: Hardee County Economic Development
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Hardee County Legislative Delegation Authorit

CONTACT PERSON: Drew Love

PHONE # and E-Mail: 850-488-9465 / drew.love@myflorida house.gov

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: 11/04/2005

Location: Wauchula, FL

(3) Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [X]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [01/26/06 **]**

Where? Herald Advocate **County** Hardee

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Delegation Chair (*Original Signature*) **Date** 3/20/06

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: 1303

SPONSOR(S): Senator JD Alexander & Representative Baxter Troutman

RELATING TO: Hardee County Economic Development Authority
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures: FY 06-07 FY 07-08

SEE ATTACHED LETTER

II. ANTICIPATED SOURCE(S) OF FUNDING:

Federal: FY 06-07 FY 07-08

State: SEE ATTACHED LETTER

Local:

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues: FY 06-07 FY 07-08

SEE ATTACHED LETTER

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

SEE ATTACHED LETTER

Disadvantages:

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

See Attached Letter

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

See Attached Letter

PREPARED BY: Janice Williamson 02/06/06
[Must be signed by Preparer] Date

TITLE: Director of Finance, Hardee County

REPRESENTING: Hardee County

PHONE: (863-773-3199)

E-Mail Address: janice.williamson@hardeecounty.net

1 A bill to be entitled
2 An act relating to the Hardee County Economic Development
3 Authority, Hardee County; amending chapter 2004-394, Laws
4 of Florida; revising the membership of the Hardee County
5 Economic Development Authority; providing an effective
6 date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (b) of subsection (1) of section 3 of
11 chapter 2004-394, Laws of Florida, is amended to read:
12 Section 3. Authority composition; procedures.--
13 (1) The authority shall consist of nine members serving
14 staggered terms and selected in the following manner:
15 (b) The director ~~Secretary~~ of the Agency for Workforce
16 Innovation ~~Florida Department of Community Affairs~~ or its
17 successor agency or the director's ~~secretary's~~ designee for an
18 initial term of 2 years;
19 Section 2. This act shall take effect upon becoming a law.

HB 1335

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1335 Monroe County
SPONSOR(S): Sorensen
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Nelson	Hamby
2) Governmental Operations Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1335 provides that one or more members of the Monroe County Board of County Commissions who participate in a special meeting through the use of teleconferencing equipment shall be deemed in attendance for purposes of establishing a quorum. "Teleconferencing equipment" is defined to mean the electronic transmission of audio, full-motion video, freeze-frame video, compressed video and digital video by any method available that allows a person in one location to meet with another person in a different location. The bill also provides that special meetings authorized by the act must comply with the provisions of current general law.

The act has an effective date of July1, 2006, and is repealed in one year.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

NON-CHARTER COUNTY GOVERNMENT

Counties not operating under county charters have such power of self-government as is provided by general or special law. See, s.1 (f) of Art. VIII of the State Constitution. Section 125.001, F.S. provides that regular and special meetings of a board of county commissioners may be held at any appropriate public place in the county upon the giving of due public notice. Section 125.01(a), F.S., provides that the legislative and governing body of a county has the power to set the time and place of its official meetings.

THE ADMINISTRATIVE PROCEDURES ACT

Section 120.54(5)(b)2., F.S., of the Administrative Procedure Act, states that the uniform rules adopted by the Administration Commission must include "uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ." These rules must provide that all evidence, testimony and argument presented be afforded equal consideration, regardless of the method of communication. A notice is required to state if a public meeting, hearing or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means. The notice for public meetings, hearings and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available. Nothing in this subsection is to be construed to diminish the right to inspect public records under ch. 119, F.S. Limiting points of access to public meetings, hearings and workshops subject to the provisions of s. 286.011, F.S., to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. This section provides that other laws relating to public meetings, hearings and workshops, including penal and remedial provisions, apply to public meetings, hearings and workshops conducted by means of communications media technology, and will be liberally construed in their application to such public meetings, hearings and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video and digital video by any method available.

NOTICES OF MEETINGS AND HEARINGS; RECORD REQUIRED TO APPEAL

Section 286.0105, F.S., provides that:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the

testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW

Section 286.011, F.S., provides, in relevant part, that:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings."

FLORIDA'S VOTING REQUIREMENT LAW

Section 286.012, F.S., provides:

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

Effect of Proposed Changes

Monroe County, Florida, has a non-charter government. The Board of County Commissioners consists of five members elected at large for staggered terms of four years in the November general election in even years. Regular meetings are held every three weeks on a rotating basis at Key Largo Library in the Upper Keys, the Marathon Government Center, and the Commission Chambers of the Harvey Government Center at Historic Truman School in Key West. When there are conflicting schedules, meetings are held at other locations.

HB 1335 provides that one or more members of the Monroe County Board of County Commissions who participate in a special meeting through the use of teleconferencing equipment shall be deemed in attendance for purposes of establishing a quorum. "Teleconferencing equipment" is defined to mean the electronic transmission of audio, full-motion video, freeze-frame video, compressed video and digital video by any method available that allows a person in one location to meet with another person in a different location.

The bill also provides that special meetings authorized by the act must comply with the provisions of ss. 286.0105, 286.011, and 286.012, F. S. These provisions require, respectively, that the county commission advise in their meeting notices that a record of the proceedings is required to appeal; that the county commission hold its meetings in compliance with the Sunshine Law, and that the county commission comply with Florida's voting requirement law. All meetings of these groups are required to comply with these laws so this language is inconsequential.

The bill prefaces the allowance of teleconferencing equipment on the exclusion of the provisions of s. 120.54(5)(b)2., F.S. While there is no question that a county commission is an "agency"[1] for purposes of application of ch.120, F.S., the language of s.120.54(5)(b)2., F.S., limits its terms only to uniform rules for state agencies.

[1] See, s. 120.52(1)(c), F.S.., defining "agency" for purposes of Ch. 120 to include "each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions...."

Theoretically, this bill could allow the entire county board to conduct a meeting and public business via telephone. See, Section III A, "Constitutional Issues," of this analysis.

The bill provides for an effective date of July 1, 2006, and provides that the special act will be repealed on June 30, 2007.

C. SECTION DIRECTORY:

Section 1: Provides definitions; provides for a quorum using teleconferencing equipment; requires that meetings must comply with the provisions of ss. 286.0105, 286.011, and 286.012, F.S.; provides for repeal of special act on June 30, 2007.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 27 and 28, 2006

WHERE? *The Reporter*, a weekly newspaper published in Monroe County, Florida, and *The Citizen*, a daily newspaper published in Monroe County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, this bill will have a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 24 (b) of Art. 1 of the State Constitution, provides:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and

the compliance of such meetings with Florida's public meetings laws. In AGO 92-44, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., required that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present at the public place. A similar conclusion was reached in AGO 98-28, which concluded that a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site.

However, in general, the OAG has displayed a reluctance to allow local board members to use telecommunications media:

> "Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."[2]

The OAG has argued that concerns about the validity of official actions taken by a public body when less than a quorum is present requires a very conservative reading of the statutes. Thus, the OAG has concluded that, in the absence of a statute to the contrary, a quorum of the members must be physically present at a meeting in order to take action.[3]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Sponsor may want to consider an amendment which deletes the language on Lines 21 and 22 which states "Notwithstanding section 120.54(5)(b)2., Florida Statutes," as this provision does not apply to local governments.

Other Comments

The County Administrator for Monroe County has indicted that Monroe County's geography as a 140-mile chain of islands connected by bridges and a single road necessitates the use of teleconferencing equipment to conduct public meetings. He indicates that Monroe County would like to receive legislative approval under a one-year "test program." According to the administrator, the use of technology would:

- allow greater public access and input by residents of the county regardless of the meeting location or the location of the resident;
- allow county commissioners to attend board meetings held outside their districts without the need to travel up to 100-plus miles; and

---

[2] See, AGO 98-28.

[3] See, AGOs 83-100, and 89-39, quoting 62 C.J.S. Municipal Corporations s. 399, p. 757, which provides: "In order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone."

- save considerable salary and travel expenses by reducing the need for staff to travel to attend board meetings.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill in that it may provide an exemption to Florida law regarding public meetings.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Your Upper Keys Connection

THE REPORTER

P.O. Box 1197 • Tavernier, Florida 33070-1197
(305) 852-3216 Fax: (305) 852-0199

PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF MONROE

Before the undersigned authority personally appeared JON O'NEILL who on oath, says that he is EDITOR of THE REPORTER, a weekly newspaper entitled to publish legal advertising published at Tavernier, Monroe County, Florida: that the attached copy of advertisement, being LEGAL NOTICE in said newspaper in the issue of:

January 27th 2006

Affiant further says that THE REPORTER is a newspaper published at Tavernier, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in the said Monroe County, Florida, each week (on Friday), and has been entered as second class mail matter at the Post Office in Tavernier, in said County of Monroe, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any firm, person, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper and that The Reporter is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Sworn to and subscribed before me this 27th day of January 2006.

MARGARET J. WHISENHUNT
MY COMMISSION #DD443753
EXPIRES: JUN 22, 2009
Bonded through 1st State Insurance

Margaret J. Whisenhunt
Notary 1/27/06

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Legislature and any Special or Extended Sessions for passage of an act relating to Monroe County authorizing teleconferencing attendance by county commissioners of Monroe County to obtain and qualify a quorum at special meetings. The act would allow a county commissioner to be present for purposes of obtaining a quorum of the Board of County Commissioners by means of teleconferencing technology. It is proposed to be effective for a trial period of one year commencing July 1, 2006 and ending June 30, 2007. The act does not apply to regular monthly meetings of the Board of County Commissioners.

Copies of the proposed bill are available at the office of Representative Ken Sorensen, 90311 Overseas Highway, Tavernier, Florida and at the office of the Monroe County Administrator, 1100 Simonton Street, Key West, Florida.

Dated this 24th day of January, 2006.

Publish: 1/27/06, The Reporter, Tavernier, FL 33070 Ad# 12318

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Legislature and any Special or Extended Sessions for passage of an act relating to Monroe County authorizing teleconferencing attendance by county commissioners of Monroe County to obtain and qualify a quorum at special meetings. The act would allow a county commissioner to be present for purposes of obtaining a quorum of the Board of County Commissioners by means of teleconferencing technology. It is proposed to be effective for a trial period of one year commencing July 1, 2006 and ending June 30, 2007. The act does not apply to regular monthly meetings of the Board of County Commissioners.

Copies of the proposed bill are available at the office of Representative Ken Sorensen, 90311 Overseas Highway, Tavernier, Florida and at the Office of the Monroe County Administrator, 1100 Simonton Street, Key West, Florida.

Dated this 24th day of January, 2006. KW Citizen 1/29/06

211602

THE CITIZEN KEY WEST
The Florida Keys Only Daily Newspaper, Est. 1876
Cooke Communications, LLC
Florida Keys

Marsha F. Kirkwood
Advertising Coordinator

PO Box 1800
Key West Fl 33041
Office.....305-292-7777
Extension.....x219
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legals@keysnews.com

INTERNET PUBLISHING
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keysnews.com
floridakeys.com
key-west.com
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The Citizen
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Citizen Local's Guide
Paradise
Keys TV Channel Guide

MARKETING SERVICES
Commercial Printing
Citizen Locals Card
Direct Mail

FLORIDA KEYS OFFICES
Printing / Main Facility
3420 Northside Drive
Key West, FL
33040-1800
Tel 305-292-7777
Fax 305-294-0768
citizen@keywest.com

Internet Division
1201 White Street (Suite 103)
Key West, FL
33040-3328
Tel 305-292-1880
Fax 305-294-1699
sales@keywest.com

Middle Keys Office
6363 Overseas Hwy
Marathon, FL (MM 52.5)
33050-3342
Tel 305-743-8766
Fax 305-743-9977
navigator@floridakeys.com

Upper Keys Office
81549 Old Hwy
PO Box 469
Islamorada, FL (MM81.5)
33036-0469
Tel 305-664-2266
Fax 305-664-8411
freepress@floridakeys.com

Ocean Reef Office
3A Barracuda Lane
Key Largo, FL 33037
Tel 305-367-4911
Fax 305-367-2191

STATE OF FLORIDA
COUNTY OF MONROE

Before the undersigned authority personally appeared Randy G. Erickson, who on oath says that he is Vice-President of Advertising Operations of the Key West Citizen, a daily newspaper published in Key West, in Monroe County, Florida; that the attached copy of advertisement, being a legal notice in the matter of Notice of Intent to Seek Legislation

In the _____ Court, was published in said newspaper in the issues of January 29, 2006.

Affiant further says that the Key West Citizen is a newspaper published in Key West, in said Monroe County, Florida and that the said newspaper has heretofore been continuously published in said Monroe County, Florida every and has been entered as second-class mail matter at the post office in Key West, in said Monroe County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Signature of Affiant

Sworn and subscribed before me this 31 day of January, 2006

Notary Public: Marsha F Kirkwood Marsha F Kirkwood

Expires: September 15, 2009 Notary Seal

MARSHA F. KIRKWOOD
Notary Public - State of Florida
My Commission Expires Sep 15, 2009
Commission # DD 472620
Bonded By National Notary Assn.

Personally Known ___x___ Produced Identification _____
Type of Identification Produced _____

FLORIDA KEYS

KEYNOTER

Published Twice Weekly
Marathon, Monroe County, Florida

PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF MONROE

Before the undersigned authority personally appeared **WAYNE MARKHAM** who on oath, says that he is **PUBLISHER of the FLORIDA KEYS KEYNOTER**, a twice weekly newspaper published in Marathon, in Monroe County, Florida: that the attached copy of advertisement was published in said newspaper in the issues of: *(date(s) of publication)*

January 28, 2006

Affiant further says that the said FLORIDA KEYS KEYNOTER is a newspaper published at Marathon, in said Monroe County, Florida, and that the said newspaper has heretofore been continuously published in said Monroe County, Florida, twice each week (on Wednesday and Saturday) and has been entered as a second class mail matter at the post office in Marathon, in Monroe County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement. The affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s) and that The Florida Keys Keynoter is in full compliance with Chapter 50 of the Florida State Statutes on Legal and Official Advertisements.

Wayne Mr

Sworn to and subscribed before me this 31 Day of January 2006
(SEAL)

KATHLEEN BRYAN
Comm# DD0241827
Expires 12/12/2007
Bonded thru (800)432-4254
Florida Notary Assn., Inc

Kathleen Bryan
Notary

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Legislature and any Special or Extended Sessions for passage of an act relating to Monroe County authorizing teleconferencing attendance by county commissioners of Monroe County to obtain and qualify a quorum at special meetings. The act would allow a county commissioner to be present for purposes of obtaining a quorum of the Board of County Commissioners by means of teleconferencing technology. It is proposed to be effective for a trial period of one year commencing July 1, 2006 and ending June 30, 2007. The act does not apply to regular monthly meetings of the Board of County Commissioners.

Copies of the proposed bill are available at the office of Representative Ken Sorensen, 90311 Overseas Highway, Tavernier, Florida and at the Office of the Monroe County Administrator, 1100 Simonton Street, Key West, Florida.

Dated this 24th day of January, 2006.

Published Keynoter 1/28/06

1335

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: (Tracking # 14792)

SPONSOR(S): Ken Sorensen

RELATING TO: Monroe County, Teleconferencing Technology
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Monroe

CONTACT PERSON: Rep. Ken Sorensen

PHONE # and E-Mail: (305) 853-1947 ken.sorensen@myfloridahouse.gov

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: February 3, 2006

Location: Key Largo

(3) Was this bill formally approved by a majority of the delegation members?
YES [X] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [January 28, 2006 **]**

Where? Monroe County **County** Monroe

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Ken Sorensen 2/03/06

Delegation Chair *(Original Signature)* **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: (Tracking # 14792)

SPONSOR(S): Representative Ken Sorenson

RELATING TO: Monroe County- Telecommunication Technology

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	12,000.00	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	0	0
State:	0	0
Local:	12,000.00	0

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 06-07	FY 07-08
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: **Reduction in travel costs-staff and public**

Reduction in staff costs-county

Disadvantages: **none**

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

True expense data received from Monroe County Sheriff's office. They presently use the technology.

PREPARED BY: _____ 2/2/06
[Must be signed by Preparer] Date

TITLE: County Administrator

REPRESENTING: Monroe County

PHONE: (305-292-4441)

E-Mail Address: willi-tom@monroecounty-fl.gov

1 A bill to be entitled
2 An act relating to Monroe County; providing definitions;
3 authorizing teleconferencing attendance by county
4 commissioners to qualify for a quorum at certain meetings;
5 requiring compliance with certain public meetings laws;
6 providing for future repeal; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. (1) As used in this section, the term:
11 (a) "Board" means the Board of County Commissioners of
12 Monroe County.
13 (b) "Special meeting" means a public meeting of the board
14 at which official action is taken, but does not include regular
15 monthly meetings of the board.
16 (c) "Teleconferencing equipment" means the electronic
17 transmission of audio, full-motion video, freeze-frame video,
18 compressed video, and digital video by any method available that
19 allows a person in one location to meet with another person in a
20 different location.
21 (2) Notwithstanding section 120.54(5)(b)2., Florida
22 Statutes, one or more board members participating through the
23 use of teleconferencing equipment shall be deemed in attendance
24 for purposes of establishing a quorum of board members for a
25 special meeting.
26 (3) Special meetings authorized through this section must
27 comply with the provisions of sections 286.0105, 286.011, and
28 286.012, Florida Statutes.

29 (4) This section is repealed June 30, 2007.

30 Section 2. This act shall take effect July 1, 2006.

HB 1357

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Growth Management
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Nelson	Hamby
2) Growth Management Committee			
3) Transportation & Economic Development Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 1357 creates the "Interlocal Service Boundary Agreement Act" to provide an alternative process for annexation that allows counties and municipalities to negotiate in good faith to identify municipal service areas and unincorporated service areas, resolve which local government is responsible for providing services and facilities within the municipal service areas, and reduce the number of enclaves.

The bill defines a "municipal service area" as an unincorporated area that has been identified by a municipality that is a party to an interlocal service boundary agreement as an area to be annexed or to receive municipal services from the municipality or its designee. Land within a municipal service area may be annexed by a municipality if consent is obtained using a process for annexation consistent with current statutes, or a process, as determined by the agreement, that includes one or more of the following:

- a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation;
- a petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation; or
- approval by a majority of the registered voters in the area proposed for annexation.

The bill allows an enclave consisting of 20 acres or more within a designated municipal service area to be annexed if statutory consent requirements are met, one or more of the provisions for annexing land within a municipal service area are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. Enclaves consisting of less than 20 acres and with fewer than 100 registered voters, within a designated municipal service area, may be annexed using a process for securing the consent of the voters, as provided in the interlocal service boundary agreement. No voter approval is required.

The bill does not appear to have a fiscal impact upon the state. However, it may have an unknown fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The "Municipal Annexation or Contraction Act," ch. 171, F.S., codifies the state's annexation procedures[1] and was enacted in 1974 to ensure sound urban development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be provided.[2] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[3]

Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annexation area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation also may be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

An area proposed for annexation must be unincorporated, contiguous and reasonably compact.[4] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminous with the municipality's boundary.[5] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket or "finger areas in serpentine patterns."[6]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipality's future land use map. It is possible for the city to adopt the comprehensive plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[7] In the interim, a city must apply county regulations or wait to apply its own rules.

The effective date of the annexation determines who receives certain funds. The county share of revenue sharing and the half-cent sales tax is reduced effective July 1 if a parcel is annexed prior to April 1. Should the annexation occur before a city levies millage, the annexed property is subject to the city millage, but excluded from the municipal service taxing unit. If a county has not levied its non-ad valorem assessments before annexation, the county loses those assessments.

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[1] Section (2)(c), Art. VIII of the State Constitution provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal service boundary agreement, voluntary annexation or involuntary annexation. Annexation through a special act must meet the notice and referendum requirements of s. 10, Art. III, of the State Constitution.
[2] Section 171.021, F.S.
[3] See, Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, October 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.
[4] Sections 171.0413-.043, F.S.
[5] Section 171.031(11), F.S.
[6] Section 171.031(12), F.S.
[7] See, 1000 Friends of Fla., Inc. v. Florida Dept. of Community Affairs, 824 So. 2d 989 (Fla.4th DCA 2002).

Cities may annex enclaves of 10 acres or less by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves of 10 acres or less also can be annexed by municipal ordinance when there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum.

Section 171.044, F.S., provides the procedure for a voluntary annexation which occurs when 100 percent of the landowners in an area petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a municipal or county charter provides the exclusive method for voluntary annexation.[8] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[9]

Sections 171.0413 and 171.042, F.S., establish an electoral procedure for involuntary annexation that allows for separate approval of a proposed annexation in an existing city, at the city's option, and in the area to be annexed. The owners of more than 50 percent of the land in an area proposed for annexation must consent if more than 70 percent of the property in that area is owned by persons that are not registered electors. Also, the governing body of the annexing municipality must prepare a report on the provision of urban services to the area being annexed as well as adopt an ordinance allowing for the annexation and meet certain notice requirements.

A municipality may annex within an independent special district pursuant to s. 171.093, F.S. The municipality, after electing to assume the district's responsibilities and adopting a resolution, may enter into an interlocal agreement to address responsibility for service provision, real estate assets, equipment and personnel. Absent an interlocal agreement, the district continues as the service provider in the annexed area for a period of four years and receives an amount from the city equal to the ad valorem taxes or assessments that would have been collected on the property. Following the four years and any mutually agreed upon extension, the municipality and district must reach agreement on the equitable distribution of property and indebtedness or the matter will proceed in circuit court.

Municipal annexation provides for conflict and tension between many county and municipal governments. The process of annexation often raises issues regarding delivery of services and the costs associated with the delivery of those services, boundaries and land use. During the past two legislative sessions, the Florida League of Cities and the Florida Association of Counties have recommended a statutory resolution to these issues. This compromise proposed a process by which a municipality and a county could work to negotiate the matters of conflict surrounding a particular annexation proposal. The present bill, HB 1357, and its companion, SB 1194, also reflect this compromise.

Proposed Changes

HB 1357 creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property. The bill is intended to establish a more flexible process for adjusting municipal boundaries and to address a wider range of the effects of annexation. This bill also is intended to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments.

<u>Interlocal Service Boundary Agreement Act: ss. 171.20—171.212, F.S.</u>

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[8] Section 171.044(4), F.S.
[9] *Id.*

Definitions
Section.171.202, F.S., contains definitions for the following terms as used part II of ch. 171, F.S.: chief administrative officer, enclave, independent special district, initiating county, initiating local government, initiating municipality, initiating resolution, interlocal service boundary agreement, invited local government, invited municipality, municipal service area, notified local government, participating resolution, requesting resolution, responding resolution, and unincorporated service area.

Specifically, the bill defines an "interlocal service boundary agreement" as an agreement adopted under part II of chapter 171, F.S., between a county and one or more municipalities, which may include one or more independent special districts.

A "municipal service area" is defined as an unincorporated area that has been identified for annexation in an interlocal agreement by a municipality that is a party to the interlocal agreement. This term also includes an unincorporated area that has been identified in the agreement to receive municipal services from a municipality that is a party to the agreement or the municipality's designee.

The term "unincorporated service area" refers to an unincorporated area that has been identified in an interlocal service boundary agreement and which may not be annexed without the consent of the county. It also may refer to an unincorporated area or incorporated area, or both, that has been identified in an interlocal service boundary agreement to receive municipal services from the county, its designee, or an independent special district.

Process of Initiating an Interlocal Service Boundary Agreement
Section 171.203, F.S., authorizes the governing body of a county and one or more municipalities or independent special districts to enter into an interlocal service boundary agreement. The county, municipality or independent special district may develop a process for reaching an interlocal service boundary agreement that meets certain requirements, or use the process provided in this section.

Initiating Resolution
The process outlined in s. 171.203, F.S., provides that the negotiations for an interlocal service boundary agreement are initiated when a county or municipality adopts an initiating resolution. The initiating resolution must identify an unincorporated area or incorporated area, or both, and the issues to be negotiated. The initiating resolution must include a map or legal description of the unincorporated or incorporated area to be discussed. An independent special district may initiate an interlocal agreement for the sole purpose of dissolving the district, or removing more than 10 percent of the taxable or assessable value of the district. A county's initiating resolution must designate one more invited municipality, while a municipality's initiating resolution may designate an invited municipality. An initiating resolution from a special district must designate one or more municipalities and invite the county.

Responding Resolution
Copies of a county's or municipality's initiating resolution must be provided to every invited municipality, all other municipalities in the county, and each independent special district in the unincorporated area identified in the resolution. Within 60 days of receipt of an initiating resolution, the county or invited municipality must adopt a responding resolution. This responding resolution may identify an additional unincorporated area, incorporated area, or issues for negotiation, and also may invite an additional municipality or independent special district to negotiate. A municipality within the county that is not invited may request participation in the negotiations within a prescribed time frame and the county and invited municipality must consider this request.

After the parties to the negotiations have been determined through the adoption of various resolutions, the county, invited municipalities, participating municipalities, if any, and any independent special districts that elect to participate, are required to begin negotiations within 60 days after receipt of a responding or participating resolution, whichever occurs first. An invited municipality that does not adopt a responding resolution is deemed to have waived its right to participate and is bound by an

interlocal service boundary agreement that results from the negotiations. Local governments are authorized to simultaneously negotiate more than one interlocal service boundary agreement. Counties and municipalities that successfully negotiate an interlocal service boundary agreement must adopt the agreement by ordinance; an independent special district must adopt the agreement using a method consistent with its charter.

Issues That May be Addressed in an Interlocal Service Boundary Agreement
The issues that may be addressed by an interlocal service boundary agreement may include, but are not limited to: the identification of a municipal service area and unincorporated service area; the identification of the local government responsible for the delivery or funding of public safety, fire, emergency rescue and medical, water and wastewater, road ownership, construction and maintenance, conservation, parks and recreation, and stormwater management and drainage services within the area; and other services and infrastructure not currently provided by an electric utility or a natural gas transmission company, as long as it does not affect any territorial agreement between electric utilities or pubic utilities, or affect the determination of a territorial dispute by the Florida Public Service Commission. The interlocal service boundary agreement may establish a process and schedule for annexing an area within a designated municipal service area. The agreement also may provide for a procedure by which the local government responsible for water and wastewater services applies for necessary permit modifications to reflect changes in surface water management operating entity responsibilities.

Additionally, the interlocal service boundary agreement may establish a process for land-use decisions consistent with part II of ch. 163, F.S., including joint land-use decisions of the county and municipality, and allowing a municipality to adopt land-use changes for areas that are scheduled to be annexed within the term of the interlocal service boundary agreement. If the agreement addresses land use planning, it must provide procedures for the preparation and adoption of plan amendments, the administration of land development regulations, and the issuance of development orders.

The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation to one county, municipality or independent special district from another local government or special district, and provide for the joint use of facilities and collocation of services. Finally, the agreement may require the municipality to send the county a report on its planned service delivery.

Standing to Challenge Certain Plan Amendments
Each local government that is a party to the interlocal service boundary agreement is required to amend the intergovernmental coordination element of its comprehensive plan no later than six months following entry of the agreement consistent with s.163.3177(6)(h)1., F.S. For purposes of challenging such plan amendment, an affected person includes persons owning real property, residing, or owning or operating a business within the boundaries of the municipal service area and owners of real property abutting real property within the municipal service area that is the subject of the plan amendment, in addition to those affected persons who would have standing under s.163.3184, F.S.

Review by the State Land Planning Agency
A municipality that is party to an interlocal agreement and identifies an unincorporated area for annexation is required to adopt a plan amendment to address future possible annexation. The identified municipal service area must contain: a boundary map of the municipal service area, population projections for the area, and data supporting the provision of public services for the area. The amendment is subject to review by the DCA for compliance with part II of ch. 163, F.S. However, the DCA may not review or approve or disapprove a municipal ordinance relating to municipal annexation or contraction.

Conclusion of Negotiations on an Interlocal Service Boundary Agreement
An interlocal service boundary agreement may be for a term of 20 years or less and must include a provision requiring periodic review with renegotiations to begin at least 18 months prior to its termination date. Once an agreement has been reached, the county and municipality must adopt the

agreement by ordinance. A special district that consents to the agreement is required to adopt the agreement using a method consistent with its charter. Nothing in part II of ch. 171, F.S. (which is created by this bill) prohibits a local government from adopting an interlocal service boundary agreement without the consent of an independent special district.

If an interlocal service boundary agreement has not been reached six months after negotiations have commenced, the initiating or invited local governments may declare an impasse in the negotiations and seek to resolve the issues through the conflict resolution procedures in ch. 164, F.S. If the local governments cannot agree at the conclusion of the dispute resolution process, the bill requires the local governments to hold a joint public hearing on the issues raised in the negotiations.

For a period of six months following the failure of the local governments to reach an agreement, the initiating local government may not initiate negotiations to require the responding local government to negotiate the same issues with respect to the same unincorporated areas. Although a local government is not required under this bill to enter into an agreement, local governments are required to negotiate in good faith to the conclusion of the process once it has been initiated. Local governments may negotiate more than one interlocal agreement simultaneously. Local government officials are encouraged to participate actively and directly in the negotiation process for developing an agreement.

The bill states that part II of ch. 171, F.S., does not impair any existing franchise agreement without the consent of the franchisee. Local governments retain their authority under this bill to negotiate franchise agreements for the use of public rights-of-way and providing service.

Annexation Procedures under an Interlocal Service Boundary Agreement
Sections 171.204 and 171.205, F.S., provide procedures under which land identified in an interlocal service boundary agreement for annexation may be annexed by a municipality. These land areas may include areas that may not be annexed by a municipality under existing ch. 171, F.S. Specifically, the bill authorizes a municipality to annex any character of land, including an area that is not contiguous to the municipality's boundaries or creates an enclave if the area is urban in character as defined in s. 171.031(8), F.S. However, the agreement may not allow for the annexation of land within a municipality that is not a party to the agreement or of land that is within another county.

Land within a municipal service area, as identified in the interlocal service boundary agreement, may be annexed by the municipality using a process for annexation consistent with part I of ch. 171, F.S., or using a "flexible" process established in the interlocal agreement. The flexible process may be used to secure the consent of property owners or registered voters residing in the area proposed for annexation with notice to these individuals.

Annexation within the municipal service area must meet the consent requirements in part I of ch. 171, F.S., or the annexation may be achieved by one or more of the following: the filing of a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation, the filing of a petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation, or upon the approval by a majority of the registered voters in the area proposed for annexation voting in a referendum on the annexation. If the area to be annexed includes a privately owned solid waste disposal facility, the annexing municipality must set forth in its plan the impacts the annexation of the facility will have on other local governments.

The bill allows the annexation of enclaves consisting of 20 acres or more within a designated municipal service area using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement, with notice to those property owners and residents within the area proposed for annexation. However, the interlocal service boundary agreement may not allow annexation unless the consent requirements of part I of ch. 171, F.S., are met, the provisions described above are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. Enclaves consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area, may be annexed using a flexible process for securing the consent of the voters, as provided in the

interlocal service boundary agreement, with notice to the registered voters and property owners in the area to be annexed. The flexible process may include one or more of described procedures or a referendum of the registered voters who reside in the area proposed to be annexed.

Effect of Interlocal Service Boundary Agreement

Section 171.206, F.S., provides that an interlocal service boundary agreement is binding on the parties. Section 171.207, F.S., provides that part II of ch. 171, F.S., is an alternative provision allowing for the transfer of power resulting from the interlocal service boundary agreement as authorized by s. 4, Art. VIII of the State Constitution. Section 171.208, F.S., authorizes a municipality to exercise extraterritorial powers, including the authority to provide services and facilities within the unincorporated area as provided for in the interlocal service boundary agreement. Similarly, s. 171.209, F.S., authorizes a county to provide services and facilities within a municipality according to the terms of the interlocal service boundary agreement. Section 171.21, F.S., provides for the effect of an interlocal service boundary agreement on a county charter. Section 171.211, F.S., provides that an interlocal service boundary agreement is presumed valid and binding and places the burden of proving the agreement's invalidity on the challenger. Section 171.212, F.S., requires local governments to use ch. 164, F.S., to resolve disputes regarding the construction and effect of an interlocal service boundary agreement under this part. If the procedures in ch. 164, F.S., do not result in resolution of the conflict, a local government may file an action in circuit court not later than 30 days following the conclusion of those procedures.

The bill also amends current provisions in ch. 171, F.S., to:

- require that an ordinance notice for annexation be provided to the county where the municipality is located not fewer than 15 days prior to commencing annexation procedures under s. 171.0413, F.S.;
- provide that failure to provide such notice may be the basis for a cause of action invalidating the annexation;
- require a municipality to send a copy of the ordinance notice for a voluntary annexation to the county where the municipality is located not fewer than 10 days prior to publishing or posting the notice;
- provide that an interlocal service boundary agreement entered into pursuant to part II of ch. 171, F.S., is binding on the parties;
- provide a time limit for initiating an appeal on annexation or contraction; and
- provide that a primary disputing governmental entity that fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in the Florida Governmental Conflict Resolution Act, shall be required to pay the attorney's fees and costs for that proceeding.

The bill provides an effective date of upon becoming a law.

Chapter 171, F.S.	Proposed Alternative to Chapter 171, F.S.
Character of the Land	
An area proposed for annexation must be incorporated, contiguous and reasonably compact.	As determined by the interlocal service boundary agreement, a municipality may annex any character of land within a municipal service area if it is urban in character, regardless of whether it is not contiguous or would create an enclave.
Involuntary Annexation	
Involuntary annexation requires approval by the registered electors in the area proposed for annexation. If more than 70 percent of the property in a proposed area to be annexed is owned by persons who are not registered electors, the owners of more than 50 percent of the land must consent to the annexation. The governing body of the annexing municipality also may submit the ordinance to a vote of the registered electors in the annexing municipality.	Land within a municipal service area may be annexed by a municipality if consent is attained using a process for annexation consistent with part I of ch. 171, F.S., or a flexible process, as determined by the interlocal service boundary agreement between the county and municipality, that includes one or more of the following: • petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation; or • petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation; or • approval by a majority of the registered voters in the area proposed for annexation voting in a referendum on the annexation.
Voluntary Annexation	
A voluntary annexation occurs when 100 percent of the landowners in an area petition a municipality to be annexed.	Same procedures as ch. 171, F.S.
Enclaves	
Same procedures as involuntary annexation.	Enclaves consisting of 20 acres or more within a designated municipal service area may be annexed using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement with notice to the registered voters and property owners in the area to be annexed. The agreement may not allow annexation unless the consent requirements of part 1 of ch. 171, F.S., are met, one or more of the provisions for annexing land within a municipal service area are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation.
Small Enclaves	
Cities may annex enclaves of 10 acres or less by interlocal agreement with the county or by municipal ordinance if there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum.	Enclaves consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal service boundary agreement. No voter approval is required.

C. SECTION DIRECTORY:

Section 1: Creates part II of ch. 171, F.S., the "Interlocal Service Boundary Agreement Act."

Section 2: Provides for the designation of ss. 171.011-171.093, F.S., and s. 171.094, F.S., as part I of chp. 171, F.S.

Section 3: Amends s. 171.011, F.S.

Section 4: Amends s. 171.031, F.S.

Section 5: Amends ss. 171.042(2) and adds (3), F.S., relating to the prerequisites to annexation.

Section 6: Amends s. 171.044(6), F.S., relating to voluntary annexation.

Section 7: Amends s. 171.045, F.S.

Section 8: Amends s. 171.081, F.S., relating to appeal on annexation or contraction.

Section 9: Creates s. 171.094, F.S., relating to the effect of interlocal service boundary agreements on annexations.

Section 10: Amends s. 163.01(11), F.S., relating to the Florida Interlocal Cooperation Act of 1969.

Section 11: Amends s. 164.1058, F.S., relating to penalties for certain governmental entities for failure to participate in good faith in a conflict assessment meeting.

Section 12: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown. See, FISCAL COMMENTS, below.

2. Expenditures:

   Unknown. See, FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Any fiscal impacts to local governments as a result of the bill will depend on the types of actions taken and agreements reached.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 4, Art. VIII of the State Constitution provides:

> By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Section 171.207, F.S., declares that the provisions created in the bill are an alternative provision otherwise provided by law as authorized by s. 4, Art. VIII of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Comments

Both the Florida League of Cities[10] and the Florida Association of Counties[11] support this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[10] John Wayne Smith, Assistant Director, Legislative and Public Affairs, Florida League of Cities.
[11] Sarah M. Bleakley, Nabors, Giblin & Nickerson, P.A., Special Counsel to Florida Association of Counties.

1 A bill to be entitled
2 An act relating to growth management; creating part II of
3 ch. 171, F.S., the "Interlocal Service Boundary Agreement
4 Act"; providing legislative intent with respect to
5 annexation and the coordination of services by local
6 governments; providing definitions; providing for the
7 creation of interlocal service boundary agreements by a
8 county and one or more municipalities or independent
9 special districts; specifying the procedures for
10 initiating an agreement and responding to a proposal for
11 agreements; identifying issues the agreement may or must
12 address; requiring local governments that are a party to
13 the agreement to amend their comprehensive plans;
14 providing for review of the amendment by the state land
15 planning agency; providing an exception to the limitation
16 on plan amendments; specifying those persons who may
17 challenge a plan amendment required by the agreement;
18 providing for negotiation and adoption of the agreement;
19 providing for preservation of certain agreements and
20 powers regarding utility services; providing for
21 preservation of existing contracts; providing
22 prerequisites to annexation; providing a process for
23 annexation; providing for the effect of an interlocal
24 service boundary area agreement on the parties to the
25 agreement; providing for a transfer of powers; authorizing
26 a municipality to provide services within an
27 unincorporated area or territory of another municipality;
28 authorizing a county to exercise certain powers within a

29 municipality; providing for effect on interlocal
30 agreements and county charters; providing a presumption of
31 validity; providing a procedure to settle a dispute
32 regarding an interlocal service boundary agreement;
33 designating ss. 171.011-171.094 as part I of chapter 171,
34 F.S.; amending ss. 171.011, 171.031, and 171.045, F.S., to
35 conform; amending s. 171.042, F.S.; revising the time
36 period for filing a report; providing for a cause of
37 action to invalidate an annexation; requiring
38 municipalities to provide notice of proposed annexation to
39 certain persons; amending s. 171.044, F.S.; revising the
40 time period for providing a copy of a notice; providing
41 for a cause of action to invalidate an annexation;
42 amending s. 171.081, F.S.; requiring a governmental entity
43 affected by annexation or contraction to initiate conflict
44 resolution procedures under certain circumstances;
45 providing for initiation of judicial review and
46 reimbursement of attorney's fees and costs regarding
47 certain annexations or contractions; creating s. 171.094,
48 F.S.; providing for the effect of interlocal service
49 boundary agreements adopted under the act; amending s.
50 163.01, F.S.; providing for the place of filing an
51 interlocal agreement in certain circumstances; amending s.
52 164.1058, F.S.; providing that a governmental entity that
53 fails to participate in conflict resolution procedures
54 shall be required to pay attorney's fees and costs under
55 certain conditions; providing an effective date.
56

57 Be It Enacted by the Legislature of the State of Florida:
58
59 Section 1. Part II of chapter 171, Florida Statutes,
60 consisting of sections 171.20, 171.201, 171.202, 171.203,
61 171.204, 171.205, 171.206, 171.207, 171.208, 171.209, 171.21,
62 171.211, and 171.212, is created to read:
63 171.20 Short title.--This part may be cited as the
64 "Interlocal Service Boundary Agreement Act."
65 171.201 Legislative intent.--The Legislature intends to
66 provide an alternative to part I for local governments regarding
67 the annexation of territory into a municipality and the
68 subtraction of territory from the unincorporated area of the
69 county. The principal goal of this part is to encourage local
70 governments to jointly determine how to provide services to
71 residents and property in the most efficient and effective
72 manner while balancing the needs and desires of the community.
73 This part is intended to establish a more flexible process for
74 adjusting municipal boundaries and to address a wider range of
75 the effects of annexation. This part is intended to encourage
76 intergovernmental coordination in planning, service delivery,
77 and boundary adjustments and to reduce intergovernmental
78 conflicts and litigation between local governments. It is the
79 intent of this part to promote sensible boundaries that reduce
80 the costs of local governments, avoid duplicating local
81 services, and increase political transparency and
82 accountability. This part is intended to prevent inefficient
83 service delivery and an insufficient tax base to support the
84 delivery of those services.

85 171.202 Definitions.--As used in this part, the term:
86 (1) "Chief administrative officer" means the municipal
87 administrator, municipal manager, county manager, county
88 administrator, or other officer of the municipality, county, or
89 independent special district who reports directly to the
90 governing body of the local government.
91 (2) "Enclave" has the same meaning as provided in s.
92 171.031.
93 (3) "Independent special district" means an independent
94 special district, as defined in s. 189.403, which provides fire,
95 emergency medical, water, wastewater, or stormwater services.
96 (4) "Initiating county" means a county that commences the
97 process for negotiating an interlocal service boundary agreement
98 through the adoption of an initiating resolution.
99 (5) "Initiating local government" means a county,
100 municipality, or independent special district that commences the
101 process for negotiating an interlocal service boundary agreement
102 through the adoption of an initiating resolution.
103 (6) "Initiating municipality" means a municipality that
104 commences the process for negotiating an interlocal service
105 boundary agreement through the adoption of an initiating
106 resolution.
107 (7) "Initiating resolution" means a resolution adopted by
108 a county, municipality, or independent special district which
109 commences the process for negotiating an interlocal service
110 boundary agreement and which identifies the unincorporated area
111 and other issues for discussion.
112 (8) "Interlocal service boundary agreement" means an

113 agreement adopted under this part, between a county and one or
114 more municipalities, which may include one or more independent
115 special districts as parties to the agreement.
116 (9) "Invited local government" means an invited county,
117 municipality, or special district and any other local government
118 designated as such in an initiating resolution or a responding
119 resolution that invites the local government to participate in
120 negotiating an interlocal service boundary agreement.
121 (10) "Invited municipality" means an initiating
122 municipality and any other municipality designated as such in an
123 initiating resolution or a responding resolution that invites
124 the municipality to participate in negotiating an interlocal
125 service boundary agreement.
126 (11) "Municipal service area" means one or more of the
127 following as designated in an interlocal service boundary
128 agreement:
129 (a) An unincorporated area that has been identified in an
130 interlocal service boundary agreement for municipal annexation
131 by a municipality that is a party to the agreement.
132 (b) An unincorporated area that has been identified in an
133 interlocal service boundary agreement to receive municipal
134 services from a municipality that is a party to the agreement or
135 from the municipality's designee.
136 (12) "Notified local government" means the county or a
137 municipality, other than an invited municipality, that receives
138 an initiating resolution.
139 (13) "Participating resolution" means the resolution
140 adopted by the initiating local government and the invited local

141 government.
142 (14) "Requesting resolution" means the resolution adopted
143 by a municipality seeking to participate in the negotiation of
144 an interlocal service boundary agreement.
145 (15) "Responding resolution" means the resolution adopted
146 by the county or an invited municipality which responds to the
147 initiating resolution and which may identify an additional
148 unincorporated area or another issue for discussion, or both,
149 and may designate an additional invited municipality or
150 independent special district.
151 (16) "Unincorporated service area" means one or more of
152 the following as designated in an interlocal service boundary
153 agreement:
154 (a) An unincorporated area that has been identified in an
155 interlocal service boundary agreement and that may not be
156 annexed without the consent of the county.
157 (b) An unincorporated area or incorporated area, or both,
158 which have been identified in an interlocal service boundary
159 agreement to receive municipal services from a county or its
160 designee or an independent special district.
161 171.203 Interlocal service boundary agreement.--The
162 governing body of a county and one or more municipalities or
163 independent special districts within the county may enter into
164 an interlocal service boundary agreement under this part. The
165 governing bodies of a county, a municipality, or an independent
166 special district may develop a process for reaching an
167 interlocal service boundary agreement which provides for public
168 participation in a manner that meets or exceeds the requirements

169 of subsection (12), or the governing bodies may use the process
170 established in this section.
171 (1) A county, a municipality, or an independent special
172 district desiring to enter into an interlocal service boundary
173 agreement shall commence the negotiation process by adopting an
174 initiating resolution. The initiating resolution must identify
175 an unincorporated area or incorporated area, or both, to be
176 discussed and the issues to be negotiated. The identified area
177 must be specified in the initiating resolution by a descriptive
178 exhibit that includes, but need not be limited to, a map or
179 legal description of the designated area. The issues for
180 negotiation must be listed in the initiating resolution and may
181 include, but need not be limited to, the issues listed in
182 subsection (6). An independent special district may initiate the
183 interlocal service boundary agreement for the purposes of
184 dissolving an independent special district or removing more than
185 10 percent of the taxable or assessable value of an independent
186 special district.
187 (a) The initiating resolution of an initiating county must
188 designate one or more invited municipalities. The initiating
189 resolution of an initiating municipality may designate an
190 invited municipality. The initiating resolution of an
191 independent special district must designate one or more invited
192 municipalities and invite the county.
193 (b) An initiating county shall send the initiating
194 resolution by certified mail to the chief administrative officer
195 of every invited municipality and each other municipality within
196 the county. An initiating municipality shall send the initiating

197 resolution by certified mail to the chief administrative officer
198 of the county, the invited municipality, if any, and each other
199 municipality within the county.
200 (c) The initiating local government shall also send the
201 initiating resolution to the chief administrative officer of
202 each independent special district in the unincorporated area
203 designated in the initiating resolution.
204 (2) Within 60 days after the receipt of an initiating
205 resolution, the county or the invited municipality, as
206 appropriate, shall adopt a responding resolution. The responding
207 resolution may identify an additional unincorporated area or
208 incorporated area, or both, for discussion and may designate
209 additional issues for negotiation. The additional identified
210 area, if any, must be specified in the responding resolution by
211 a descriptive exhibit that includes, but need not be limited to,
212 a map or legal description of the designated area. The
213 additional issues designated for negotiation, if any, must be
214 listed in the responding resolution and may include, but need
215 not be limited to, the issues listed in subsection (6). The
216 responding resolution may also invite an additional municipality
217 or independent special district to negotiate the interlocal
218 service boundary agreement.
219 (a) Within 7 days after the adoption of a responding
220 resolution, the responding county shall send the responding
221 resolution by certified mail to the chief administrative officer
222 of the initiating municipality, each invited municipality, if
223 any, and the independent special district that received an
224 initiating resolution.

225 (b) Within 7 days after the adoption of a responding
226 resolution, an invited municipality shall send the responding
227 resolution by certified mail to the chief administrative officer
228 of the initiating county, each invited municipality, if any, and
229 each independent special district that received an initiating
230 resolution.
231 (c) An invited municipality that was invited by a
232 responding resolution shall adopt a responding resolution in
233 accordance with paragraph (b).
234 (d) Within 60 days after receipt of the initiating
235 resolution, any independent special district that received an
236 initiating resolution and that desires to participate in the
237 negotiations shall adopt a resolution indicating that the
238 district intends to participate in the negotiation process for
239 the interlocal service boundary agreement. Within 7 days after
240 the adoption of the resolution, the independent special district
241 shall send the resolution by certified mail to the chief
242 administrative officer of the county, the initiating
243 municipality, each invited municipality, if any, and each
244 notified local government.
245 (3) A municipality within the county which is not an
246 invited municipality may request participation in the
247 negotiations for the interlocal service boundary agreement. Such
248 a request must be accomplished by adopting a requesting
249 resolution within 60 days after receipt of the initiating
250 resolution or within 10 days after receipt of the responding
251 resolution. Within 7 days after adoption of the requesting
252 resolution, the requesting municipality shall send the

253 resolution by certified mail to the chief administrative officer
254 of the initiating local government and each invited
255 municipality. The county and the invited municipality shall
256 consider whether to allow a requesting municipality to
257 participate in the negotiations, and, if the county and invited
258 municipality agree, the county and invited municipality shall
259 adopt a participating resolution allowing the requesting
260 municipality to participate in the negotiations.
261 (4) The county, the invited municipalities, the
262 participating municipalities, if any, and the independent
263 special districts, if any have adopted a resolution to
264 participate, shall begin negotiations within 60 days after
265 receipt of the responding resolution or a participating
266 resolution, whichever occurs later.
267 (5) An invited municipality that fails to adopt a
268 responding resolution shall be deemed to waive its right to
269 participate in the negotiation process and shall be bound by an
270 interlocal agreement resulting from such negotiation process, if
271 any is reached.
272 (6) An interlocal service boundary agreement may address
273 any issue concerning service delivery, fiscal responsibilities,
274 or boundary adjustment. The agreement may include, but need not
275 be limited to, provisions that:
276 (a) Identify a municipal service area.
277 (b) Identify an unincorporated service area.
278 (c) Identify the local government responsible for the
279 delivery or funding of the following services within the
280 municipal service area or the unincorporated service area:

281 1. Public safety.
282 2. Fire, emergency rescue, and medical.
283 3. Water and wastewater.
284 4. Road ownership, construction, and maintenance.
285 5. Conservation, parks, and recreation.
286 6. Stormwater management and drainage.
287 (d) Address other services and infrastructure not
288 currently provided by an electric utility as defined in s.
289 366.02 or a natural gas transmission company as defined in s.
290 368.103. However, this paragraph does not affect any territorial
291 agreement between electrical utilities or public utilities under
292 chapter 366 or affect the determination of a territorial dispute
293 by the Public Service Commission under s. 366.04.
294 (e) Establish a process and schedule for annexation of an
295 area within the designated municipal service area consistent
296 with s. 171.205.
297 (f) Establish a process for land-use decisions consistent
298 with part II of chapter 163, including those made jointly by the
299 governing bodies of the county and the municipality, or allow a
300 municipality to adopt land-use changes consistent with part II
301 of chapter 163 for areas that are scheduled to be annexed within
302 the term of the interlocal agreement; however, the county
303 comprehensive plan and land-development regulations shall
304 control until the municipality annexes the property and amends
305 its comprehensive plan accordingly. Comprehensive plan
306 amendments to incorporate the process established by this
307 paragraph are exempt from the twice-per-year limitation under s.
308 163.3187.

309 (g) Address other issues concerning service delivery,
310 including the transfer of services and infrastructure and the
311 fiscal compensation to one county, municipality, or independent
312 special district from another county, municipality, or
313 independent special district.
314 (h) Provide for the joint use of facilities and the
315 colocation of services.
316 (i) Include a requirement for a report to the county of
317 the municipality's planned service delivery, as provided in s.
318 171.042, or as otherwise determined by agreement.
319 (j) Establish a procedure by which the local government
320 that is responsible for water and wastewater services shall
321 apply, within 30 days after the annexation or subtraction of
322 territory, for any modifications to permits of the water
323 management district or the Department of Environmental
324 Protection which are necessary to reflect changes in the entity
325 that is responsible for managing surface water under such
326 permits.
327 (7) If the interlocal service boundary agreement addresses
328 responsibilities for land-use planning under chapter 163, the
329 agreement must also establish the procedures for preparing and
330 adopting comprehensive plan amendments, administering land-
331 development regulations, and issuing development orders.
332 (8) Each local government that is a party to the
333 interlocal service boundary agreement shall amend the
334 intergovernmental coordination element of its comprehensive
335 plan, as described in s. 163.3177(6)(h)1., no later than 6
336 months following entry of the interlocal service boundary

337 agreement consistent with s. 163.3177(6)(h)1. Plan amendments
338 required by this subsection are exempt from the twice-per-year
339 limitation under s. 163.3187.
340 (9) An affected person for the purpose of challenging a
341 comprehensive plan amendment required by paragraph (6)(f)
342 includes a person who owns real property, resides, or owns or
343 operates a business within the boundaries of the municipal
344 service area, and a person who owns real property abutting real
345 property within the municipal service area that is the subject
346 of the comprehensive plan amendment, in addition to other
347 affected persons who would have standing under s. 163.3184.
348 (10)(a) A municipality that is a party to an interlocal
349 service boundary agreement that identifies an unincorporated
350 area for municipal annexation under s. 171.202(11)(a) shall
351 adopt a municipal service area as an amendment to its
352 comprehensive plan to address future possible municipal
353 annexation. The state land planning agency shall review the
354 amendment for compliance with part II of chapter 163. A
355 municipal service area must contain:
356 1. A boundary map of the municipal service area.
357 2. Population projections for the area.
358 3. Data and analysis supporting the provision of public
359 facilities for the area.
360 (b) This part does not authorize the state land planning
361 agency to review, evaluate, determine, approve, or disapprove a
362 municipal ordinance relating to municipal annexation or
363 contraction.
364 (c) Any amendment required by paragraph (a) is exempt from

365 the twice-per-year limitation under s. 163.3187.
366 (11) An interlocal service boundary agreement may be for a
367 term of 20 years or less. The interlocal service boundary
368 agreement must include a provision requiring periodic review.
369 The interlocal service boundary agreement must require
370 renegotiations to begin at least 18 months before its
371 termination date.
372 (12) No earlier than 6 months after the commencement of
373 negotiations, either of the initiating local governments or
374 both, the county, or the invited municipality may declare an
375 impasse in the negotiations and seek a resolution of the issues
376 under ss. 164.1053-164.1057. If the local governments fail to
377 agree at the conclusion of the process under chapter 164, the
378 local governments shall hold a joint public hearing on the
379 issues raised in the negotiations.
380 (13) When the local governments have reached an interlocal
381 service boundary agreement, the county and the municipality
382 shall adopt the agreement by ordinance under s. 166.041 or s.
383 125.66, respectively. An independent special district, if it
384 consents to the agreement, shall adopt the agreement by final
385 order, resolution, or other method consistent with its charter.
386 The interlocal service boundary agreement shall take effect on
387 the day specified in the agreement or, if there is no date, upon
388 adoption by the county or the invited municipality, whichever
389 occurs later. This part does not prohibit a county or
390 municipality from adopting an interlocal service boundary
391 agreement without the consent of an independent special
392 district, unless the agreement provides for the dissolution of

393 an independent special district or the removal of more than 10
394 percent of the taxable or assessable value of an independent
395 special district.
396 (14) For a period of 6 months following the failure of the
397 local governments to consent to an interlocal service boundary
398 agreement, the initiating local government may not initiate the
399 negotiation process established in this section to require the
400 responding local government to negotiate an agreement concerning
401 the same identified unincorporated area and the same issues that
402 were specified in the failed initiating resolution.
403 (15) This part does not authorize one local government to
404 require another local government to enter into an interlocal
405 service boundary agreement. However, when the process for
406 negotiating an interlocal service boundary agreement is
407 initiated, the local governments shall negotiate in good faith
408 to the conclusion of the process established in this section.
409 (16) This section authorizes local governments to
410 simultaneously engage in negotiating more than one interlocal
411 service boundary agreement, notwithstanding that separate
412 negotiations concern similar or identical unincorporated areas
413 and issues.
414 (17) Elected local government officials are encouraged to
415 participate actively and directly in the negotiation process for
416 developing an interlocal service boundary agreement.
417 (18) This part does not impair any existing franchise
418 agreement without the consent of the franchisee, any existing
419 territorial agreement between electric utilities or public
420 utilities under chapter 366, or the jurisdiction of the Public

421 Service Commission to resolve a territorial dispute involving
422 electric utilities or public utilities in accordance with s.
423 366.04. In addition, an interlocal agreement entered into under
424 this section has no effect in a proceeding before the Public
425 Service Commission involving a territorial dispute. A
426 municipality or county shall retain all existing authority, if
427 any, to negotiate a franchise agreement with any private service
428 provider for use of public rights-of-way or the privilege of
429 providing a service.
430 (19) This part does not impair any existing contract
431 without the consent of the parties.
432 171.204 Prerequisites to annexation under this part.--The
433 interlocal service boundary agreement may describe the character
434 of land that may be annexed under this part and may provide that
435 the restrictions on the character of land that may be annexed
436 pursuant to part I are not restrictions on land that may be
437 annexed pursuant to this part. As determined in the interlocal
438 service boundary agreement, any character of land may be
439 annexed, including, but not limited to, an annexation of land
440 not contiguous to the boundaries of the annexing municipality,
441 an annexation that creates an enclave, or an annexation where
442 the annexed area is not reasonably compact; however, such area
443 must be urban in character as defined in s. 171.031. The
444 interlocal service boundary agreement may not allow for
445 annexation of land within a municipality that is not a party to
446 the agreement or of land that is within another county. Before
447 annexation of land that is not contiguous to the boundaries of
448 the annexing municipality, an annexation that creates an

449 enclave, or an annexation of land that is not currently served
450 by water or sewer utilities, one of the following options must
451 be followed:
452 (1) The municipality shall transmit a comprehensive plan
453 amendment that proposes specific amendments relating to the
454 property anticipated for annexation to the Department of
455 Community Affairs for review under chapter 163. After
456 considering the department's review, the municipality may
457 approve the annexation and comprehensive plan amendment
458 concurrently. The local government must adopt the annexation and
459 the comprehensive plan amendment as separate and distinct
460 actions, but may take such actions at a single public hearing;
461 or
462 (2) A municipality and county shall enter into a joint
463 planning agreement under s. 163.3171, which is adopted into the
464 municipal comprehensive plan. The joint planning agreement must
465 identify the geographic areas anticipated for annexation, the
466 future land uses that the municipality would seek to establish,
467 necessary public facilities and services, including
468 transportation and school facilities and how such facilities
469 will be provided, and natural resources, including surface water
470 and groundwater resources, and how such resources will be
471 protected. An amendment to the future land-use map of a
472 comprehensive plan which is consistent with the joint planning
473 agreement must be considered a small-scale amendment.
474 171.205 Consent requirements for annexation of land under
475 this part.--Notwithstanding part I, an interlocal service
476 boundary agreement may provide a process for annexation

477 consistent with this section or with part I.
478 (1) For all or a portion of the area within a designated
479 municipal service area, the interlocal service boundary
480 agreement may provide a flexible process for securing the
481 consent of persons who are registered voters or own property in
482 the area proposed for annexation, or of both such voters and
483 owners, for the annexation of property within a municipal
484 service area, with notice to such voters or owners as required
485 in the interlocal service boundary agreement. The interlocal
486 service boundary agreement may not authorize annexation unless
487 the consent requirements of part I are met or the annexation is
488 consented to by one or more of the following:
489 (a) The municipality has received a petition for
490 annexation from more than 50 percent of the registered voters
491 who reside in the area proposed to be annexed.
492 (b) The annexation is approved by a majority of the
493 registered voters who reside in the area proposed to be annexed
494 voting in a referendum on the annexation.
495 (c) The municipality has received a petition for
496 annexation from more than 50 percent of the persons who own
497 property within the area proposed to be annexed.
498 (2) If the area to be annexed includes a privately owned
499 solid waste disposal facility as defined in s. 403.703 which
500 receives municipal solid waste collected within the jurisdiction
501 of multiple local governments, the annexing municipality must
502 set forth in its plan the effects that the annexation of the
503 solid waste disposal facility will have on the other local
504 governments. The plan must also indicate that the owner of the

505 affected solid waste disposal facility has been contacted in
506 writing concerning the annexation, that an agreement between the
507 annexing municipality and the solid waste disposal facility to
508 govern the operations of the solid waste disposal facility if
509 the annexation occurs has been approved, and that the owner of
510 the solid waste disposal facility does not object to the
511 proposed annexation.
512 (3) For all or a portion of an enclave consisting of more
513 than 20 acres within a designated municipal service area, the
514 interlocal service boundary agreement may provide a flexible
515 process for securing the consent of persons who are registered
516 voters or own property in the area proposed for annexation, or
517 of both such voters and owners, for the annexation of property
518 within such an enclave, with notice to such voters or owners as
519 required in the interlocal service boundary agreement. The
520 interlocal service boundary agreement may not authorize
521 annexation of enclaves under this subsection unless the consent
522 requirements of part I are met, the annexation process includes
523 one or more of the procedures in subsection (1), or the
524 municipality has received a petition for annexation from one or
525 more persons who own real property in excess of 50 percent of
526 the total real property within the area to be annexed.
527 (4) For all or a portion of an enclave consisting of 20
528 acres or fewer within a designated municipal service area,
529 within which enclave not more than 100 registered voters reside,
530 the interlocal service boundary agreement may provide a flexible
531 process for securing the consent of persons who are registered
532 voters or own property in the area proposed for annexation, or

533 of both such voters and owners, for the annexation of property
534 within such an enclave, with notice to such voters or owners as
535 required in the interlocal service boundary agreement. Such an
536 annexation process may include one or more of the procedures in
537 subsection (1) and may allow annexation according to the terms
538 and conditions provided in the interlocal service boundary
539 agreement, which may include a referendum of the registered
540 voters who reside in the area proposed to be annexed.
541 171.206 Effect of interlocal service boundary area
542 agreement on annexations.--
543 (1) An interlocal service boundary agreement is binding on
544 the parties to the agreement, and a party may not take any
545 action that violates the interlocal service boundary agreement.
546 (2) Notwithstanding part I, without consent of the county
547 and the affected municipality by resolution, a county or an
548 invited municipality may not take any action that violates the
549 interlocal service boundary agreement.
550 (3) If the independent special district that participated
551 in the negotiation process pursuant to s. 171.203(2)(d) does not
552 consent to the interlocal service boundary agreement and a
553 municipality annexes an area within the independent special
554 district, the independent special district may seek compensation
555 using the process in s. 171.093.
556 171.207 Transfer of powers.--This part is an alternative
557 provision otherwise provided by law, as authorized in s. 4, Art.
558 VIII of the State Constitution, for any transfer of power
559 resulting from an interlocal service boundary agreement for the
560 provision of services or the acquisition of public facilities

561 entered into by a county, municipality, independent special
562 district, or other entity created pursuant to law.
563 171.208 Municipal extraterritorial power.--This part
564 authorizes a municipality to exercise extraterritorial powers
565 that include, but are not limited to, the authority to provide
566 services and facilities within the unincorporated area or within
567 the territory of another municipality as provided within an
568 interlocal service boundary agreement. These powers are in
569 addition to other municipal powers that otherwise exist.
570 However, this power is subject to the jurisdiction of the Public
571 Service Commission to resolve territorial disputes under s.
572 366.04. An interlocal agreement has no effect on the resolution
573 of a territorial dispute to be determined by the Public Service
574 Commission.
575 171.209 County powers in an incorporated area.--As
576 provided in an interlocal service boundary agreement, this part
577 authorizes a county to exercise powers within a municipality
578 that include, but are not limited to, the authority to provide
579 services and facilities within the territory of a municipality.
580 These powers are in addition to other county powers that
581 otherwise exist.
582 171.21 Effect of part on interlocal agreement and county
583 charter.--A joint planning agreement, a charter provision
584 adopted under s. 171.044(4), or any other interlocal agreement
585 between local governments, including a county, municipality, or
586 independent special district, is not affected by this part;
587 however, a county, municipality or independent special district
588 may avail itself of this part, which may result in the repeal or

589 modification of a joint planning agreement or other interlocal
590 agreement. A local government within a county that has adopted a
591 charter provision pursuant to s. 171.044(4) may avail itself of
592 the provisions of this part which authorize an interlocal
593 service boundary agreement if such interlocal agreement is
594 consistent with the charter of that county, as the charter was
595 approved, revised, or amended pursuant to s. 125.64.
596 171.211 Interlocal service boundary agreement presumed
597 valid and binding.--
598 (1) If there is litigation over the terms, conditions,
599 construction, or enforcement of an interlocal service boundary
600 agreement, the agreement shall be presumed valid, and the
601 challenger has the burden of proving its invalidity.
602 (2) Notwithstanding part I, it is the intent of this part
603 to authorize a municipality to enter into an interlocal service
604 boundary agreement that enhances, restricts, or precludes
605 annexations during the term of the agreement.
606 171.212 Disputes regarding construction and effect of an
607 interlocal service boundary agreement.--If there is a question
608 or dispute about the construction or effect of an interlocal
609 service boundary agreement, a local government shall initiate
610 and proceed through the conflict resolution procedures
611 established in chapter 164. If there is a failure to resolve the
612 conflict, no later than 30 days following the conclusion of the
613 procedures established in chapter 164, the local government may
614 file an action in circuit court. For purposes of this section,
615 the term "local government" means a party to the interlocal
616 service boundary agreement.

617 Section 2. Sections 171.011-171.093, Florida Statutes, and
618 section 171.094, Florida Statutes, as created by this act, are
619 designated as part I of chapter 171, Florida Statutes.
620 Section 3. Section 171.011, Florida Statutes, is amended
621 to read:
622 171.011 Short title.--This part ~~chapter shall be known and~~
623 may be cited as the "Municipal Annexation or Contraction Act."
624 Section 4. Section 171.031, Florida Statutes, is amended
625 to read:
626 171.031 Definitions.--As used in this part ~~chapter~~, the
627 following words and terms have the following meanings unless
628 some other meaning is plainly indicated:
629 (1) "Annexation" means the adding of real property to the
630 boundaries of an incorporated municipality, such addition making
631 such real property in every way a part of the municipality.
632 (2) "Contraction" means the reversion of real property
633 within municipal boundaries to an unincorporated status.
634 (3) "Municipality" means a municipality created pursuant
635 to general or special law authorized or recognized pursuant to
636 s. 2 or s. 6, Art. VIII of the State Constitution.
637 (4) "Newspaper of general circulation" means a newspaper
638 printed in the language most commonly spoken in the area within
639 which it circulates, which is readily available for purchase by
640 all inhabitants in its area of circulation, but does not include
641 a newspaper intended primarily for members of a particular
642 professional or occupational group, a newspaper whose primary
643 function is to carry legal notices, or a newspaper that is given
644 away primarily to distribute advertising.

645 (5) "Parties affected" means any persons or firms owning
646 property in, or residing in, either a municipality proposing
647 annexation or contraction or owning property that is proposed
648 for annexation to a municipality or any governmental unit with
649 jurisdiction over such area.
650 (6) "Qualified voter" means any person registered to vote
651 in accordance with law.
652 (7) "Sufficiency of petition" means the verification of
653 the signatures and addresses of all signers of a petition with
654 the voting list maintained by the county supervisor of elections
655 and certification that the number of valid signatures represents
656 the required percentage of the total number of qualified voters
657 in the area affected by a proposed annexation.
658 (8) "Urban in character" means an area used intensively
659 for residential, urban recreational or conservation parklands,
660 commercial, industrial, institutional, or governmental purposes
661 or an area undergoing development for any of these purposes.
662 (9) "Urban services" means any services offered by a
663 municipality, either directly or by contract, to any of its
664 present residents.
665 (10) "Urban purposes" means that land is used intensively
666 for residential, commercial, industrial, institutional, and
667 governmental purposes, including any parcels of land retained in
668 their natural state or kept free of development as dedicated
669 greenbelt areas.
670 (11) "Contiguous" means that a substantial part of a
671 boundary of the territory sought to be annexed by a municipality
672 is coterminous with a part of the boundary of the municipality.

673 The separation of the territory sought to be annexed from the
674 annexing municipality by a publicly owned county park; a right-
675 of-way for a highway, road, railroad, canal, or utility; or a
676 body of water, watercourse, or other minor geographical division
677 of a similar nature, running parallel with and between the
678 territory sought to be annexed and the annexing municipality,
679 shall not prevent annexation under this act, provided the
680 presence of such a division does not, as a practical matter,
681 prevent the territory sought to be annexed and the annexing
682 municipality from becoming a unified whole with respect to
683 municipal services or prevent their inhabitants from fully
684 associating and trading with each other, socially and
685 economically. However, nothing herein shall be construed to
686 allow local rights-of-way, utility easements, railroad rights-
687 of-way, or like entities to be annexed in a corridor fashion to
688 gain contiguity; and when any provision or provisions of special
689 law or laws prohibit the annexation of territory that is
690 separated from the annexing municipality by a body of water or
691 watercourse, then that law shall prevent annexation under this
692 act.
693 (12) "Compactness" means concentration of a piece of
694 property in a single area and precludes any action which would
695 create enclaves, pockets, or finger areas in serpentine
696 patterns. Any annexation proceeding in any county in the state
697 shall be designed in such a manner as to ensure that the area
698 will be reasonably compact.
699 (13) "Enclave" means:
700 (a) Any unincorporated improved or developed area that is

701 enclosed within and bounded on all sides by a single
702 municipality; or
703 (b) Any unincorporated improved or developed area that is
704 enclosed within and bounded by a single municipality and a
705 natural or manmade obstacle that allows the passage of vehicular
706 traffic to that unincorporated area only through the
707 municipality.
708 Section 5. Subsection (2) of section 171.042, Florida
709 Statutes, is amended, and subsection (3) is added to that
710 section, to read:
711 171.042 Prerequisites to annexation.--
712 (2) Not less than 15 days prior to commencing the
713 annexation procedures under s. 171.0413, the governing body of
714 the municipality shall file a copy of the report required by
715 this section with the board of county commissioners of the
716 county wherein the municipality is located. Failure to timely
717 file the report as required in this subsection may be the basis
718 for a cause of action invalidating the annexation.
719 (3) The governing body of the municipality shall mail by
720 certified mail, not less than 10 days prior to the date set for
721 the first public hearing required by s. 171.0413(1), a written
722 notice to each person who resides or owns property within the
723 area proposed to be annexed. The notice must describe the
724 annexation proposal, the time and place for each public hearing
725 to be held regarding the annexation, and the place or places
726 within the municipality where the proposed ordinance may be
727 inspected by the public. A copy of the notice must be kept
728 available for public inspection during the regular business

729 hours of the office of the clerk of the governing body.
730 Section 6. Subsection (6) of section 171.044, Florida
731 Statutes, is amended to read:
732 171.044 Voluntary annexation.--
733 (6) Not less than 10 days prior to ~~Upon~~ publishing or
734 posting the ordinance notice required under subsection (2), the
735 governing body of the municipality must provide a copy of the
736 notice, via certified mail, to the board of the county
737 commissioners of the county wherein the municipality is located.
738 The notice provision provided in this subsection may ~~shall not~~
739 be the basis for a ~~of any~~ cause of action invalidating
740 ~~challenging~~ the annexation.
741 Section 7. Section 171.045, Florida Statutes, is amended
742 to read:
743 171.045 Annexation limited to a single county.--In order
744 for an annexation proceeding to be valid for the purposes of
745 this part ~~chapter~~, the annexation must take place within the
746 boundaries of a single county.
747 Section 8. Section 171.081, Florida Statutes, is amended
748 to read:
749 171.081 Appeal on annexation or contraction.--
750 (1) ~~No later than 30 days following the passage of an~~
751 ~~annexation or contraction ordinance,~~ Any party affected who
752 believes that he or she will suffer material injury by reason of
753 the failure of the municipal governing body to comply with the
754 procedures set forth in this part ~~chapter~~ for annexation or
755 contraction or to meet the requirements established for
756 annexation or contraction as they apply to his or her property

757 may file a petition in the circuit court for the county in which
758 the municipality or municipalities are located seeking review by
759 certiorari. The action may be initiated at the party's option
760 within 30 days following the passage of the annexation or
761 contraction ordinance or within 30 days following the completion
762 of the dispute resolution process in subsection (2). In any
763 action instituted pursuant to this subsection ~~section~~, the
764 complainant, should he or she prevail, shall be entitled to
765 reasonable costs and attorney's fees.
766 (2) If the affected party is a governmental entity, no
767 later than 30 days following the passage of an annexation or
768 contraction ordinance the governmental entity must initiate and
769 proceed through the conflict resolution procedures established
770 in chapter 164. If there is a failure to resolve the conflict,
771 no later than 30 days following the conclusion of the procedures
772 established in chapter 164 the governmental entity that
773 initiated the conflict resolution procedures may file a petition
774 in the circuit court for the county in which the municipality or
775 municipalities are located seeking review by certiorari. In any
776 legal action instituted pursuant to this subsection, the
777 prevailing party is entitled to reasonable costs and attorney's
778 fees.
779 Section 9. Section 171.094, Florida Statutes, is created
780 to read:
781 171.094 Effect of interlocal service boundary agreements
782 adopted under part II on annexations under this part.--
783 (1) An interlocal service boundary agreement entered into
784 pursuant to part II is binding on the parties to the agreement,

785 and a party may not take any action that violates the interlocal
786 service boundary agreement.
787 (2) Notwithstanding any other provision of this part,
788 without the consent of the county the affected municipality, or
789 affected independent special district by resolution, a county,
790 an invited municipality, or independent special district may not
791 take any action that violates an interlocal service boundary
792 agreement.
793 Section 10. Subsection (11) of section 163.01, Florida
794 Statutes, is amended to read:
795 163.01 Florida Interlocal Cooperation Act of 1969.--
796 (11) Prior to its effectiveness, an interlocal agreement
797 and subsequent amendments thereto shall be filed with the clerk
798 of the circuit court of each county where a party to the
799 agreement is located; however, if the parties to the agreement
800 are located in multiple counties and the agreement, pursuant to
801 subsection (7), provides for a separate legal entity or
802 administrative entity to administer the agreement, the
803 interlocal agreement and any amendments to the interlocal
804 agreement may be filed with the clerk of the circuit court in
805 the county where the legal or administrative entity maintains
806 its principal place of business.
807 Section 11. Section 164.1058, Florida Statutes, is amended
808 to read:
809 164.1058 Penalty.--If a primary conflicting governmental
810 entity ~~which has received notice of intent to initiate the~~
811 ~~conflict resolution procedure pursuant to this act~~ fails to
812 participate in good faith in the conflict assessment meeting,

813 mediation, or other remedies provided for in this act, ~~and the~~
814 ~~initiating governmental entity files suit and is the prevailing~~
815 ~~party in such suit,~~ the primary disputing governmental entity
816 that ~~which~~ failed to participate in good faith shall be required
817 to pay the attorney's fees and costs in that proceeding of the
818 prevailing primary conflicting governmental entity ~~which~~
819 ~~initiated the conflict resolution procedure~~.
820 Section 12. This act shall take effect upon becoming a
821 law.

HB 1567

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1567 Eminent Domain
SPONSOR(S): Rubio
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Camechis	Hamby
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill eliminates authority to take property for the purpose of eliminating slum or blight conditions in a geographical area and enhancing the tax base in community redevelopment areas. Taking of a parcel of property by eminent domain under the Community Redevelopment Act is allowed, however, if taking the property is reasonably necessary to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain. The bill requires local governments to exercise the power of eminent domain under the Community Redevelopment Act and prohibits delegation of that power to a community redevelopment agency. The bill requires enhanced property owner notice prior to consideration of any resolution finding slum or blight. Enhanced notice must also be provided 45 days prior to consideration of a county or city resolution to take a specific parcel of property, and the notice must indicate that the property will not be subject to taking if the conditions that pose a threat to public health or public safety are removed prior to the public hearing at which the resolution is considered.

If a property owner challenges an attempt to acquire his or her property by eminent domain under the Community Redevelopment Act, the condemning authority must demonstrate by clear and convincing evidence in an evidentiary hearing before the circuit court that the public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain, that the property is condemnation-eligible, and that taking the property is reasonably necessary in order to accomplish the public purpose. The circuit court must determine whether the public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain, whether the property is condemnation-eligible, and whether taking the property is reasonably necessary in order to accomplish the public purpose. The circuit court must make these determinations without attaching a presumption of correctness or extending judicial deference to any determinations or findings in the resolution of taking adopted by the condemning authority.

The bill also prohibits transfers of taken property to another private entity with specified exceptions, which include: transfers for use by common carriers, public utilities, private utilities, and private entities that occupy an incidental part of a public facility for the purpose of providing goods or services to the public; transfers for use in providing public infrastructure; and transfers of property taken under the Community Redevelopment Act to eliminate a threat to public health or public safety that is likely to continue absent the exercise of eminent domain. In addition, the bill allows the transfer of taken property to a private entity for any use if the property is retained by the condemning authority, or a private party to whom property was transferred under one of the exceptions, for 5 years after acquiring title to the property. This bill does not prohibit or limit the ability of local governments to take private property to abate a public nuisance inside or outside of a community redevelopment area. Therefore, cities and counties retain authority to take property to abate or eliminate any public nuisance if the taking is reasonably necessary. However, if property is taken to abate a nuisance on property that does not pose a threat to public health or public safety that is likely to continue absent the exercise of eminent domain, the property may not be transferred to a private entity unless the transfer qualifies as an exception to the prohibition against transfers of taken property to private entities.

City and county power to take property by eminent domain for a public purpose is otherwise unchanged; however, cities and counties are required to strictly comply with the prohibitions against transfers of taken property to private entities as provided in new s. 73.013, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill provides for limited government by restricting the circumstances under which local governments may take private property by eminent domain. The bill does not, however, alter the manner in which community redevelopment areas are created, funded, modified, or otherwise governed. The bill also restricts the circumstances under which private property taken by eminent domain may be transferred to private entities.

B. EFFECT OF PROPOSED CHANGES:

INTRODUCTION

On June 23, 2005, the United States Supreme Court issued its decision in the case of *Kelo v. City of New London*[1], concluding that the U.S. Constitution does not prohibit the City of New London from taking private property by eminent domain for the public purpose of economic development. Even though the Court's decision approved *Kelo*-type takings under the U.S. Constitution, the decision does not restrict the State of Florida from prohibiting takings for economic development or prohibiting transfers of property taken by eminent domain to private parties.

On June 24, 2005, House Speaker Allen Bense announced the creation of the Select Committee to Protect Private Property Rights chaired by Representative Marco Rubio. The Select Committee was tasked with reviewing Florida law in an effort to identify areas of ambiguity and recommend changes to ensure appropriate protections of property rights.

The fundamental issue raised by the *Kelo* decision may be summarized as follows: Under Florida law, is economic development -- which may include, but is not limited to, creating jobs and enhancing the tax base -- a valid public purpose for which private property may be taken and transferred to another private entity? In short, the Florida Constitution, Florida Statutes, and Florida Supreme Court decisions do not explicitly prohibit takings of private property for the purpose of economic development. Therefore, unless the Florida Constitution or statutes are amended, the question of whether a city or a county may take property for purposes of economic development will remain unanswered until directly addressed by the Florida Supreme Court.

While the case law and statutes do not expressly authorize takings for economic development purposes, private property rights advocates assert that current statutes authorizing the taking of private property for the public purpose of eliminating and preventing the recurrence of slum or blight conditions within a geographical area are being used to take property that is not genuinely blighted for economic development purposes. Much of the concern expressed by property rights advocates centers around the application of the statutory definition of "blighted area" and what many perceive as vague and inappropriate criteria in the definition. On the other hand, representatives of local government assert that the statutory criteria for slum and blight are sufficiently narrow and that the power of eminent domain is rarely exercised in the community redevelopment context.

This bill addresses takings of private property outside the redevelopment context for economic development purposes by prohibiting the transfer of taken property to private parties unless the transfer qualifies as one of the listed exceptions to the prohibition. The bill significantly limits eminent domain authority in the redevelopment context by authorizing the taking of property only if conditions on the property pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain; requiring enhanced notice to property and business owners under the Community Redevelopment Act; increasing the burden of proof on the local government at the time of

[1] 125 S.Ct. 2655 (2005).

taking property under the Community Redevelopment Act; and requiring a circuit court reviewing a proposed taking of property located in a redevelopment area to make certain determinations without applying a presumption of correctness or extending judicial deference to the local government determinations regarding the taking. The bill does not, however, alter the manner in which community redevelopment areas are created, funded, modified, or otherwise governed.

CURRENT SITUATION

General Principles of Eminent Domain Law

"Eminent domain" may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a "public use" and government must pay the owner "just compensation" for the taken property.[2] Even though the U.S. Constitution requires private property to be taken for a "public use", the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as "public purpose".

As long ago as 1905, the Court upheld state statutes that resulted in the transfer of taken property from one private owner to another for a legislatively declared public purpose. Prior to *Kelo*, the two most significant cases regarding this type of taking were *Berman v. Parker*[3] and *Hawaii Housing Authority v. Midkiff*[4].

In 1954, the Court issued a decision in the *Berman* case upholding a redevelopment plan targeting a blighted area. Under the Plan, part of the taken property would be leased or sold to private parties for redevelopment. A property owner challenged the taking, arguing that his property was not blighted and that the creation of a "better balanced, more attractive community" was not a valid public use. The Court held that eliminating slum or blight conditions in a geographic area is a public purpose and that it is permissible for government to take a parcel of private property in the area even if that particular parcel is not slum or blighted. Perhaps the most important aspect of the decision is the Court's conclusion that "when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive."

In 1984, the Court decided the *Midkiff* case in which private property owners challenged a Hawaii statute under which private properties were taken and transferred to lessees of those properties for the public purpose of reducing concentration of land ownership. Reaffirming the *Berman* decision's deferential approach to legislative judgments, the court unanimously upheld the statute. The Court concluded that a taking should be upheld as long as it is "rationally related to a conceivable public purpose."

Kelo v. City of New London

In 1990, a state agency designated the City of New London a "distressed municipality." The City was not, however, designated as a blighted or slum area. Thereafter, state and local officials targeted the area for economic revitalization, and a development plan was drafted. In addition to creating a large number of jobs and increasing the City's tax base, the plan was designed to make the City more attractive and to create leisure and recreational opportunities. While most of the property owners in the development area negotiated the sale of their property, negotiations with 7 property owners were unsuccessful. The property owners who did not wish to negotiate challenged the taking arguing that the use of eminent domain was

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[2] U.S. Const. amend. V.
[3] 348 U.S. 326 (1954).
[4] 467 U.S. 229 (1984).

unconstitutional because economic development without a determination of blight is not a valid public purpose.

In a 4-3 decision, the Supreme Court of Connecticut ruled that the takings were authorized by Connecticut's municipal development statute, which declares that the taking of land as part of an economic development project is a "public use" and in the "public interest". The case was appealed to the U.S. Supreme Court. The specific question before the Court was whether the City's taking of non-blighted private property for the purpose of economic development, in compliance with a state statute, satisfied the "public use" requirement of the U.S. Constitution even though the property would be transferred to other private entities for seemingly private uses.

The Court concluded that because the City's development plan "unquestionably" serves a public purpose, the takings satisfy the public use requirement of the U.S. Constitution. The Court immediately acknowledged, however, that a governmental entity may not take the private property of party A for the sole purpose of transferring the property to another private party B, even though A is paid just compensation. The court also noted that a one-to-one transfer of private property for the purpose of putting the property to more productive use, executed outside the confines of an integrated development plan, was not at issue in this case. The court concluded that, while such an unusual exercise of government power "would certainly raise a suspicion that a private purpose was afoot" the issue was not presented in the *Kelo* case and would not be addressed by the Court until directly presented in a future case.

The Court explicitly stated that the City could not take property simply to confer a private benefit to a "particular" private party. The Court also acknowledged that a governmental entity may not take property under the mere "pretext" of a public purpose, when its actual purpose was to bestow a private benefit. In *Kelo*, the Court noted that the takings would be executed pursuant to a "carefully considered" development plan; therefore, the property was not being taken under a mere pretext of public purpose.

Unlike more traditional public use takings, i.e., roads, schools, public parks, the Court recognized that the private lessees of the condemned property in New London would not be required to make the property or their services available to all comers. However, the Court noted that over the last hundred years, it has repeatedly rejected a literal requirement that condemned property be put into use for the general public and embraced the broader and more natural interpretation of public use as public purpose. The Court explained the erosion of "use by the public" as the definition of "public use" by pointing to the difficulty in administering the test and the impracticality of the test "given the diverse and always evolving needs of society."

The Court noted that, without exception, its decisions have "defined [the concept of public purpose] broadly, reflecting our longstanding policy of deference to legislative judgments in this field." The Court pointed out that its earliest cases in particular embodied a strong theme of federalism, emphasizing the "great respect" the Court "owe[s] state legislatures and state courts in discerning local public needs." For more than a century, the Court said, its public use jurisprudence has "wisely eschewed" rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.

Moreover, citing the *Berman* redevelopment case, the Court reasoned that promoting economic development is a traditional function of government and that "[t]here is... no principled way of distinguishing economic development from the other public purposes that we have recognized."

The Court also noted that a determination by municipal officials, acting pursuant to state authorization, that city-planned economic redevelopment is necessary "is entitled to [the Court's] deference." The city had, the Court recognized, carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue.

As with many eminent domain cases, the holding of the *Kelo* case is not absolutely clear. However, the Court explicitly concluded that the City's plan unquestionably serves a public purpose and that taking

private property under the facts presented in the case is permissible under the public use requirement of the U.S. Constitution.

It should be emphasized that the *Kelo* decision does not in any way restrict the State of Florida from prohibiting takings for purposes similar to those in *Kelo*, or for any other purpose for that matter. The Court emphasized that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline." Every state is entitled to interpret the public purpose provisions of its own state constitution in a manner that more narrowly interprets the public purpose requirement. In short, Florida may prohibit takings that are allowed under the U.S. Constitution, but may not allow takings that are prohibited.

Florida Eminent Domain Law

The Florida Constitution addresses eminent domain in section 6, Article X, as follows:

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

The Florida Constitution prohibits takings of private property unless the taking is for a "public purpose" and the property owner is paid "full compensation." The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that "private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed by law."[5]

Generally speaking, in order for a taking to be valid in Florida, the condemning authority must:

1. Possess authority to exercise the power of eminent domain;
2. Demonstrate that a taking of private property is pursued for a valid public purpose and that all statutory requirements have been fulfilled;
3. Offer evidence showing that the taking is reasonably, not absolutely, necessary to accomplish the public purpose of the taking; and
4. Pay the property owner full compensation as determined by a 12-member jury.

Each of these four requirements is more fully discussed below.

1. The condemning authority must be authorized to exercise the power of eminent domain.

In order to take private property by eminent domain, an entity must possess statutory or constitutional authority to exercise the power of eminent domain. With the exception of cities and possibly charter counties, an entity does not have authority to exercise the power of eminent domain unless authorized to do so by the Legislature. If the Legislature delegates authority to exercise the power of eminent domain, procedures and requirements imposed by statute are mandatory.

[5] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).

a. Constitutional Delegation of Home Rule Powers to Cities and Counties

The municipal home rule provision in Florida's Constitution authorizes cities to "exercise any power for municipal purposes except as otherwise provided by law".[6] In 1992, the Florida Supreme Court concluded that a statutory grant of authority is not necessary in order for a city to exercise the power of eminent domain.[7] However, because cities have all powers "except as otherwise provided by law", the Legislature may expressly prohibit cities from exercising the power of eminent domain for particular purposes. Rather than prohibiting municipal exercise of the power of eminent domain, the Legislature has granted municipalities broad statutory powers of eminent domain, including the power to take private property for "good reason connected in anywise with the public welfare of the interests of the municipality and the people thereof" and for "municipal purposes".[8]

The Florida Constitution grants charter counties "all powers of local self government not inconsistent with general law" and grants noncharter counties "such power of self-government as is provided by general law."[9] Based upon the broad constitutional grant of authority, it appears that charter counties possess the power of eminent domain except as expressly prohibited by general law. However, the Florida Supreme Court has stated, in what appears to be dicta, that counties may not have the power of eminent domain unless specifically authorized by the Legislature.[10] Even if charter counties do not possess constitutional home rule power to take property, the Legislature has granted broad statutory powers to all counties, including the power to take property for "any county purpose".[11]

It should be noted there is no evidence indicating that a city or county in Florida has exercised the power of eminent domain under constitutional home rule powers for the declared purpose of economic development.

2. A condemning authority must demonstrate that a taking is pursued for a valid public purpose and that any statutory requirements have been fulfilled.

a. What is a valid public purpose for which property may be taken by eminent domain under Florida law?

The second requirement for a valid taking is that the property must be taken for a public purpose. The fundamental question is this: what qualifies as a public purpose in Florida? There is not a definitive answer to the question for at least three reasons. First, the determination of whether a taking serves a valid public purpose depends upon the facts of each case. Second, the concept of public purpose has evolved in Florida case law over the past century from a narrowly defined and applied concept to broadly defined and applied concept. Third, the Florida Supreme Court has equated the public purpose necessary to support the issuance of public bonds with the public purpose necessary to support a taking of private property by eminent domain. However, as with eminent domain cases, recent bond validation cases appear to apply a broad interpretation of the public purpose doctrine while early cases apply a more narrow interpretation of the doctrine.

The Florida Courts have long held that the public purpose requirement in the Florida Constitution does not require private property taken by eminent domain to be "used by the public" if the court determines that the taking accomplishes a valid public purpose. However, Florida law does <u>not</u> allow government to take property from private owner A and transfer it to private owner B for "the <u>sole</u> purpose of making such property available to private enterprises for private use."[12]

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[6] Art. VIII, § 2, Fla. Const.
[7] *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).
[8] § 166.411, F.S.
[9] Art. VIII, § 1, Fla. Const.
[10] *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).
[11] § 127.01, F.S.
[12] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *State ex rel. Ervin v. Cotney*, 104 So.2d 346 (Fla. 1958).

In order to demonstrate that public purpose is not a clearly defined concept, the following Florida Supreme Court decisions illustrate the fact that some decisions apply the public purpose concept narrowly, while other cases apply the concept broadly.

The first case illustrating the narrow view is the 1947 case of *Peavy-Wilson Lumber Co. v. Brevard County.*[13] In the *Peavy* case, the Court concluded that the power of eminent domain should be limited to taking property for "something basically essential" such as roads, schools, drainage projects, parks, and playgrounds. However, even the *Peavy* Court recognized that the concept is not static and advances with caution to meet society's needs in conformity with the constitution.

In 1975, the court considered the case of *Baycol v. Downtown Development Authority of City of Ft. Lauderdale*[14], in which a downtown development authority attempted to condemn private property for a parking garage. The Supreme Court concluded that there was not a public need for extra parking facilities, which was cited as the sole basis for the taking, without the shopping center that would be constructed atop the parking garage. The development authority did not assert that economic development -- job creation or tax base enhancement -- was the public purpose for condemning the property. Therefore, the *Baycol* court did not explicitly rule on whether a taking for the declared public purpose of economic development is permissible under the Florida Constitution. The *Baycol* court declared, however, that private property may not be taken by eminent domain for a predominantly private use. To date, the Court has not established a "test" for determining when a public purpose predominates over the private interest. Each case is viewed on the individual facts presented to the court and based upon the public purpose asserted by the condemning authority. Therefore, it is unknown whether the Florida courts would consider a *Kelo*-type taking as serving a predominately public or private use.

In 1977, the court considered the case of *Deseret Ranches of Florida v. Bowman,*[15] and upheld a state statute that permitted one private property owner to exercise the power of eminent domain for the purpose of obtaining an easement of necessity over the property of another private landowner. The court reasoned that the "the statute's purpose is predominantly public and the benefit to the landowner is incidental to the public purpose....Useful land becomes more scarce in proportion to the population increase, and the problem in this state becomes greater as tourism, commerce and the need for housing and agricultural goods grow. By its application to shut-off lands to be used for housing, agriculture, timber production and stock raising, the statute is designed to fill these needs. There is then a clear public purpose in providing means of access to such lands so that they may be utilized in the enumerated ways." It has been asserted that the court's decision in *Deseret* "utterly complicates what some thought might have otherwise been a straightforward argument that *Baycol* prohibits *Kelo*-style economic development takings. In *Deseret Ranches*, it was clear that all the direct benefits of the taking were private, and any public benefits were purely incidental. Yet the 'sensible utilization of land' was, for the Court, of such a dominant public purpose as to allow that rather lopsided outcome to be characterized as consistent with *Baycol*. One does not have to possess much imagination to think of how economic development takings could be portrayed as also serving the predominant public purpose of 'sensible utilization of land.'"[16]

In 1988, the court continued to broaden the application of the public purpose doctrine in *Fl. Dep't of Transp. v Fortune Federal Savings and Loan Ass'n,*[17] concluding that "[t]he term 'public purpose' does not mean simply that the land is used for a specific public function, i.e. a road or other right of way. Rather, the concept of public purpose must be read more broadly to include projects which benefit the state in a tangible, foreseeable way."

There is also a large body of case law addressing the "public purpose" necessary to support the issuance of public bonds or the spending of public funds. When the Florida Supreme Court upheld the Community

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[13] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
[14] *Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale*, 315 So.2d 451 (Fla. 1975).
[15] 349 So.2d 155 (Fla. 1977).
[16] Professor J. B. Ruhl, *Property Rights at Risk? Eminent Domain Law in Florida After The U.S. Supreme Court Decision In Kelo v. City of New London*, p. 11 (James Madison Institute Backgrounder, Number 46, Sept. 2005).
[17] *Dep't of Transp. v. Fortune Federal Sav. and Loan Ass'n*, 532 So.2d 1267 (Fla. 1988).

Redevelopment Act in 1980[18], it equated the public purpose necessary to support the issuance of public bonds with the public purpose necessary to support a taking of private property by eminent domain. At least since 1968, the Court has broadly applied the public purpose concept in bond validation cases. However, there are early bond validation cases that appear to apply a narrow view of the public purpose doctrine.

b. Determinations of public purpose

The Legislature may authorize an entity to take property and, at the same time, declare that the taking serves a particular public purpose. However, the ultimate question of the validity of a legislatively declared public purpose is resolved by the courts.[19] Nonetheless, the courts' role in determining whether the power of eminent domain is exercised in furtherance of a legislatively declared public purpose is narrow.[20] In order to invalidate a statute that has a stated public purpose, the party challenging the statute must show that the stated purpose is arbitrary and capricious and so clearly erroneous as to be beyond the power of the legislature.[21] The threshold question for the courts is not whether the proposed use is a public one, but whether the Legislature might reasonably consider it a public one.[22]

While the question of whether the use for which private property is taken is a public use is ultimately a judicial question, where the Legislature declares a particular use to be a public use, the presumption is in favor of its declaration, and the courts will not interfere unless the use is clearly and manifestly of a private character.[23]

Similarly, when a local government's governing body determines that a taking of private property serves a statutory public purpose, the determination is entitled to judicial deference and is presumed valid and correct unless patently erroneous. Unless a condemning authority acts illegally, in bad faith, or abuses its discretion, its selection of land for condemnation will not be overruled by a court; a court is not authorized to substitute its judgment for that of a governmental body acting within the scope of its lawful authority.[24] The court will sustain the local government's determination that a taking serves the statutory public purpose as long as it is "fairly debatable".[25]

3. A condemning authority must offer evidence showing that the taking is reasonably, not absolutely, necessary to accomplish the public purpose of the taking.

If a governmental entity is authorized to take property for a valid public purpose, the entity must show that taking the property is reasonably, not absolutely, necessary in order to accomplish the declared public purpose. First, the condemning authority must show some evidence of a reasonable necessity for the taking. Once a reasonable necessity is shown, the exercise of the condemning authority's discretion will not be disturbed in the absence of illegality, bad faith, or gross abuse of discretion.[26]

4. A condemning authority must pay the property owner full compensation as determined by a 12-member jury.

If a court finds that a governmental entity is authorized to take private property for a valid public purpose, and that the entity has presented evidence showing that the property is reasonably necessary to accomplish the declared public purpose, the property owner must be paid full compensation for the taken

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[18] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980).
[19] *Dep't of Transp. v. Fortune Federal Sav. and Loan Ass'n*, 532 So.2d 1267 (Fla. 1988).
[20] *Id.*
[21] *Id.*
[22] *Wilton v. St. Johns County*, 98 Fla. 26, 123 So. 527 (Fla. 1929).
[23] *Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (Fla. 1926).
[24] *Canal Authority v. Miller*, 243 So.2d 131 (Fla. 1970).
[25] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 2002); *JFR Inv. v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261 (Fla. 4th DCA 1995).
[26] *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).

property. Key aspects of the constitutional requirement for payment of full compensation may be summarized as follows:

- A property owner is entitled to full and just compensation.
- A twelve-member jury determines the amount of compensation.
- Determining the amount of just compensation is a judicial function that cannot be performed by the Legislature directly or indirectly.
- The Legislature may create an obligation to pay more than what the courts might consider full compensation.
- Generally, the just and full compensation due is the fair market value of the property at the time of the taking.
- A condemning authority must pay reasonable attorney's fees and costs.
- A landowner is entitled to compensation for the reasonable cost of moving personal property, including impact fees.
- Business damages are available only in the case of partial takings, not takings of a full parcel.

Impact of the *Kelo* Decision on Florida Law

The question of whether the *Kelo* decision impacts takings in Florida continues to be the subject of debate. Arguably, the *Kelo* decision has no direct impact on Florida's eminent domain law. Although the decision applies in Florida to the extent that a *Kelo*-type taking may not violate the U.S. Constitution, the decision does not mean that a *Kelo*-type taking is allowed under the Florida Constitution. Whether the Florida Constitution allows a *Kelo*-type taking must be decided by the Florida Supreme Court, not the U.S. Supreme Court. What remains uncertain is whether the *Kelo* decision will have an indirect impact on the Florida courts' interpretation and application of eminent domain law in any future attempts by cities or counties to take private property for economic development purposes.

Determining whether a *Kelo*-type taking may occur in Florida must be considered in two contexts:

1. First, whether a city or county taking of private property in a non-blighted or non-slum area for the purpose of economic development is permitted outside the context of Florida's Community Redevelopment Act; and

2. Second, whether *Kelo*-type takings are now occurring under the Community Redevelopment Act.

Kelo-type takings outside the Community Redevelopment Act context

Unlike Connecticut, the Florida Legislature has not enacted a statute that expressly authorizes takings of private property in non-blighted or non-slum areas for the purpose of economic development. Therefore, state agencies are prohibited from taking property for economic development purposes. Based on the absence of a statutory delegation of authority, it may appear that a *Kelo*-type taking cannot occur under any circumstances. As previously discussed, however, cities have and charter counties may have constitutional home rule power to take property by eminent domain for economic development purposes without an explicit authorization from the Legislature. In addition, current statutes grant broad home rule authority to cities and counties, including the authority to exercise the power of eminent domain for any municipal or county purpose, and declare that economic development is a public purpose for which cities and counties may expend public funds. It could be argued that, since the Legislature has declared economic development a public purpose for spending public funds[27], economic development may be considered a public purpose for which cities and counties may exercise the power of eminent domain.

Based upon the uncertainty created by the current case law and the lack of case law directly on point, it is not possible to determine how the Florida courts will view takings of private property for economic development purposes in Florida if directly presented with the issue. What is certain is that there is not an explicit statutory or constitutional provision that prohibits cities or counties from taking private property in

[27] ss. 125.045 and 166.021, F.S.

non-blighted or non-slum areas for purposes of increasing jobs, increasing the tax base, maximizing efficient use of property, or other general economic development purposes. Further, the Florida Supreme Court has never considered a case involving a taking of private property in non-blighted or non-slum areas by a city or county asserting home rule powers for the declared public purpose of economic development.

Therefore, the decision as to whether *Kelo*-type takings are permissible in Florida lies squarely in the judiciary, and will remain so unless the constitution or statutes are amended to restrict takings for economic development purposes or restrict transfers of taken property to private entities.

Takings in the context of the Community Redevelopment Act

After the *Kelo* decision was issued, the media and other interested parties focused primarily on Florida's Community Redevelopment Act (Act), alleging that abuses of the Act are occurring throughout Florida. However, the *Kelo* decision does not have a direct impact on takings in the redevelopment context due to the fact that the property at issue in *Kelo* was not blighted or taken under a "redevelopment" statute.

In 1980, the Florida Supreme Court upheld Florida's Community Redevelopment Act in its entirety. The Act authorizes the use of eminent domain for acquisition and clearance of private property for the public purpose of eliminating and preventing the recurrence of slum or blight conditions in a geographic area. The Act also authorizes "substantial private and commercial uses of the property after redevelopment."[28]

The Act imposes requirements that must be satisfied by a county or city that wishes to create a redevelopment agency, declare redevelopment areas, or issue revenue bonds to finance projects within these areas. Under the Act, a county or city may not exercise community redevelopment authority, including the power of eminent domain, until the county or city satisfies the statutory requirements. Those requirements include adoption of a resolution, supported by data and analysis, which makes a legislative finding that the conditions in the area meet the criteria of a "slum area" or "blighted area" as defined in statute,[29] and that the rehabilitation, conservation, or redevelopment of the area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the county or city.[30]

The Community Redevelopment Act does not specifically authorize takings for "economic development" purposes; rather, the Act authorizes the taking of property within a blighted or slum area for the public purpose of eliminating and preventing slum and blight conditions, and permits the transfer of taken property to private entities for redevelopment in order to accomplish that public purpose. Private property rights advocates assert that the Act is being used to take areas of property that are not genuinely blighted for purely economic development purposes. Much of the concern expressed by property rights advocates centers around the application of the statutory definition of "blighted area," and what many perceive as the vague and inappropriate criteria in the definition.

Soon after the *Kelo* decision was issued, an Order of Taking was entered by the Circuit Court in Volusia County in a case involving takings of private property on the Daytona Beach Boardwalk, which is located within a community redevelopment area. The Order of Taking cites extensively to the *Kelo* decision, as well as to Florida judicial decisions, to uphold the takings in the case. Citing the *Kelo* decision, the circuit court opined that "[w]hen a taking serves a public purpose, the fact that the property ultimately is transferred to a private owner and that it confers a private benefits on others does not render the taking unconstitutional. The public use clause would be violated only if the taking were for purely private purposes or if the alleged public purpose were merely pretextual."[31]

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[28] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980).
[29] § 163.355, F.S.
[30] § 163.355, F.S.
[31] *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).

Community Redevelopment Act issues addressed in case law

A large body of case law exists regarding the exercise of eminent domain under the Community Redevelopment Act, which includes the following significant judicial conclusions:

- A community redevelopment agency is not required to prove that the same level of blight exists when it seeks to condemn property as was present when the redevelopment plan was initially adopted.[32]
- Designations of blight or slum do not expire after a given period of time; therefore, property located within a redevelopment area is subject to taking for an indefinite period of time.[33]
- If a public purpose and reasonable necessity exists for the taking of property for slum or blight clearance, the fact that a landowner has begun to develop the property in accordance with the redevelopment plan does not give the owner an option to retain and develop the property unless approved by the redevelopment agency.[34]
- The general characteristics of a slum or blighted geographic area control whether property within the entire area is subject to taking, not the condition of an individual parcel.[35] Therefore, a parcel of property may be subject to taking by eminent domain if the parcel is located in an area designated as slum or blighted even if the parcel itself is not in a slum or blighted condition.

Summary of Key Points

The following may be considered a summary of the key aspects of the preceding discussion of the law:

- The decision as to whether a taking for economic development purposes is permissible in Florida lies squarely in the judiciary, and will remain so unless the constitution or statutes are amended to restrict such takings.
- The *Kelo* decision did not directly affect the fundamental principles of Florida's eminent domain law; however, for the first time, the U.S. Supreme Court approved, under the U.S. Constitution, a taking of private property in a non-blighted or non-slum area and subsequent transfer to private parties for the purpose of economic development.
- Whether the *Kelo* decision will have an indirect impact on the Florida courts' interpretation and application of the law in a future attempt by cities or counties to take private property for economic development purposes is unknown.
- There is not a Florida statute that explicitly prohibits the taking of private property for economic development purposes; therefore, cities and counties appear to have the underlying authority to initiate a taking for economic development purposes under their constitutional and statutory home rule power.
- The Florida Supreme Court has not considered a case involving a taking for the declared public purpose of economic development. Therefore, whether the Court will uphold or prohibit such takings in the future is unknown.
- The Florida Supreme Court has upheld the Community Redevelopment Act, concluding that the elimination and prevention of slum and blight serves a public purpose and that the public purpose is not invalidated by the substantial involvement of private interests in redevelopment.
- The Community Redevelopment Act includes a broad definition of "blighted area," which may permit the taking of an individual parcel of property that does not appear to be blighted. Private property rights advocates claim that under the current definition of "blight," *Kelo*-type takings are occurring in Florida.

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[32] *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).
[33] *Rukab v. City of Jacksonville Beach*, 866 So.2d 773 (Fla. 1st DCA 2004); *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).
[34] *Post v. Dade County*, 467 So.2d 758 (Fla. 3rd DCA 1985); rev. den. *Post v. Dade County*, 479 So.2d 118 (Fla. 1985).
[35] *Berman v. Parker*, 348 U.S. 26 (1954); *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *Post v. Dade County*, 467 So.2d 758 (Fla. 3rd DCA 1985); rev. den. *Post v. Dade County*, 479 So.2d 118 (Fla. 1985); *Grubstein v. Urban Renewal Agency of City of Tampa*, 115 So.2d 745 (Fla. 1959).

- The League of Cities and the Community Redevelopment Association assert that eminent domain is typically a last resort to complete the land assembly process. However, they predict that, without the power of eminent domain, "CRAs will have much difficulty in assembling land especially where many landowners are involved".

Community Redevelopment Act Generally

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), provides a mechanism to eliminate and prevent the recurrence of slum or blighted areas, "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state." The Act finds and declares that the powers conferred by the Act, including the power of eminent domain, are for public uses and purposes for which public money may be expended and the power of eminent domain exercised. In short, the Act declares that eliminating and preventing the recurrence of slum or blight conditions is a valid public purpose for which property may be taken by eminent domain.

The Act authorizes counties and cities to exercise the community redevelopment powers under the Act if the governing body first adopts a "finding of necessity" resolution finding that conditions in the area meet the criteria for a "slum area" or "blighted area" under the Act. The definition has undergone revisions over the years whereby the criteria were made more general in order to allow non-traditional "slum" and "blighted" areas to be eligible for participation. Section 163.340, F.S., defines "slum area" and "blighted area" as follows:

> (7) "Slum area" means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:
> (a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;
> (b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or
> (c) The existence of conditions that endanger life or property by fire or other causes.
>
> (8) "Blighted area" means an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
> (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
> (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
> (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
> (d) Unsanitary or unsafe conditions;
> (e) Deterioration of site or other improvements;
> (f) Inadequate and outdated building density patterns;
> (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
> (h) Tax or special assessment delinquency exceeding the fair value of the land;
> (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
> (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
> (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
> (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
> (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
> (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, "blighted area" means an area as defined in this subsection.

Upon a further finding that there is a need for a community redevelopment agency to carry out the community redevelopment purposes of the Act, the governing body may create a community redevelopment agency. The finding of necessity resolution is not required to specify that property within the redevelopment area may be subject to taking by eminent domain, and the governing body is not required to provide notice of the resolution to property owners within the area other than the notice typically provided for public hearings conducted by a governmental entity. The notice of the public hearing is not required to specify that property within the redevelopment area may be subject to taking. After the finding of necessity resolution is adopted and the community redevelopment agency is formed, property within the area is subject to taking if taking the property is reasonably necessary to accomplish the public purpose of eliminating and preventing the recurrence of slum or blight conditions in the area.

Section 163.375, F.S., currently authorizes any county or municipality, or any community redevelopment agency pursuant to specific approval of the governing body of the county or municipality that established the agency, to acquire by eminent domain any interest in real property, including a fee simple title, that it deems necessary for, or in connection with, community redevelopment and related activities under the Act. Any county or municipality, or any community redevelopment agency pursuant to specific approval by the governing body of the county or municipality that established the agency, may exercise the power of eminent domain in the manner provided in chs. 73 and 74, F.S., or may exercise the power of eminent domain in the manner provided by any other statutory provision for the exercise of the power of eminent domain. Property in unincorporated enclaves surrounded by the boundaries of a community redevelopment area may be acquired when it is determined necessary by the agency to accomplish the community redevelopment plan. Property already devoted to a public use may be acquired in like manner. However, no real property belonging to the United States, the state, or any political subdivision of the state may be acquired without its consent.

If a governing body adopts a finding of necessity resolution and creates a redevelopment agency, any property within the redevelopment area may be subject to taking if taking the property is reasonably necessary to accomplish the public purpose of eliminating and preventing the recurrence of slum or blight conditions. If, at some point after the resolution is adopted, a property owner challenges the taking of a specific parcel of private property and questions the validity of the resolution finding blight or slum conditions, the courts will sustain the resolution and findings of the governing body "as long as [they were] fairly debatable" at the time the resolution was adopted.[36]

When a local government determines that a taking of private property serves the statutory public purpose of eliminating slum or blight conditions, the determination is entitled to judicial deference and is presumed valid and correct unless patently erroneous. Unless a condemning authority acts illegally, in bad faith, or abuses its discretion, its selection of land for condemnation will not be overruled by a court, and a court is not authorized to substitute its judgment for that of a governmental body acting within the scope of its lawful authority.[37] The court will sustain the local government's determination that a taking serves the declared public purpose as long as it is "fairly debatable".[38]

If a governmental entity is authorized to take property for a valid public purpose, the entity must show that a taking of the property is reasonably, not absolutely, necessary in order to accomplish the declared public purpose of eliminating and preventing the recurrence of slum or blight conditions. First, the condemning authority must show some evidence of a reasonable necessity for the taking. Once a reasonable necessity

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[36] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 1992).
[37] *Canal Authority v. Miller*, 243 So.2d 131 (Fla. 1970).
[38] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 2002); *JFR Inv. v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261 (Fla. 4th DCA 1995).

is shown, the exercise of the condemning authority's discretion will not be disturbed in the absence of illegality, bad faith, or gross abuse of discretion.[39]

Within community redevelopment areas, charter counties and cities may also exercise the power of eminent domain pursuant to their home rule powers or any other statutory authorization, including the power to take property for any county or municipal purpose. Non-charter counties may take property within the boundaries of a community redevelopment area for any purpose authorized by statute, including any county purpose.

EFFECT OF PROPOSED CHANGES

Section-by-Section Analysis

Section 1. Creates s. 73.013, F.S.

This section creates new s. 73.013, F.S., to restrict transfers of property taken by eminent domain to private parties. This section is created to address takings for economic development purposes by prohibiting transfers of property taken by eminent domain to private parties unless the transfer qualifies as one of the exceptions listed in this section.

According to this new section, if the state, any political subdivision as defined by statute, or any other entity to which the power of eminent domain is delegated files a petition of taking on or after July 1, 2006, regarding a parcel of real property, ownership or control of property acquired pursuant to the petition may not be conveyed by the condemning authority or any other entity to a natural person or private entity, except that ownership or control of property acquired pursuant to the petition may be conveyed to:

> (1) (a) A natural person or private entity for use in providing common carrier services or systems;
> (b) A natural person or private entity for use as a road or other right-of-way or means open to the public for transportation, whether at no charge or by toll;
> (c) A natural person or private entity that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;
> (d) A natural person or private entity for use in providing public infrastructure;
> (e) A natural person or private entity that occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;
> (f) A natural person or private entity if the property was taken pursuant to s. 163.375;
> (g) A natural person or private entity if the property was owned and controlled by the condemning authority or a governmental entity for at least 5 years after the condemning authority acquired title to the property; or
> (h) A natural person or private entity in accordance with subsection (2).
> (2) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (1)(a), (b), (c), (d), (e), or (f), and that natural person or private entity retains ownership and control of the property for at least 5 years after acquiring title, the property may subsequently be transferred to another natural person or private entity without restriction.

1. Common Carriers

New s. 73.013(1)(a), F.S., allows transfers of taken property to a natural person or private entity for use in providing common carrier services or systems. A common carrier is generally defined as "one who holds himself out to the public as engaged in the business of transporting persons or property from place to

[39] *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).

place, for compensation, offering his services to the public generally....The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by a course of conduct, as to the service offered or performed.... To constitute a public conveyance a common carrier, it is not necessary that it come within the definition of a public utility so as to be subjected to the rules and regulations of a public utility commission."[40]

2. Public Infrastructure

New s. 73.013(1)(d), F.S., allows the transfer of taken property to a private person or entity if the property will be used for purposes of public infrastructure. Although the new statutory section does not define "public infrastructure", the term is defined in The American Heritage Dictionary as "[t]he basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including schools, post offices, and prisons."[41]

Infrastructure has come to connote a diverse collection of constructed facilities and associated services, ranging from airports to energy supply to landfills to wastewater treatment. Many of the facilities are built and operated by governments, and thus fall easily into the category of public works, but others are built or operated, in whole or in part, by private enterprise or joint public-private partnership. What is today considered infrastructure has traditionally been viewed as separate systems of constructed facilities, supporting such functions as supplying water, enabling travel, and controlling floods.[42]

A 1987 committee of the National Research Council, reporting on Infrastructure for the 21st Century adopted the term "public works infrastructure" including both specific functional modes—highways, streets, roads, and bridges; mass transit; airports and airways; water supply and water resources; wastewater management; solidwaste treatment and disposal; electric power generation and transmission; telecommunications; and hazardous waste management—and the combined system these modal elements comprise. Parkland, open space, urban forests, drainage channels and aquifers, and other hydrologic features also qualify as infrastructure, not only for their aesthetic and recreational value, but because they play important roles in supplying clean air and water.[43]

Section 2. Amends s. 163.335, F.S.

Currently, s. 163.335, F.S., provides legislative findings and declarations of necessity in the Community Redevelopment Act. This section finds and declares that the powers conferred by the Act, including the power of eminent domain, are for public uses and purposes for which public money may be expended and the power of eminent domain exercised. In short, this provision declares that eliminating and preventing the recurrence of slum or blight conditions is a valid public purpose for which private property may be taken by eminent domain. In 1980, the Florida Supreme Court stated that "it was recognized very early that slum clearance and public housing, when declared to be so by the legislature, were public purposes...The wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods or even whole districts is not for the Court to determine."[44] The courts have concluded that eliminating and preventing the recurrence of slum or blight conditions is a valid public purpose for taking any property within a community

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[40] *L. B. Smith Aircraft Corp. v. Green,* 94 so.2d 832 (Fla.1957); *Ruke Transport Line, Inc. v. Green*, 156 So.2d 176 (Fla. 1st DCA 1963).
[41] The American Heritage® Dictionary of the English Language, Fourth Edition. Copyright © 2000 by Houghton Mifflin Company.
[42] In Our Own Backyard: Principles for Effective Improvement of the Nation's Infrastructure, COMMITTEE ON INFRASTRUCTURE BUILDING RESEARCH BOARD COMMISSION ON ENGINEERING AND TECHNICAL SYSTEMS NATIONAL RESEARCH COUNCIL, Albert A. Grant, Andrew C. Lemer, Editors, NATIONAL ACADEMY PRESS, WASHINGTON, D.C., 1993.
[43] *Id.*
[44] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).

redevelopment area even if the property is in immaculate condition and the taking occurs long after the local government determines that slum or blight conditions exist in the area.[45]

The bill amends s. 163.335, F.S., to specify that the prevention or elimination of a "slum area" or "blighted area" as defined in the Act, and the preservation or enhancement of the tax base, are not public uses or purposes for which private property may be taken by eminent domain.

Section 3. Amends s. 163.355, F.S.

Currently, s. 163.355, F.S., requires a city or county to adopt a finding of necessity resolution that makes a legislative finding that the conditions in the area meet the criteria described in the statutory definitions of "slum area" and "blighted area". The resolution must state that (a) one or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and (b) the rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.

The bill adds new provisions to s. 163.355, F.S., all of which generally relate to providing enhanced notice prior to formation of a community redevelopment area to owners of property that may be located within the community redevelopment area. The enhanced notice is designed to inform the public that property located within a proposed redevelopment area may be subject to taking by eminent domain if the area is designated as a redevelopment area under the Act.

New subsection (2) requires each resolution finding slum or blight conditions to indicate that property within the community redevelopment area may be subject to taking by eminent domain pursuant to s. 163.375, F.S. In the alternative, the county or municipality may explicitly state in the resolution that the power of eminent domain provided under s. 163.375, F.S., will not be exercised by the county or municipality within the community redevelopment area. A county or municipality is not required to provide notice in accordance with subsections (3) and (4) if the resolution finding slum or blight conditions, as proposed and adopted by the county or municipality, expressly declares that the power of eminent domain provided under s. 163.375, F.S. will not be exercised by the county or municipality within the community redevelopment area.

New subsection (3) provides that, at least 30 days prior to the first public hearing at which a proposed resolution finding slum or blight conditions will be considered by a county or municipality, actual notice of the public hearing must be mailed via first class mail to each real property owner whose property may be included within the community redevelopment area and to each business owner, including a lessee, who operates a business located on property that may be included within the community redevelopment area.

a. Notice to Property Owners. Notice must be sent to each owner of real property that may be included within the community redevelopment area at the owner's last known address as listed on the county ad valorem tax roll. Alternatively, the notice may be personally delivered to a property owner. If there is more than one owner of a property, notice to one owner constitutes notice to all owners of the property. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires title to property after the notice required by this subsection has been given.

b. Notice to Business Owners. Notice must be sent to the address of the registered agent for the business located on the property or, if no agent is registered, by certified mail or personal delivery to the address of the business located on the property. Notice to one owner of a multiple ownership business constitutes notice to all owners of that business. The return of the notice as undeliverable by the postal

[45] See *Berman v. Parker,* 348 U.S. 326 (1954); *City of Jacksonville v. Moman*, 290 So.2d 105 (Fla. 1st DCA 1974); cert. den., 297 So.2d 570 (Fla. 1974); *Grubstein v. Urban Renewal Agency of City of Tampa*, 115 So.2d 745 (Fla. 1959).

authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires an interest in a business after the notice required by this subsection has been given.

c. At a minimum, the mailed notice required by paragraphs (a) and (b) must:

- Generally explain the purpose, effect, and substance of the proposed resolution;
- Indicate that private property within the proposed redevelopment area may be subject to taking by eminent domain if the current condition of the property poses an existing threat to the public health or public safety that is likely to continue absent the exercise of eminent domain;
- Indicate that private-to-private transfers of property may occur;
- Contain a geographic location map that clearly indicates the area covered by the resolution, including major street names as a means of identification of the general area;
- Provide the dates, times, and locations of future public hearings during which the resolution may be considered;
- Identify the place or places within the county or municipality at which the resolution may be inspected by the public;
- Indicate that the property owner may file written objections with the local governing board prior to any public hearing on the resolution; and
- Indicate that interested parties may appear and be heard at all public hearings at which the resolution will be considered.

New subsection (4) provides that, in addition to mailing notice to property owners, the county or municipality must conduct at least two advertised public hearings prior to adoption of the proposed resolution. At least one hearing must be held after 5 p.m. on a weekday, unless the governing body, by a majority plus one vote, elects to conduct the hearing at another time of day. The first public hearing must be held at least 7 days after the day the first advertisement is published. The second hearing must be held at least 10 days after the first hearing and must be advertised at least 5 days prior to the public hearing. The required advertisements must be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement must not be placed in that portion of the newspaper where legal notices and classified advertisements appear and must be placed in a newspaper of general paid circulation rather than one of limited subject matter. Whenever possible, the advertisement must appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published fewer than 5 days a week. At a minimum, the advertisement must:

- Generally explain the substance and effect of the resolution;
- Include a statement indicating that private property within the proposed redevelopment area may be subject to taking by eminent domain if the current condition of the property poses an existing threat to the public health or public safety that is likely to continue absent the exercise of eminent domain;
- Provide the date, time, and location of the meeting;
- Identify the place or places within the county or municipality at which the resolution may be inspected by the public;
- Contain a geographic location map that clearly indicates the area covered by the resolution, including major street names as a means of identification of the general area;
- Indicate that any interested party may file written objections with the local governing board prior to the public hearing; and
- Indicate that any interested party may appear and be heard at the public hearing.

Section 4. Amends s. 163.358, F.S.

Currently, under s. 163.358, F.S., community redevelopment powers assigned to a community redevelopment agency include all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act, except the following, which vest in the governing body of the county or municipality:

- The power to determine an area to be a slum or blighted area, or combination thereof; to designate such area as appropriate for community redevelopment; and to hold any public hearings required with respect thereto.
- The power to grant final approval to community redevelopment plans and modifications thereof.
- The power to authorize the issuance of revenue bonds.
- The power to approve the acquisition, demolition, removal, or disposal of property and the power to assume the responsibility to bear loss.
- The power to approve the development of community policing innovations.

This bill amends s. 163.358, F.S., to specify that the power of eminent domain vests in the governing body of a city or county that has created a community redevelopment agency, and to prohibit delegation of the power of eminent domain by the governing body of a city or county to a community redevelopment agency.

Section 5. Amends s. 163.360, F.S.

Currently, s. 163.360, F.S., provides that community redevelopment in a community redevelopment area may not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area, a blighted area, or an area in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, or a combination thereof, and designated such area as appropriate for community redevelopment. The county, municipality, or community redevelopment agency may itself prepare or cause to be prepared a community redevelopment plan, or any person or agency, public or private, may submit such a plan to a community redevelopment agency. Prior to adopting a plan, the governing body must hold a public hearing on a community redevelopment plan after public notice by publication in a newspaper having a general circulation in the area of operation of the county or municipality. The notice must describe the time, date, place, and purpose of the hearing, identify generally the community redevelopment area covered by the plan, and outline the general scope of the community redevelopment plan under consideration.

This bill amends s. 163.360, F.S., to require each community redevelopment plan to indicate that real property within the community redevelopment area may be subject to taking by eminent domain pursuant to s. 163.375, F.S. If consistent with the resolution finding slum or blight conditions, the plan must indicate that the power of eminent domain provided under s. 163.375, F.S., will not be exercised by the county or municipality within the community redevelopment area.

Section 6. Amends s. 163.370, F.S.

Currently, s. 163.370, F.S., specifies that every county and municipality has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act, including a non-exclusive list of powers found in that section. A county or city may exercise all or any part or combination of powers granted under the Act or to elect to have such powers exercised by a community redevelopment agency

This bill amends s. 163.370, F.S., to specify that the power of eminent domain may not be exercised by a community redevelopment agency. The bill also specifies that property may only be acquired by a community redevelopment agency by voluntary methods of acquisition prior to approval of the community redevelopment plan or approval of plan modifications.

Section 7. Amends s. 163.375, F.S.

Section 163.375, F.S., currently authorizes any county or municipality, or any community redevelopment agency pursuant to specific approval of the governing body of the county or municipality which established the agency, to acquire by condemnation any interest in real property, including a fee simple title, which it deems necessary for, or in connection with, community redevelopment and related activities under the Act. Any county or municipality, or any community redevelopment agency pursuant to specific approval by the governing body of the county or municipality which established the agency, may exercise the power of eminent domain in the manner provided in chs. 73 and 74, F.S., or it may exercise the power of eminent domain in the manner provided by any other statutory provision for the exercise of the power of eminent domain. Property in unincorporated enclaves surrounded by the boundaries of a community redevelopment area may be acquired when it is determined necessary by the agency to accomplish the community redevelopment plan. Property already devoted to a public use may be acquired in like manner. However, no real property belonging to the United States, the state, or any political subdivision of the state may be acquired without its consent.

If a governing body adopts a finding of necessity resolution and creates a redevelopment agency, any property within the redevelopment area may be subject to taking if taking the property is reasonably necessary to accomplish the public purpose of eliminating and preventing the recurrence of slum or blight conditions in a geographic area. If, at some point after the resolution is adopted, a property owner challenges the taking of a specific parcel of private property and questions the validity of the resolution finding blight or slum conditions, the courts will sustain the resolution and findings of the governing body "as long as [they were] fairly debatable" at the time the resolution was adopted.[46]

This bill substantially amends s. 163.375, F.S., to limit authority to take property by eminent domain under the Act. This bill provides that, after the community redevelopment plan is adopted, a county or municipality may acquire by eminent domain any interest in a parcel of real property within a community redevelopment area, including a fee simple title, for the purpose of eliminating an existing threat to public health or public safety if the parcel of real property is condemnation eligible. A parcel of real property is condemnation eligible only if the current condition of the property poses an existing threat to public health or public safety and the existing threat to public health or public safety is likely to continue absent the exercise of eminent domain. A county or municipality must exercise the power of eminent domain in the manner provided in this section and in chs. 73 and 74, F.S., or pursuant to the power of eminent domain provided by any other statutory provision, as limited by new s. 73.013, F.S.

A county or municipality may not initiate an eminent domain proceeding pursuant to authority conferred by this section unless the governing body first adopts a resolution of taking containing specific determinations or findings that:

- The public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain;
- The parcel of real property is condemnation eligible, including a specific description of the current conditions on the property that pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain; and
- Taking the property by eminent domain is reasonably necessary in order to accomplish the public purpose of eliminating an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain.

The county or municipality may not adopt a resolution of taking under this section unless actual notice of the public hearing at which the resolution is considered was provided, at least 45 days prior to the hearing, to the property owner and to any business owner, including a lessee, who operates a business located on the property.

[46] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 1992).

a. Notice to Property Owners. Notice must be sent by certified mail, return receipt requested, to the last known address listed on the county ad valorem tax roll of each owner of the property. Alternatively, the notice may be personally delivered to each property owner. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires title to the property after the notice required by this subsection has been given.

b. Notice to Business Owners. Notice must be sent by certified mail, return receipt requested, to the address of the registered agent for the business located on the property to be acquired or, if no agent is registered, by certified mail or personal delivery to the address of the business located on the property to be acquired. Notice to one owner of a multiple ownership business constitutes notice to all business owners of that business. The return of the notice as undeliverable by the postal authorities constitutes compliance with this subsection. The condemning authority is not required to give notice to a person who acquires an interest in the business after the notice required by this subsection has been given.

At a minimum, the notices to property and business owners required above must indicate:

- That the county or municipal governing body will determine whether to take the parcel of real property pursuant to authority granted by this part and will formally consider a resolution of taking at a public hearing;
- That the property is subject to taking by eminent domain under this part because current conditions on the property pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain;
- The specific conditions on the property that pose an existing threat to public health or public safety and form the basis for taking the property;
- That the property will not be subject to taking if the specific conditions that pose an existing threat to public health or public safety and form the basis for the taking are removed prior to the public hearing at which the resolution will be considered by the governing body;
- The date, time, and location of the public hearing at which the resolution of taking will be considered;
- That the property owner or business owner may file written objections with the governing board prior to the public hearing at which the resolution of taking is considered; and
- That any interested party may appear and be heard at the public hearing at which the resolution of taking is considered.

If a property owner challenges an attempt to acquire his or her property by eminent domain under this section, the condemning authority must prove by clear and convincing evidence in an evidentiary hearing before the circuit court that:

- The public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain;
- The property is condemnation eligible because conditions on the property pose an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain; and
- Taking the property by eminent domain is reasonably necessary in order to accomplish the public purpose of eliminating an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain.

The circuit court must determine whether the public purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain, whether the property is condemnation eligible, and whether taking the property is reasonably necessary in order to accomplish the public purpose of eliminating an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain. The circuit court must make these determinations without attaching a presumption of correctness or extending judicial deference to any determinations or findings in the resolution of taking adopted by the condemning authority.

Section 8. Amending s. 127.01, F.S.

Currently, s. 127.01, F.S., authorizes counties to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any county purpose. The absolute fee simple title to all taken property vests in the county unless the county seeks to condemn a particular right or estate in such property. Each county is further authorized to exercise the eminent domain power granted to the Department of Transportation by s. 337.27(1), F.S., the transportation corridor protection provisions of s. 337.273, F.S., and the right of entry onto property pursuant to s. 337.274, F.S.

However, no county has the right to condemn any lands outside its own county boundaries for parks, playgrounds, recreational centers, or other recreational purposes. In eminent domain proceedings, a county's burden of showing reasonable necessity for parks, playgrounds, recreational centers, or other types of recreational purposes is the same as the burden in other types of eminent domain proceedings.

The bill amends s. 127.01, F.S., to require strict compliance by counties with new s. 73.013, F.S., which limits the circumstances under which property taken by eminent domain may be transferred to private parties. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 9. Amending s. 127.02, F.S.

Currently, s. 127.02, F.S., allows a board of county commissioners to, by resolution, authorize acquisition by eminent domain of property, real or personal, for any county use or purpose designated in the resolution.

This bill amends s. 127.02, F.S., to subject county acquisitions of real property to the restrictions on transfers to private parties provided in new s. 73.013, F.S., which is created by this bill. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 10. Amends s. 166.401, F.S.

Currently, s. 166.401, F.S., authorizes all municipalities to exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized pursuant to part IV of ch. 166, F.S. The absolute fee simple title to all taken property vests in the municipal corporation unless the municipality seeks to condemn a particular right or estate in such property. Each municipality is further authorized to exercise the eminent domain power granted to the Department of Transportation in s. 337.27(1), F.S., and the transportation corridor protection provisions of s. 337.273, F.S.

This bill amends s. 166.401, F.S., to require strict compliance by municipalities with new s. 73.013, F.S., which limits the circumstances under which property taken by eminent domain may be transferred to private parties. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 11. Amends s. 166.411, F.S.

Currently, s. 166.411(1), F.S., authorizes municipalities to exercise the power of eminent domain "[f]or the proper and efficient carrying into effect of any proposed scheme or plan of drainage, ditching, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof." Section 166.411(10), F.S., authorizes the exercise of the power of eminent domain "[f]or city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain".

This bill amends s. 166.411(1) and (10), F.S., to subject any exercise of power under these subsections to the restrictions on transfers to private parties provided in new s. 73.013, F.S., which is created by this bill. (Please see Section 1 for detailed discussion of s. 73.013, F.S.)

Section 12. Effective Date

This act takes effect July 1, 2006, and applies to all condemnation proceedings in which a petition of taking is filed pursuant to ch. 73, F.S., on or after that date.

C. SECTION DIRECTORY:

Section 1. Creating s. 73.013, F.S.; restricting certain transfers of property taken by eminent domain to certain natural persons or private entities;
Section 2. Amending s. 163.335, F.S.; providing legislative findings and declarations;
Section 3. Amending s. 163.355, F.S.; requiring disclosure of eminent domain authority in resolutions finding slum or blight conditions; providing for notice to property owners and business owners or lessees and requirements therefor; providing for hearings and advertising requirements therefor;
Section 4. Amending s. 163.358, F.S.; providing that the power of eminent domain does not vest in a community redevelopment agency but rather with the governing body of a county or municipality;
Section 5. Amending s. 163.360, F.S.; requiring disclosure of eminent domain authority in community redevelopment plans;
Section 6. Amending s. 163.370, F.S.; revising powers of community redevelopment agencies with respect to the acquisition of real property;
Section 7. Amending s. 163.375, F.S.; revising eminent domain authority and procedures;
Section 8. Amending s. 127.01, F.S.; requiring county compliance with eminent domain limitations;
Section 9. Amending s. 127.02, F.S.; requiring county compliance with eminent domain limitations;
Section 10. Amending s. 166.401, F.S.; requiring municipal compliance with eminent domain limitations;
Section 11. Amending 166.411, F.S.; requiring municipal compliance with eminent domain limitations;
Section 12. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Please see Fiscal Comments.

2. Expenditures: Please see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Please see Fiscal Comments.

2. Expenditures: Please see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Private property owners will not be required to relinquish their property under the Community Redevelopment Act for purposes of removing slum or blight conditions in a geographic area. Private property owners may realize economic benefits due to the ability to negotiate as willing sellers of property located in community redevelopment areas rather than through involuntary eminent domain proceedings. Private entities who may, today, acquire taken property for "non-traditional" economic uses will no longer be permitted to acquire ownership or control of taken property unless the transfer qualifies as an exception to the general prohibition provided in s. 73.013, F.S., as created in this bill.

D. FISCAL COMMENTS:

Impact of Local Governments: This bill eliminates authority under the Community Redevelopment Act to take property by eminent domain for the purpose of eliminating slum or blight conditions. Elimination of this authority may increase the cost to local government of assembling property, which cost may or may not be passed on to private developers. New s. 73.013, F.S., created by this bill, allows the transfer of taken property to a private entity for any use if the property is retained by the condemning authority, or a private party to whom property was transferred under one of the exceptions, for 5 years after acquiring title to the property. Requiring taken property to be retained for five years before the property may be transferred to a private entity for any use may result in some costs to the condemning authority, including costs of maintenance.

Impact on State Government: New s. 73.013, F.S., created by this bill, allows the transfer of taken property to a private entity for any use if the property is retained by the condemning authority, or a private party to whom property was transferred under one of the exceptions, for 5 years after acquiring title to the property. This provision applies to state agencies as well as any other condemning authority in the state. Requiring taken property to be retained for five years before the property may be transferred to a private entity for any use may result in some costs to a state agency condemning authority, including costs of maintenance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: See Current Situation for a general discussion of constitutional issues.

B. RULE-MAKING AUTHORITY: This bill does not address rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

It is anticipated that a strike-all amendment will be offered in the Local Government Council. The strike-all incorporates amendments that were recommended by the Select Committee to Protect Private Property Rights at its March 13, 2006 meeting. The amendment:

- Removes authority to transfer taken property to a private entity if the property was taken under the Act to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain. As a result, property taken under the Act may be transferred to private parties only if the transfer qualifies under one of the remaining exceptions;
- Retains the authority to transfer taken property after 5 years, but requires public notice and competitive bidding prior to the transfer unless otherwise provided by general law;
- Allows a city or county to take property under the Act if the purpose of the taking is to eliminate an existing threat to public health or public safety that is likely to continue absent the exercise of eminent domain as evidenced by at least one of a list of factors that indicate an existing threat. In short, the amendment more explicitly defines the conditions that constitute a threat to public health or public safety; and
- Adds language to require that notice must be posted to property to be acquired by eminent domain under the Community Redevelopment Act as well as mailed.

1 A bill to be entitled
2 An act relating to eminent domain; creating s. 73.013,
3 F.S.; restricting certain transfers of property taken by
4 eminent domain to certain natural persons or private
5 entities; amending s. 163.335, F.S.; providing legislative
6 findings and declarations; amending s. 163.355, F.S.;
7 requiring disclosure of eminent domain authority in
8 resolutions finding slum or blight conditions; providing
9 for notice to property owners and business owners or
10 lessees and requirements therefor; providing for hearings
11 and advertising requirements therefor; amending s.
12 163.358, F.S.; providing that the power of eminent domain
13 does not vest in a community redevelopment agency but
14 rather with the governing body of a county or
15 municipality; amending s. 163.360, F.S.; requiring
16 disclosure of eminent domain authority in community
17 redevelopment plans; amending s. 163.370, F.S.; revising
18 powers of community redevelopment agencies with respect to
19 the acquisition of real property; amending s. 163.375,
20 F.S.; revising eminent domain authority and procedures;
21 amending ss. 127.01 and 127.02, F.S.; requiring county
22 compliance with eminent domain limitations; amending ss.
23 166.401 and 166.411, F.S.; requiring municipal compliance
24 with eminent domain limitations; providing application;
25 providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Section 73.013, Florida Statutes, is created to
30 read:
31 73.013 Conveyance of property taken by eminent domain.--
32 (1) Notwithstanding any other provision of law, including
33 any charter provision, ordinance, statute, or special law, if
34 the state, any political subdivision as defined in s. 1.01(8),
35 or any other entity to which the power of eminent domain is
36 delegated files a petition of taking on or after July 1, 2006,
37 regarding a parcel of real property in this state, ownership or
38 control of property acquired pursuant to such petition may not
39 be conveyed by the condemning authority or any other entity to a
40 natural person or private entity, except that ownership or
41 control of property acquired pursuant to such petition may be
42 conveyed to:
43 (a) A natural person or private entity for use in
44 providing common carrier services or systems;
45 (b) A natural person or private entity for use as a road
46 or other right-of-way or means open to the public for
47 transportation, whether at no charge or by toll;
48 (c) A natural person or private entity that is a public or
49 private utility for use in providing electricity services or
50 systems, natural or manufactured gas services or systems, water
51 and wastewater services or systems, stormwater or runoff
52 services or systems, sewer services or systems, pipeline
53 facilities, telephone services or systems, or similar services
54 or systems;
55 (d) A natural person or private entity for use in
56 providing public infrastructure;

57 (e) A natural person or private entity that occupies,
58 pursuant to a lease, an incidental part of a public property or
59 a public facility for the purpose of providing goods or services
60 to the public;
61 (f) A natural person or private entity if the property was
62 taken pursuant to s. 163.375;
63 (g) A natural person or private entity if the property was
64 owned and controlled by the condemning authority or a
65 governmental entity for at least 5 years after the condemning
66 authority acquired title to the property; or
67 (h) A natural person or private entity in accordance with
68 subsection (2).
69 (2) If ownership of property is conveyed to a natural
70 person or private entity pursuant to paragraph (1)(a), (b), (c),
71 (d), (e), or (f), and that natural person or private entity
72 retains ownership and control of the property for at least 5
73 years after acquiring title, the property may subsequently be
74 transferred to another natural person or private entity without
75 restriction.
76 Section 2. Subsection (3) of section 163.335, Florida
77 Statutes, is amended, and subsection (7) is added to that
78 section, to read:
79 163.335 Findings and declarations of necessity.--
80 (3) It is further found and declared that the powers
81 conferred by this part are for public uses and purposes for
82 which public money may be expended, the police power exercised,
83 and the power of eminent domain exercised subject to the
84 limitations in s. 163.375 ~~and the power of eminent domain and~~

85 ~~police power exercised~~, and the necessity in the public interest
86 for the provisions herein enacted is hereby declared as a matter
87 of legislative determination.
88 (7) It is further found that the prevention or elimination
89 of a "slum area" or "blighted area" as defined in this part and
90 the preservation or enhancement of the tax base are not public
91 uses or purposes for which private property may be taken by
92 eminent domain.
93 Section 3. Section 163.355, Florida Statutes, is amended
94 to read:
95 163.355 Finding of necessity by county or municipality.--
96 (1) No county or municipality shall exercise the community
97 redevelopment authority conferred by this part until after the
98 governing body has adopted a resolution, supported by data and
99 analysis, which makes a legislative finding that the conditions
100 in the area meet the criteria described in s. 163.340(7) or (8).
101 The resolution must state that:
102 (a) ~~(1)~~ One or more slum or blighted areas, or one or more
103 areas in which there is a shortage of housing affordable to
104 residents of low or moderate income, including the elderly,
105 exist in such county or municipality; and
106 (b) ~~(2)~~ The rehabilitation, conservation, or redevelopment,
107 or a combination thereof, of such area or areas, including, if
108 appropriate, the development of housing which residents of low
109 or moderate income, including the elderly, can afford, is
110 necessary in the interest of the public health, safety, morals,
111 or welfare of the residents of such county or municipality.

112 (2) A resolution finding slum or blight conditions must
113 indicate that property within the community redevelopment area
114 may be subject to taking by eminent domain pursuant to s.
115 163.375. In the alternative, the county or municipality may
116 explicitly state in the resolution that the power of eminent
117 domain provided under s. 163.375 will not be exercised by the
118 county or municipality within the community redevelopment area.
119 A county or municipality is not required to provide notice in
120 accordance with subsections (3) and (4) if the resolution
121 finding slum or blight conditions, as proposed and adopted by
122 the county or municipality, expressly declares that the power of
123 eminent domain provided under s. 163.375 will not be exercised
124 by the county or municipality within the community redevelopment
125 area.
126 (3) At least 30 days prior to the first public hearing at
127 which a proposed resolution finding slum or blight conditions
128 will be considered by a county or municipality, actual notice of
129 the public hearing must be mailed via first class mail to each
130 real property owner whose property may be included within the
131 community redevelopment area and to each business owner,
132 including a lessee, who operates a business located on property
133 that may be included within the community redevelopment area.
134 (a) Notice must be sent to each owner of real property
135 that may be included within the community redevelopment area at
136 the owner's last known address as listed on the county ad
137 valorem tax roll. Alternatively, the notice may be personally
138 delivered to a property owner. If there is more than one owner
139 of a property, notice to one owner constitutes notice to all

140 owners of the property. The return of the notice as
141 undeliverable by the postal authorities constitutes compliance
142 with this subsection. The condemning authority is not required
143 to give notice to a person who acquires title to property after
144 the notice required by this subsection has been given.
145 (b) Notice must be sent to the address of the registered
146 agent for the business located on the property or, if no agent
147 is registered, by certified mail or personal delivery to the
148 address of the business located on the property. Notice to one
149 owner of a multiple ownership business constitutes notice to all
150 owners of that business. The return of the notice as
151 undeliverable by the postal authorities constitutes compliance
152 with this subsection. The condemning authority is not required
153 to give notice to a person who acquires an interest in a
154 business after the notice required by this subsection has been
155 given.
156 (c) At a minimum, the mailed notice required by paragraphs
157 (a) and (b) must:
158 1. Generally explain the purpose, effect, and substance of
159 the proposed resolution;
160 2. Indicate that private property within the proposed
161 redevelopment area may be subject to taking by eminent domain if
162 the current condition of the property poses an existing threat
163 to the public health or public safety that is likely to continue
164 absent the exercise of eminent domain;
165 3. Indicate that private-to-private transfers of property
166 may occur;

167 4. Contain a geographic location map that clearly
168 indicates the area covered by the resolution, including major
169 street names as a means of identification of the general area;
170 5. Provide the dates, times, and locations of future
171 public hearings during which the resolution may be considered;
172 6. Identify the place or places within the county or
173 municipality at which the resolution may be inspected by the
174 public;
175 7. Indicate that the property owner may file written
176 objections with the local governing board prior to any public
177 hearing on the resolution; and
178 8. Indicate that interested parties may appear and be
179 heard at all public hearings at which the resolution will be
180 considered.
181 (4) In addition to mailing notice to property owners, the
182 county or municipality must conduct at least two advertised
183 public hearings prior to adoption of the proposed resolution. At
184 least one hearing must be held after 5 p.m. on a weekday, unless
185 the governing body, by a majority plus one vote, elects to
186 conduct the hearing at another time of day. The first public
187 hearing must be held at least 7 days after the day the first
188 advertisement is published. The second hearing must be held at
189 least 10 days after the first hearing and must be advertised at
190 least 5 days prior to the public hearing. The required
191 advertisements must be no less than 2 columns wide by 10 inches
192 long in a standard size or a tabloid size newspaper, and the
193 headline in the advertisement must be in a type no smaller than
194 18 point. The advertisement must not be placed in that portion

195 of the newspaper where legal notices and classified
196 advertisements appear and must be placed in a newspaper of
197 general paid circulation rather than one of limited subject
198 matter. Whenever possible, the advertisement must appear in a
199 newspaper that is published at least 5 days a week unless the
200 only newspaper in the community is published fewer than 5 days a
201 week. At a minimum, the advertisement must:
202 (a) Generally explain the substance and effect of the
203 resolution;
204 (b) Include a statement indicating that private property
205 within the proposed redevelopment area may be subject to taking
206 by eminent domain if the current condition of the property poses
207 an existing threat to the public health or public safety that is
208 likely to continue absent the exercise of eminent domain;
209 (c) Provide the date, time, and location of the meeting;
210 (d) Identify the place or places within the county or
211 municipality at which the resolution may be inspected by the
212 public;
213 (e) Contain a geographic location map that clearly
214 indicates the area covered by the resolution, including major
215 street names as a means of identification of the general area;
216 (f) Indicate that any interested party may file written
217 objections with the local governing board prior to the public
218 hearing; and
219 (g) Indicate that any interested party may appear and be
220 heard at the public hearing.
221 Section 4. Subsection (6) is added to section 163.358,
222 Florida Statutes, to read:

223 163.358 Exercise of powers in carrying out community
224 redevelopment and related activities.--The community
225 redevelopment powers assigned to a community redevelopment
226 agency created under s. 163.356 include all the powers necessary
227 or convenient to carry out and effectuate the purposes and
228 provisions of this part, except the following, which continue to
229 vest in the governing body of the county or municipality:
230 (6) The power of eminent domain.
231 Section 5. Paragraph (d) is added to subsection (2) of
232 section 163.360, Florida Statutes, to read:
233 163.360 Community redevelopment plans.--
234 (2) The community redevelopment plan shall:
235 (d) Indicate that real property within the community
236 redevelopment area may be subject to taking by eminent domain
237 pursuant to s. 163.375. If consistent with the resolution
238 finding slum or blight conditions, the plan must indicate that
239 the power of eminent domain provided under s. 163.375 will not
240 be exercised by the county or municipality within the community
241 redevelopment area.
242 Section 6. Paragraph (o) of subsection (1) and paragraph
243 (a) of subsection (3) of section 163.370, Florida Statutes, are
244 amended to read:
245 163.370 Powers; counties and municipalities; community
246 redevelopment agencies.--
247 (1) Every county and municipality shall have all the
248 powers necessary or convenient to carry out and effectuate the
249 purposes and provisions of this part, including the following
250 powers in addition to others herein granted:

251 (o) To exercise all or any part or combination of powers
252 herein granted or to elect to have such powers exercised by a
253 community redevelopment agency; however, the power of eminent
254 domain shall not be exercised by a community redevelopment
255 agency.
256 (3) With the approval of the governing body, a community
257 redevelopment agency may:
258 (a) Prior to approval of a community redevelopment plan or
259 approval of any modifications of the plan, acquire real property
260 in a community redevelopment area by purchase, lease, option,
261 gift, grant, bequest, devise, or other voluntary method of
262 acquisition, demolish and remove any structures on the property,
263 and pay all costs related to the acquisition, demolition, or
264 removal, including any administrative or relocation expenses.
265 Section 7. Section 163.375, Florida Statutes, is amended
266 to read:
267 163.375 Eminent domain.--
268 (1) After the community redevelopment plan is adopted, a
269 county or municipality may acquire by eminent domain any
270 interest in a parcel of real property within a community
271 redevelopment area, including a fee simple title thereto, for
272 the purpose of eliminating an existing threat to public health
273 or public safety if the parcel of real property is condemnation
274 eligible. A parcel of real property is condemnation eligible
275 only if the current condition of the property poses an existing
276 threat to public health or public safety and the existing threat
277 to public health or public safety is likely to continue absent
278 the exercise of eminent domain. A county or municipality shall

279 exercise the power of eminent domain in the manner provided in
280 this section and in chapters 73 and 74, or pursuant to the power
281 of eminent domain provided by any other statutory provision, as
282 limited by s. 73.013. Real property belonging to the United
283 States, the state, or any political subdivision of the state may
284 not be acquired without its consent. ~~Any county or municipality,~~
285 ~~or any community redevelopment agency pursuant to specific~~
286 ~~approval of the governing body of the county or municipality~~
287 ~~which established the agency, as provided by any county or~~
288 ~~municipal ordinance has the right to acquire by condemnation any~~
289 ~~interest in real property, including a fee simple title thereto,~~
290 ~~which it deems necessary for, or in connection with, community~~
291 ~~redevelopment and related activities under this part. Any county~~
292 ~~or municipality, or any community redevelopment agency pursuant~~
293 ~~to specific approval by the governing body of the county or~~
294 ~~municipality which established the agency, as provided by any~~
295 ~~county or municipal ordinance may exercise the power of eminent~~
296 ~~domain in the manner provided in chapters 73 and 74 and acts~~
297 ~~amendatory thereof or supplementary thereto, or it may exercise~~
298 ~~the power of eminent domain in the manner now or which may be~~
299 ~~hereafter provided by any other statutory provision for the~~
300 ~~exercise of the power of eminent domain. Property in~~
301 ~~unincorporated enclaves surrounded by the boundaries of a~~
302 ~~community redevelopment area may be acquired when it is~~
303 ~~determined necessary by the agency to accomplish the community~~
304 ~~redevelopment plan. Property already devoted to a public use may~~
305 ~~be acquired in like manner. However, no real property belonging~~

306 ~~to the United States, the state, or any political subdivision of~~
307 ~~the state may be acquired without its consent.~~
308 (2) A county or municipality may not initiate an eminent
309 domain proceeding pursuant to authority conferred by this
310 section unless the governing body first adopts a resolution of
311 taking containing specific determinations or findings that:
312 (a) The public purpose of the taking is to eliminate an
313 existing threat to public health or public safety that is likely
314 to continue absent the exercise of eminent domain;
315 (b) The parcel of real property is condemnation eligible
316 as defined in subsection (1), including a specific description
317 of the current conditions on the property that pose an existing
318 threat to public health or public safety that is likely to
319 continue absent the exercise of eminent domain; and
320 (c) Taking the property by eminent domain is reasonably
321 necessary in order to accomplish the public purpose of
322 eliminating an existing threat to public health or public safety
323 that is likely to continue absent the exercise of eminent
324 domain.
325 (3) The county or municipality may not adopt a resolution
326 of taking under this section unless actual notice of the public
327 hearing at which the resolution is considered was provided, at
328 least 45 days prior to the hearing, to the property owner and to
329 any business owner, including a lessee, who operates a business
330 located on the property.
331 (a) Notice must be sent by certified mail, return receipt
332 requested, to the last known address listed on the county ad
333 valorem tax roll of each owner of the property. Alternatively,

334 the notice may be personally delivered to each property owner.
335 The return of the notice as undeliverable by the postal
336 authorities constitutes compliance with this subsection. The
337 condemning authority is not required to give notice to a person
338 who acquires title to the property after the notice required by
339 this subsection has been given.
340 (b) Notice must be sent by certified mail, return receipt
341 requested, to the address of the registered agent for the
342 business located on the property to be acquired or, if no agent
343 is registered, by certified mail or personal delivery to the
344 address of the business located on the property to be acquired.
345 Notice to one owner of a multiple ownership business constitutes
346 notice to all business owners of that business. The return of
347 the notice as undeliverable by the postal authorities
348 constitutes compliance with this subsection. The condemning
349 authority is not required to give notice to a person who
350 acquires an interest in the business after the notice required
351 by this subsection has been given.
352 (c) At a minimum, the notices required by paragraphs (a)
353 and (b) shall indicate:
354 1. That the county or municipal governing body will
355 determine whether to take the parcel of real property pursuant
356 to authority granted by this part and will formally consider a
357 resolution of taking at a public hearing;
358 2. That the property is subject to taking by eminent
359 domain under this part because current conditions on the
360 property pose an existing threat to public health or public

361 safety that is likely to continue absent the exercise of eminent
362 domain;
363 3. The specific conditions on the property that pose an
364 existing threat to public health or public safety and form the
365 basis for taking the property;
366 4. That the property will not be subject to taking if the
367 specific conditions that pose an existing threat to public
368 health or public safety and form the basis for the taking are
369 removed prior to the public hearing at which the resolution will
370 be considered by the governing body;
371 5. The date, time, and location of the public hearing at
372 which the resolution of taking will be considered;
373 6. That the property owner or business owner may file
374 written objections with the governing board prior to the public
375 hearing at which the resolution of taking is considered; and
376 7. That any interested party may appear and be heard at
377 the public hearing at which the resolution of taking is
378 considered.
379 (4)(a) In accordance with chapters 73 and 74, if a
380 property owner challenges an attempt to acquire his or her
381 property by eminent domain under this section, the condemning
382 authority must prove by clear and convincing evidence in an
383 evidentiary hearing before the circuit court that:
384 1. The public purpose of the taking is to eliminate an
385 existing threat to public health or public safety that is likely
386 to continue absent the exercise of eminent domain;
387 2. The property is condemnation eligible as defined in
388 subsection (1); and

389 3. Taking the property by eminent domain is reasonably
390 necessary in order to accomplish the public purpose of
391 eliminating an existing threat to public health or public safety
392 that is likely to continue absent the exercise of eminent
393 domain.
394 (b) The circuit court shall determine whether the public
395 purpose of the taking is to eliminate an existing threat to
396 public health or public safety that is likely to continue absent
397 the exercise of eminent domain, whether the property is
398 condemnation eligible as defined in subsection (1), and whether
399 taking the property is reasonably necessary in order to
400 accomplish the public purpose of eliminating an existing threat
401 to public health or public safety that is likely to continue
402 absent the exercise of eminent domain. The circuit court shall
403 make these determinations without attaching a presumption of
404 correctness or extending judicial deference to any
405 determinations or findings in the resolution of taking adopted
406 by the condemning authority.
407 (5) ~~(2)~~ In any proceeding to fix or assess compensation for
408 damages for the taking of property, or any interest therein,
409 through the exercise of the power of eminent domain or
410 condemnation, evidence or testimony bearing upon the following
411 matters shall be admissible and shall be considered in fixing
412 such compensation or damages in addition to evidence or
413 testimony otherwise admissible:
414 (a) Any use, condition, occupancy, or operation of such
415 property, which is unlawful or violative of, or subject to
416 elimination, abatement, prohibition, or correction under, any

417 law, ordinance, or regulatory measure of the state, county,
418 municipality, or other political subdivision, or any agency
419 thereof, in which such property is located, as being unsafe,
420 substandard, unsanitary, or otherwise contrary to the public
421 health, safety, morals, or welfare.
422 (b) The effect on the value of such property of any such
423 use, condition, occupancy, or operation or of the elimination,
424 abatement, prohibition, or correction of any such use,
425 condition, occupancy, or operation.
426 (6) ~~(3)~~ In any proceeding to fix or assess compensation for
427 damages for the taking of property, or any interest therein, the
428 foregoing testimony and evidence shall be admissible
429 notwithstanding that no action has been taken by any public body
430 or public officer toward the abatement, prohibition,
431 elimination, or correction of any such use, condition,
432 occupancy, or operation. Testimony or evidence that any public
433 body or public officer charged with the duty or authority so to
434 do has rendered, made, or issued any judgment, decree,
435 determination, or order for the abatement, prohibition,
436 elimination, or correction of any such use, condition,
437 occupancy, or operation shall be admissible and shall be prima
438 facie evidence of the existence and character of such use,
439 condition, or operation.
440 Section 8. Subsection (3) is added to section 127.01,
441 Florida Statutes, to read:
442 127.01 Counties delegated power of eminent domain;
443 recreational purposes, issue of necessity of taking.--

444 (3) Each county shall strictly comply with the limitations
445 set forth in s. 73.013.
446 Section 9. Section 127.02, Florida Statutes, is amended to
447 read:
448 127.02 County commissioners may authorize acquirement of
449 property by eminent domain.--The board of county commissioners
450 may, by resolution, authorize the acquirement by eminent domain
451 of property, real or personal, for any county use or purpose
452 designated in such resolution, subject to the limitations set
453 forth in s. 73.013.
454 Section 10. Subsection (3) is added to section 166.401,
455 Florida Statutes, to read:
456 166.401 Right of eminent domain.--
457 (3) Each municipality shall strictly comply with the
458 limitations set forth in s. 73.013.
459 Section 11. Subsections (1), (9), and (10) of section
460 166.411, Florida Statutes, are amended to read:
461 166.411 Eminent domain; uses or purposes.--Municipalities
462 are authorized to exercise the power of eminent domain for the
463 following uses or purposes:
464 (1) For the proper and efficient carrying into effect of
465 any proposed scheme or plan of drainage, ditching, grading,
466 filling, or other public improvement deemed necessary or
467 expedient for the preservation of the public health, or for
468 other good reason connected in anywise with the public welfare
469 or the interests of the municipality and the people thereof,
470 subject to the limitations set forth in s. 73.013;
471 (9) For laying wires and conduits underground; and

472 (10) For city buildings, waterworks, ponds, and other
473 municipal purposes which shall be coextensive with the powers of
474 the municipality exercising the right of eminent domain subject
475 to the limitations set forth in s. 73.013.~~; and~~
476 Section 12. This act shall take effect July 1, 2006, and
477 shall apply to all condemnation proceedings in which a petition
478 of taking is filed pursuant to chapter 73, Florida Statutes, on
479 or after that date.

Bill No. **HB 1567**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government Council
2 Representative(s) Cannon and Robaina offered the following:
3
4 **Amendment**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 73.013, Florida Statutes, is created to
7 read:
8 73.013 Conveyance of property taken by eminent domain.--
9 (1) Notwithstanding any other provision of law, including
10 any charter provision, ordinance, statute, or special law, if
11 the state, any political subdivision as defined in s. 1.01(8),
12 or any other entity to which the power of eminent domain is
13 delegated files a petition of taking on or after July 1, 2006,
14 regarding a parcel of real property in this state, ownership or
15 control of property acquired pursuant to such petition may not
16 be conveyed by the condemning authority or any other entity to a
17 natural person or private entity, except that ownership or
18 control of property acquired pursuant to such petition may be
19 conveyed to:
20 (a) A natural person or private entity for use in
21 providing common carrier services or systems;

22 (b) A natural person or private entity for use as a road
23 or other right-of-way or means open to the public for
24 transportation, whether at no charge or by toll;
25 (c) A natural person or private entity that is a public or
26 private utility for use in providing electricity services or
27 systems, natural or manufactured gas services or systems, water
28 and wastewater services or systems, stormwater or runoff
29 services or systems, sewer services or systems, pipeline
30 facilities, telephone services or systems, or similar services
31 or systems;
32 (d) A natural person or private entity for use in
33 providing public infrastructure;
34 (e) A natural person or private entity that occupies,
35 pursuant to a lease, an incidental part of a public property or
36 a public facility for the purpose of providing goods or services
37 to the public;
38 (f) A natural person or private entity if the property was
39 owned and controlled by the condemning authority or a
40 governmental entity for at least 5 years after the condemning
41 authority acquired title to the property; or
42 (g) A natural person or private entity in accordance with
43 subsection (2).
44 (2) If ownership of property is conveyed to a natural
45 person or private entity pursuant to paragraph (1)(a), (b), (c),
46 (d), or (e), and that natural person or private entity retains
47 ownership and control of the property for at least 5 years after
48 acquiring title, the property may subsequently be transferred,
49 after public notice and competitive bidding unless otherwise
50 provided by general law, to another natural person or private
51 entity without restriction.

52 Section 2. Subsection (3) of section 163.335, Florida
53 Statutes, is amended, and subsection (7) is added to that
54 section, to read:
55 163.335 Findings and declarations of necessity.--
56 (3) It is further found and declared that the powers
57 conferred by this part are for public uses and purposes for
58 which public money may be expended, the police power exercised,
59 and the power of eminent domain exercised subject to the
60 limitations in s. 163.375 ~~and the power of eminent domain and~~
61 ~~police power exercised~~, and the necessity in the public interest
62 for the provisions herein enacted is hereby declared as a matter
63 of legislative determination.
64 (7) It is further found that the prevention or elimination
65 of a "slum area" or "blighted area" as defined in this part and
66 the preservation or enhancement of the tax base are not public
67 uses or purposes for which private property may be taken by
68 eminent domain.
69 Section 3. Section 163.355, Florida Statutes, is amended
70 to read:
71 163.355 Finding of necessity by county or municipality.--
72 (1) No county or municipality shall exercise the community
73 redevelopment authority conferred by this part until after the
74 governing body has adopted a resolution, supported by data and
75 analysis, which makes a legislative finding that the conditions
76 in the area meet the criteria described in s. 163.340(7) or (8).
77 The resolution must state that:
78 (a) ~~(1)~~ One or more slum or blighted areas, or one or more
79 areas in which there is a shortage of housing affordable to
80 residents of low or moderate income, including the elderly,
81 exist in such county or municipality; and

82 (b) ~~(2)~~ The rehabilitation, conservation, or redevelopment,
83 or a combination thereof, of such area or areas, including, if
84 appropriate, the development of housing which residents of low
85 or moderate income, including the elderly, can afford, is
86 necessary in the interest of the public health, safety, morals,
87 or welfare of the residents of such county or municipality.
88 (2) A resolution finding slum or blight conditions must
89 indicate that property within the community redevelopment area
90 may be subject to taking by eminent domain pursuant to s.
91 163.375. In the alternative, the county or municipality may
92 explicitly state in the resolution that the power of eminent
93 domain provided under s. 163.375 will not be exercised by the
94 county or municipality within the community redevelopment area.
95 A county or municipality is not required to provide notice in
96 accordance with subsections (3) and (4) if the resolution
97 finding slum or blight conditions, as proposed and adopted by
98 the county or municipality, expressly declares that the power of
99 eminent domain provided under s. 163.375 will not be exercised
100 by the county or municipality within the community redevelopment
101 area.
102 (3) At least 30 days prior to the first public hearing at
103 which a proposed resolution finding slum or blight conditions
104 will be considered by a county or municipality, actual notice of
105 the public hearing must be mailed via first class mail to each
106 real property owner whose property may be included within the
107 community redevelopment area and to each business owner,
108 including a lessee, who operates a business located on property
109 that may be included within the community redevelopment area.
110 (a) Notice must be sent to each owner of real property
111 that may be included within the community redevelopment area at
112 the owner's last known address as listed on the county ad

113 valorem tax roll. Alternatively, the notice may be personally
114 delivered to a property owner. If there is more than one owner
115 of a property, notice to one owner constitutes notice to all
116 owners of the property. The return of the notice as
117 undeliverable by the postal authorities constitutes compliance
118 with this subsection. The condemning authority is not required
119 to give notice to a person who acquires title to property after
120 the notice required by this subsection has been given.
121 (b) Notice must be sent to the address of the registered
122 agent for the business located on the property or, if no agent
123 is registered, by certified mail or personal delivery to the
124 address of the business located on the property. Notice to one
125 owner of a multiple ownership business constitutes notice to all
126 owners of that business. The return of the notice as
127 undeliverable by the postal authorities constitutes compliance
128 with this subsection. The condemning authority is not required
129 to give notice to a person who acquires an interest in a
130 business after the notice required by this subsection has been
131 given.
132 (c) At a minimum, the mailed notice required by paragraphs
133 (a) and (b) must:
134 1. Generally explain the purpose, effect, and substance of
135 the proposed resolution;
136 2. Indicate that private property within the proposed
137 redevelopment area may be subject to taking by eminent domain if
138 the current condition of the property poses an existing threat
139 to the public health or public safety that is likely to continue
140 absent the exercise of eminent domain;
141 3. Indicate that private-to-private transfers of property
142 may occur;

143 4. Contain a geographic location map that clearly
144 indicates the area covered by the resolution, including major
145 street names as a means of identification of the general area;
146 5. Provide the dates, times, and locations of future
147 public hearings during which the resolution may be considered;
148 6. Identify the place or places within the county or
149 municipality at which the resolution may be inspected by the
150 public;
151 7. Indicate that the property owner may file written
152 objections with the local governing board prior to any public
153 hearing on the resolution; and
154 8. Indicate that interested parties may appear and be
155 heard at all public hearings at which the resolution will be
156 considered.
157 (4) In addition to mailing notice to property owners, the
158 county or municipality must conduct at least two advertised
159 public hearings prior to adoption of the proposed resolution. At
160 least one hearing must be held after 5 p.m. on a weekday, unless
161 the governing body, by a majority plus one vote, elects to
162 conduct the hearing at another time of day. The first public
163 hearing must be held at least 7 days after the day the first
164 advertisement is published. The second hearing must be held at
165 least 10 days after the first hearing and must be advertised at
166 least 5 days prior to the public hearing. The required
167 advertisements must be no less than 2 columns wide by 10 inches
168 long in a standard size or a tabloid size newspaper, and the
169 headline in the advertisement must be in a type no smaller than
170 18 point. The advertisement must not be placed in that portion
171 of the newspaper where legal notices and classified
172 advertisements appear and must be placed in a newspaper of
173 general paid circulation rather than one of limited subject

174 matter. Whenever possible, the advertisement must appear in a
175 newspaper that is published at least 5 days a week unless the
176 only newspaper in the community is published fewer than 5 days a
177 week. At a minimum, the advertisement must:
178 (a) Generally explain the substance and effect of the
179 resolution;
180 (b) Include a statement indicating that private property
181 within the proposed redevelopment area may be subject to taking
182 by eminent domain if the current condition of the property poses
183 an existing threat to the public health or public safety that is
184 likely to continue absent the exercise of eminent domain;
185 (c) Provide the date, time, and location of the meeting;
186 (d) Identify the place or places within the county or
187 municipality at which the resolution may be inspected by the
188 public;
189 (e) Contain a geographic location map that clearly
190 indicates the area covered by the resolution, including major
191 street names as a means of identification of the general area;
192 (f) Indicate that any interested party may file written
193 objections with the local governing board prior to the public
194 hearing; and
195 (g) Indicate that any interested party may appear and be
196 heard at the public hearing.
197 Section 4. Subsection (6) is added to section 163.358,
198 Florida Statutes, to read:
199 163.358 Exercise of powers in carrying out community
200 redevelopment and related activities.--The community
201 redevelopment powers assigned to a community redevelopment
202 agency created under s. 163.356 include all the powers necessary
203 or convenient to carry out and effectuate the purposes and

204 provisions of this part, except the following, which continue to
205 vest in the governing body of the county or municipality:
206 (6) The power of eminent domain.
207 Section 5. Paragraph (d) is added to subsection (2) of
208 section 163.360, Florida Statutes, to read:
209 163.360 Community redevelopment plans.--
210 (2) The community redevelopment plan shall:
211 (d) Indicate that real property within the community
212 redevelopment area may be subject to taking by eminent domain
213 pursuant to s. 163.375. If consistent with the resolution
214 finding slum or blight conditions, the plan must indicate that
215 the power of eminent domain provided under s. 163.375 will not
216 be exercised by the county or municipality within the community
217 redevelopment area.
218 Section 6. Paragraph (o) of subsection (1) and paragraph
219 (a) of subsection (3) of section 163.370, Florida Statutes, are
220 amended to read:
221 163.370 Powers; counties and municipalities; community
222 redevelopment agencies.--
223 (1) Every county and municipality shall have all the
224 powers necessary or convenient to carry out and effectuate the
225 purposes and provisions of this part, including the following
226 powers in addition to others herein granted:
227 (o) To exercise all or any part or combination of powers
228 herein granted or to elect to have such powers exercised by a
229 community redevelopment agency; however, the power of eminent
230 domain shall not be exercised by a community redevelopment
231 agency.
232 (3) With the approval of the governing body, a community
233 redevelopment agency may:

234 (a) Prior to approval of a community redevelopment plan or
235 approval of any modifications of the plan, acquire real property
236 in a community redevelopment area by purchase, lease, option,
237 gift, grant, bequest, devise, or other voluntary method of
238 acquisition, demolish and remove any structures on the property,
239 and pay all costs related to the acquisition, demolition, or
240 removal, including any administrative or relocation expenses.
241 Section 7. Section 163.375, Florida Statutes, is amended
242 to read:
243 163.375 Eminent domain.--
244 (1) After the community redevelopment plan is adopted, a
245 county or municipality may acquire by eminent domain any
246 interest in a parcel of real property within a community
247 redevelopment area, including a fee simple title thereto, for
248 the purpose of eliminating an existing threat to public health
249 or public safety if the parcel of real property is condemnation
250 eligible as defined in subsection(2). A county or municipality
251 shall exercise the power of eminent domain in the manner
252 provided in this section and in chapters 73 and 74, or pursuant
253 to the power of eminent domain provided by any other statutory
254 provision, as limited by s. 73.013. Real property belonging to
255 the United States, the state, or any political subdivision of
256 the state may not be acquired without its consent. ~~Any county or~~
257 ~~municipality, or any community redevelopment agency pursuant to~~
258 ~~specific approval of the governing body of the county or~~
259 ~~municipality which established the agency, as provided by any~~
260 ~~county or municipal ordinance has the right to acquire by~~
261 ~~condemnation any interest in real property, including a fee~~
262 ~~simple title thereto, which it deems necessary for, or in~~
263 ~~connection with, community redevelopment and related activities~~
264 ~~under this part. Any county or municipality, or any community~~

265 ~~redevelopment agency pursuant to specific approval by the~~
266 ~~governing body of the county or municipality which established~~
267 ~~the agency, as provided by any county or municipal ordinance may~~
268 ~~exercise the power of eminent domain in the manner provided in~~
269 ~~chapters 73 and 74 and acts amendatory thereof or supplementary~~
270 ~~thereto, or it may exercise the power of eminent domain in the~~
271 ~~manner now or which may be hereafter provided by any other~~
272 ~~statutory provision for the exercise of the power of eminent~~
273 ~~domain. Property in unincorporated enclaves surrounded by the~~
274 ~~boundaries of a community redevelopment area may be acquired~~
275 ~~when it is determined necessary by the agency to accomplish the~~
276 ~~community redevelopment plan. Property already devoted to a~~
277 ~~public use may be acquired in like manner. However, no real~~
278 ~~property belonging to the United States, the state, or any~~
279 ~~political subdivision of the state may be acquired without its~~
280 ~~consent.~~
281 (2) Private property is condemnation-eligible if the
282 current condition of the property poses an existing threat to
283 public health or public safety that is likely to continue absent
284 the exercise of eminent domain as evidenced by at least one of
285 the following factors:
286 (a) The property contains a structure which, in its
287 current condition, has substantial dilapidation which is either
288 physically incurable or economically incurable in that the cost
289 of repair of rehabilitation would exceed the replacement cost of
290 a new structure. Superficial or cosmetic disrepair, which is
291 reparable by a nominal expenditure, not to exceed 20% of the
292 market value of the existing structure, shall not constitute
293 dilapidation for purposes of constituting a condemnation-
294 eligible factor;

295 (b) The property contains a structure which, in its
296 current condition, is unsanitary, unsafe, or vermin-infested,
297 and is designated by the agency responsible for enforcement of
298 the housing, building, or fire codes as unfit for human
299 habitation or use;
300 (c) The property contains a structure which, in its current
301 condition, is a fire hazard, or otherwise dangerous to the
302 safety of persons or property, and is designated by the agency
303 responsible for enforcement of the housing, building, or fire
304 codes as unfit for human habitation or use;
305 (d) The property contains a structure from which, in its
306 current condition, the utilities, plumbing, heating, sewerage,
307 or other facilities have been disconnected, destroyed, removed,
308 or rendered ineffective so that the property is unfit for human
309 habitation or use; or
310 (e) The physical condition, use, or occupancy of the
311 property constitutes a public nuisance and the property has been
312 the subject of code violations affecting public health or public
313 safety that have not been substantially rehabilitated within one
314 year of receipt of notice to rehabilitate from the appropriate
315 code enforcement agency.
316 (3) A county or municipality may not initiate an eminent
317 domain proceeding pursuant to authority conferred by this
318 section unless the governing body first adopts a resolution of
319 taking containing specific determinations or findings that:
320 (a) The public purpose of the taking is to eliminate an
321 existing threat to public health or public safety that is likely
322 to continue absent the exercise of eminent domain;
323 (b) The parcel of real property is condemnation eligible
324 as defined in subsection (2), including a specific description
325 of the current conditions on the property that pose an existing

326 threat to public health or public safety that is likely to
327 continue absent the exercise of eminent domain; and
328 (c) Taking the property by eminent domain is reasonably
329 necessary in order to accomplish the public purpose of
330 eliminating an existing threat to public health or public safety
331 that is likely to continue absent the exercise of eminent
332 domain.
333 (4) The county or municipality may not adopt a resolution
334 of taking under this section unless actual notice of the public
335 hearing at which the resolution is considered was provided, at
336 least 45 days prior to the hearing, to the property owner and to
337 any business owner, including a lessee, who operates a business
338 located on the property.
339 (a) Notice must be sent by certified mail, return receipt
340 requested, to the last known address listed on the county ad
341 valorem tax roll of each owner of the property. Alternatively,
342 the notice may be personally delivered to each property owner.
343 Compliance with s. 163.375(4) shall also require conspicuous
344 posting of the notice to the premises of the property to be
345 acquired. The posted notice shall prominently and legibly
346 display the information provided in s. 163.375(4)(c). The
347 condemning authority is not required to give notice to a person
348 who acquires title to the property after the notice required by
349 this subsection has been given.
350 (b) Notice must be sent by certified mail, return receipt
351 requested, to the address of the registered agent for the
352 business located on the property to be acquired or, if no agent
353 is registered, by certified mail or personal delivery to the
354 address of the business located on the property to be acquired.
355 Notice to one owner of a multiple ownership business constitutes
356 notice to all business owners of that business. Compliance with

357 s. 163.375(4) shall also require conspicuous posting of the
358 notice to the premises of the property to be acquired. The
359 posted notice shall prominently and legibly display the
360 information provided in s. 163.375(4)(c). The condemning
361 authority is not required to give notice to a person who
362 acquires an interest in the business after the notice required
363 by this subsection has been given.
364 (c) At a minimum, the notices required by paragraphs (a)
365 and (b) shall indicate:
366 1. That the county or municipal governing body will
367 determine whether to take the parcel of real property pursuant
368 to authority granted by this part and will formally consider a
369 resolution of taking at a public hearing;
370 2. That the property is subject to taking by eminent
371 domain under this part because current conditions on the
372 property pose an existing threat to public health or public
373 safety that is likely to continue absent the exercise of eminent
374 domain;
375 3. The specific conditions on the property that pose an
376 existing threat to public health or public safety and form the
377 basis for taking the property;
378 4. That the property will not be subject to taking if the
379 specific conditions that pose an existing threat to public
380 health or public safety and form the basis for the taking are
381 removed prior to the public hearing at which the resolution will
382 be considered by the governing body;
383 5. The date, time, and location of the public hearing at
384 which the resolution of taking will be considered;
385 6. That the property owner or business owner may file
386 written objections with the governing board prior to the public
387 hearing at which the resolution of taking is considered; and

388 7. That any interested party may appear and be heard at
389 the public hearing at which the resolution of taking is
390 considered.
391 (5)(a) In accordance with chapters 73 and 74, if a
392 property owner challenges an attempt to acquire his or her
393 property by eminent domain under this section, the condemning
394 authority must prove by clear and convincing evidence in an
395 evidentiary hearing before the circuit court that:
396 1. The public purpose of the taking is to eliminate an
397 existing threat to public health or public safety that is likely
398 to continue absent the exercise of eminent domain;
399 2. The property is condemnation eligible as defined in
400 subsection (2); and
401 3. Taking the property by eminent domain is reasonably
402 necessary in order to accomplish the public purpose of
403 eliminating an existing threat to public health or public safety
404 that is likely to continue absent the exercise of eminent
405 domain.
406 (b) The circuit court shall determine whether the public
407 purpose of the taking is to eliminate an existing threat to
408 public health or public safety that is likely to continue absent
409 the exercise of eminent domain, whether the property is
410 condemnation eligible as defined in subsection (2), and whether
411 taking the property is reasonably necessary in order to
412 accomplish the public purpose of eliminating an existing threat
413 to public health or public safety that is likely to continue
414 absent the exercise of eminent domain. The circuit court shall
415 make these determinations without attaching a presumption of
416 correctness or extending judicial deference to any
417 determinations or findings in the resolution of taking adopted
418 by the condemning authority.

419 (6) ~~(2)~~ In any proceeding to fix or assess compensation for
420 damages for the taking of property, or any interest therein,
421 through the exercise of the power of eminent domain or
422 condemnation, evidence or testimony bearing upon the following
423 matters shall be admissible and shall be considered in fixing
424 such compensation or damages in addition to evidence or
425 testimony otherwise admissible:
426 (a) Any use, condition, occupancy, or operation of such
427 property, which is unlawful or violative of, or subject to
428 elimination, abatement, prohibition, or correction under, any
429 law, ordinance, or regulatory measure of the state, county,
430 municipality, or other political subdivision, or any agency
431 thereof, in which such property is located, as being unsafe,
432 substandard, unsanitary, or otherwise contrary to the public
433 health, safety, morals, or welfare.
434 (b) The effect on the value of such property of any such
435 use, condition, occupancy, or operation or of the elimination,
436 abatement, prohibition, or correction of any such use,
437 condition, occupancy, or operation.
438 (7) ~~(3)~~ In any proceeding to fix or assess compensation for
439 damages for the taking of property, or any interest therein, the
440 foregoing testimony and evidence shall be admissible
441 notwithstanding that no action has been taken by any public body
442 or public officer toward the abatement, prohibition,
443 elimination, or correction of any such use, condition,
444 occupancy, or operation. Testimony or evidence that any public
445 body or public officer charged with the duty or authority so to
446 do has rendered, made, or issued any judgment, decree,
447 determination, or order for the abatement, prohibition,
448 elimination, or correction of any such use, condition,
449 occupancy, or operation shall be admissible and shall be prima

450 facie evidence of the existence and character of such use,
451 condition, or operation.
452 Section 8. Subsection (3) is added to section 127.01,
453 Florida Statutes, to read:
454 127.01 Counties delegated power of eminent domain;
455 recreational purposes, issue of necessity of taking.--
456 (3) Each county shall strictly comply with the limitations
457 set forth in s. 73.013.
458 Section 9. Section 127.02, Florida Statutes, is amended to
459 read:
460 127.02 County commissioners may authorize acquirement of
461 property by eminent domain.--The board of county commissioners
462 may, by resolution, authorize the acquirement by eminent domain
463 of property, real or personal, for any county use or purpose
464 designated in such resolution, subject to the limitations set
465 forth in s. 73.013.
466 Section 10. Subsection (3) is added to section 166.401,
467 Florida Statutes, to read:
468 166.401 Right of eminent domain.--
469 (3) Each municipality shall strictly comply with the
470 limitations set forth in s. 73.013.
471 Section 11. Subsections (1), (9), and (10) of section
472 166.411, Florida Statutes, are amended to read:
473 166.411 Eminent domain; uses or purposes.--Municipalities
474 are authorized to exercise the power of eminent domain for the
475 following uses or purposes:
476 (1) For the proper and efficient carrying into effect of
477 any proposed scheme or plan of drainage, ditching, grading,
478 filling, or other public improvement deemed necessary or
479 expedient for the preservation of the public health, or for
480 other good reason connected in anywise with the public welfare

481 or the interests of the municipality and the people thereof, subject to the limitations set forth in s. 73.013;
482
483 (9) For laying wires and conduits underground; and
484 (10) For city buildings, waterworks, ponds, and other
485 municipal purposes which shall be coextensive with the powers of
486 the municipality exercising the right of eminent domain subject
487 to the limitations set forth in s. 73.013.~~; and~~
488 Section 12. This act shall take effect July 1, 2006, and
489 shall apply to all condemnation proceedings in which a petition
490 of taking is filed pursuant to chapter 73, Florida Statutes, on
491 or after that date.
492

HJR 1569

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1569 Eminent Domain
SPONSOR(S): Rubio
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Camechis	Hamby
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This House Joint Resolution proposes an amendment to the State Constitution to prohibit the transfer of ownership or control of private real property taken by eminent domain pursuant to a petition filed on or after January 2, 2007, to any natural person or private entity, except that:

(a) Ownership or control of such property may be conveyed to:
(1) A natural person or private entity for use in providing common carrier services or systems;
(2) A natural person or private entity for use as a road or other right-of-way or means open to the public for transportation, whether at no charge or by toll;
(3) A natural person or private entity that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;
(4) A natural person or private entity for use in providing public infrastructure;
(5) A natural person or private entity that occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;
(6) A natural person or private entity if the property was taken to eliminate an existing threat to public health or public safety as provided by general law;
(7) A natural person or private entity if the property was owned and controlled by the condemning authority or a governmental entity for at least 5 years after the condemning authority acquired title to the property; or
(8) A natural person or private entity in accordance with subsection (b).
(b) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (a)(1), (2), (3), (4), (5), or (6), and that natural person or private entity retains ownership and control of the property for at least 5 years after acquiring title, the property may subsequently be transferred to another natural person or private entity without restriction.

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This joint resolution provides for limited government by limiting the circumstances under which a condemning authority may transfer taken property to another private entity, thereby limiting the circumstances under which government may exercise the power of eminent domain.

B. EFFECT OF PROPOSED CHANGES:

The following Introduction and Current Situation are repeated in the Staff Analysis of HB 1567.

INTRODUCTION

On June 23, 2005, the United States Supreme Court issued its decision in the case of *Kelo v. City of New London*[1], concluding that the U.S. Constitution does not prohibit the City of New London from taking private property by eminent domain for the public purpose of economic development. Even though the Court's decision approved *Kelo*-type takings under the U.S. Constitution, the decision does not restrict the State of Florida from prohibiting takings for economic development or prohibiting transfers of property taken by eminent domain to private parties.

On June 24, 2005, House Speaker Allen Bense announced the creation of the Select Committee to Protect Private Property Rights chaired by Representative Marco Rubio. The Select Committee was tasked with reviewing Florida law in an effort to identify areas of ambiguity and recommend changes to ensure appropriate protections of property rights.

The fundamental issue raised by the *Kelo* decision may be summarized as follows: Under Florida law, is economic development -- which may include, but is not limited to, creating jobs and enhancing the tax base -- a valid public purpose for which private property may be taken and transferred to another private entity? In short, the Florida Constitution, Florida Statutes, and Florida Supreme Court decisions do not explicitly prohibit takings of private property for the purpose of economic development. Therefore, unless the Florida Constitution or statutes are amended, the question of whether a city or a county may take property for purposes of economic development will remain unanswered until directly addressed by the Florida Supreme Court.

While the case law and statutes do not expressly authorize takings for economic development purposes, private property rights advocates assert that current statutes authorizing the taking of private property for the public purpose of eliminating and preventing the recurrence of slum or blight conditions within a geographical area are being used to take property that is not genuinely blighted for economic development purposes. Much of the concern expressed by property rights advocates centers around the application of the statutory definition of "blighted area" and what many perceive as vague and inappropriate criteria in the definition. On the other hand, representatives of local government assert that the statutory criteria for slum and blight are sufficiently narrow and that the power of eminent domain is rarely exercised in the community redevelopment context.

This joint resolution addresses takings of private property outside the redevelopment context for economic development purposes by prohibiting the transfer of taken property to private parties unless the transfer qualifies as one of the listed exceptions to the prohibition.

CURRENT SITUATION

[1] 125 S.Ct. 2655 (2005).

General Principles of Eminent Domain Law

"Eminent domain" may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a "public use" and government must pay the owner "just compensation" for the taken property.[2] Even though the U.S. Constitution requires private property to be taken for a "public use", the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as "public purpose".

As long ago as 1905, the Court upheld state statutes that resulted in the transfer of taken property from one private owner to another for a legislatively declared public purpose. Prior to *Kelo*, the two most significant cases regarding this type of taking were *Berman v. Parker*[3] and *Hawaii Housing Authority v. Midkiff*[4].

In 1954, the Court issued a decision in the *Berman* case upholding a redevelopment plan targeting a blighted area. Under the Plan, part of the taken property would be leased or sold to private parties for redevelopment. A property owner challenged the taking, arguing that his property was not blighted and that the creation of a "better balanced, more attractive community" was not a valid public use. The Court held that eliminating slum or blight conditions in a geographic area is a public purpose and that it is permissible for government to take a parcel of private property in the area even if that particular parcel is not slum or blighted. Perhaps the most important aspect of the decision is the Court's conclusion that "when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive."

In 1984, the Court decided the *Midkiff* case in which private property owners challenged a Hawaii statute under which private properties were taken and transferred to lessees of those properties for the public purpose of reducing concentration of land ownership. Reaffirming the *Berman* decision's deferential approach to legislative judgments, the court unanimously upheld the statute. The Court concluded that a taking should be upheld as long as it is "rationally related to a conceivable public purpose."

Kelo v. City of New London

In 1990, a state agency designated the City of New London a "distressed municipality." The City was not, however, designated as a blighted or slum area. Thereafter, state and local officials targeted the area for economic revitalization, and a development plan was drafted. In addition to creating a large number of jobs and increasing the City's tax base, the plan was designed to make the City more attractive and to create leisure and recreational opportunities. While most of the property owners in the development area negotiated the sale of their property, negotiations with 7 property owners were unsuccessful. The property owners who did not wish to negotiate challenged the taking arguing that the use of eminent domain was unconstitutional because economic development without a determination of blight is not a valid public purpose.

In a 4-3 decision, the Supreme Court of Connecticut ruled that the takings were authorized by Connecticut's municipal development statute, which declares that the taking of land as part of an economic development project is a "public use" and in the "public interest". The case was appealed to

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[2] U.S. Const. amend. V.
[3] 348 U.S. 326 (1954).
[4] 467 U.S. 229 (1984).

the U.S. Supreme Court. The specific question before the Court was whether the City's taking of non-blighted private property for the purpose of economic development, in compliance with a state statute, satisfied the "public use" requirement of the U.S. Constitution even though the property would be transferred to other private entities for seemingly private uses.

The Court concluded that because the City's development plan "unquestionably" serves a public purpose, the takings satisfy the public use requirement of the U.S. Constitution. The Court immediately acknowledged, however, that a governmental entity may not take the private property of party A for the sole purpose of transferring the property to another private party B, even though A is paid just compensation. The court also noted that a one-to-one transfer of private property for the purpose of putting the property to more productive use, executed outside the confines of an integrated development plan, was not at issue in this case. The court concluded that, while such an unusual exercise of government power "would certainly raise a suspicion that a private purpose was afoot" the issue was not presented in the *Kelo* case and would not be addressed by the Court until directly presented in a future case.

The Court explicitly stated that the City could not take property simply to confer a private benefit to a "particular" private party. The Court also acknowledged that a governmental entity may not take property under the mere "pretext" of a public purpose, when its actual purpose was to bestow a private benefit. In *Kelo*, the Court noted that the takings would be executed pursuant to a "carefully considered" development plan; therefore, the property was not being taken under a mere pretext of public purpose.

Unlike more traditional public use takings, i.e., roads, schools, public parks, the Court recognized that the private lessees of the condemned property in New London would not be required to make the property or their services available to all comers. However, the Court noted that over the last hundred years, it has repeatedly rejected a literal requirement that condemned property be put into use for the general public and embraced the broader and more natural interpretation of public use as public purpose. The Court explained the erosion of "use by the public" as the definition of "public use" by pointing to the difficulty in administering the test and the impracticality of the test "given the diverse and always evolving needs of society."

The Court noted that, without exception, its decisions have "defined [the concept of public purpose] broadly, reflecting our longstanding policy of deference to legislative judgments in this field." The Court pointed out that its earliest cases in particular embodied a strong theme of federalism, emphasizing the "great respect" the Court "owe[s] state legislatures and state courts in discerning local public needs." For more than a century, the Court said, its public use jurisprudence has "wisely eschewed" rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power.

Moreover, citing the *Berman* redevelopment case, the Court reasoned that promoting economic development is a traditional function of government and that "[t]here is... no principled way of distinguishing economic development from the other public purposes that we have recognized."

The Court also noted that a determination by municipal officials, acting pursuant to state authorization, that city-planned economic redevelopment is necessary "is entitled to [the Court's] deference." The city had, the Court recognized, carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue.

As with many eminent domain cases, the holding of the *Kelo* case is not absolutely clear. However, the Court explicitly concluded that the City's plan unquestionably serves a public purpose and that taking private property under the facts presented in the case is permissible under the public use requirement of the U.S. Constitution.

It should be emphasized that the *Kelo* decision does not in any way restrict the State of Florida from prohibiting takings for purposes similar to those in *Kelo*, or for any other purpose for that matter. The Court emphasized that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline." Every state is entitled to interpret the public purpose provisions of its own state constitution in a manner that more narrowly interprets the public purpose requirement. In short, Florida may prohibit takings that are allowed under the U.S. Constitution, but may not allow takings that are prohibited.

Florida Eminent Domain Law

The Florida Constitution addresses eminent domain in section 6, Article X, as follows:

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

The Florida Constitution prohibits takings of private property unless the taking is for a "public purpose" and the property owner is paid "full compensation." The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that "private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed by law."[5]

Generally speaking, in order for a taking to be valid in Florida, the condemning authority must:

1. Possess authority to exercise the power of eminent domain;
2. Demonstrate that a taking of private property is pursued for a valid public purpose and that all statutory requirements have been fulfilled;
3. Offer evidence showing that the taking is reasonably, not absolutely, necessary to accomplish the public purpose of the taking; and
4. Pay the property owner full compensation as determined by a 12-member jury.

Each of these four requirements is more fully discussed below.

1. The condemning authority must be authorized to exercise the power of eminent domain.

In order to take private property by eminent domain, an entity must possess statutory or constitutional authority to exercise the power of eminent domain. With the exception of cities and possibly charter counties, an entity does not have authority to exercise the power of eminent domain unless authorized to do so by the Legislature. If the Legislature delegates authority to exercise the power of eminent domain, procedures and requirements imposed by statute are mandatory.

[5] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).

a. Constitutional Delegation of Home Rule Powers to Cities and Counties

The municipal home rule provision in Florida's Constitution authorizes cities to "exercise any power for municipal purposes except as otherwise provided by law".[6] In 1992, the Florida Supreme Court concluded that a statutory grant of authority is not necessary in order for a city to exercise the power of eminent domain.[7] However, because cities have all powers "except as otherwise provided by law", the Legislature may expressly prohibit cities from exercising the power of eminent domain for particular purposes. Rather than prohibiting municipal exercise of the power of eminent domain, the Legislature has granted municipalities broad statutory powers of eminent domain, including the power to take private property for "good reason connected in anywise with the public welfare of the interests of the municipality and the people thereof" and for "municipal purposes".[8]

The Florida Constitution grants charter counties "all powers of local self government not inconsistent with general law" and grants noncharter counties "such power of self-government as is provided by general law."[9] Based upon the broad constitutional grant of authority, it appears that charter counties possess the power of eminent domain except as expressly prohibited by general law. However, the Florida Supreme Court has stated, in what appears to be dicta, that counties may not have the power of eminent domain unless specifically authorized by the Legislature.[10] Even if charter counties do not possess constitutional home rule power to take property, the Legislature has granted broad statutory powers to all counties, including the power to take property for "any county purpose".[11]

It should be noted there is no evidence indicating that a city or county in Florida has exercised the power of eminent domain under constitutional home rule powers for the declared purpose of economic development.

2. A condemning authority must demonstrate that a taking is pursued for a valid public purpose and that any statutory requirements have been fulfilled.

a. What is a valid public purpose for which property may be taken by eminent domain under Florida law?

The second requirement for a valid taking is that the property must be taken for a public purpose. The fundamental question is this: what qualifies as a public purpose in Florida? There is not a definitive answer to the question for at least three reasons. First, the determination of whether a taking serves a valid public purpose depends upon the facts of each case. Second, the concept of public purpose has evolved in Florida case law over the past century from a narrowly defined and applied concept to broadly defined and applied concept. Third, the Florida Supreme Court has equated the public purpose necessary to support the issuance of public bonds with the public purpose necessary to support a taking of private property by eminent domain. However, as with eminent domain cases, recent bond validation cases appear to apply a broad interpretation of the public purpose doctrine while early cases apply a more narrow interpretation of the doctrine.

The Florida Courts have long held that the public purpose requirement in the Florida Constitution does not require private property taken by eminent domain to be "used by the public" if the court determines that the taking accomplishes a valid public purpose. However, Florida law does <u>not</u> allow government to take property from private owner A and transfer it to private owner B for "the <u>sole</u> purpose of making such property available to private enterprises for private use."[12]

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[6] Art. VIII, § 2, Fla. Const.
[7] *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).
[8] § 166.411, F.S.
[9] Art. VIII, § 1, Fla. Const.
[10] *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).
[11] § 127.01, F.S.
[12] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *State ex rel. Ervin v. Cotney,* 104 So.2d 346 (Fla. 1958).

In order to demonstrate that public purpose is not a clearly defined concept, the following Florida Supreme Court decisions illustrate the fact that some decisions apply the public purpose concept narrowly, while other cases apply the concept broadly.

The first case illustrating the narrow view is the 1947 case of *Peavy-Wilson Lumber Co. v. Brevard County.*[13] In the *Peavy* case, the Court concluded that the power of eminent domain should be limited to taking property for "something basically essential" such as roads, schools, drainage projects, parks, and playgrounds. However, even the *Peavy* Court recognized that the concept is not static and advances with caution to meet society's needs in conformity with the constitution.

In 1975, the court considered the case of *Baycol v. Downtown Development Authority of City of Ft. Lauderdale*[14], in which a downtown development authority attempted to condemn private property for a parking garage. The Supreme Court concluded that there was not a public need for extra parking facilities, which was cited as the sole basis for the taking, without the shopping center that would be constructed atop the parking garage. The development authority did not assert that economic development -- job creation or tax base enhancement -- was the public purpose for condemning the property. Therefore, the *Baycol* court did not explicitly rule on whether a taking for the declared public purpose of economic development is permissible under the Florida Constitution. The *Baycol* court declared, however, that private property may not be taken by eminent domain for a predominantly private use. To date, the Court has not established a "test" for determining when a public purpose predominates over the private interest. Each case is viewed on the individual facts presented to the court and based upon the public purpose asserted by the condemning authority. Therefore, it is unknown whether the Florida courts would consider a *Kelo*-type taking as serving a predominately public or private use.

In 1977, the court considered the case of *Deseret Ranches of Florida v. Bowman,*[15] and upheld a state statute that permitted one private property owner to exercise the power of eminent domain for the purpose of obtaining an easement of necessity over the property of another private landowner. The court reasoned that the "the statute's purpose is predominantly public and the benefit to the landowner is incidental to the public purpose....Useful land becomes more scarce in proportion to the population increase, and the problem in this state becomes greater as tourism, commerce and the need for housing and agricultural goods grow. By its application to shut-off lands to be used for housing, agriculture, timber production and stock raising, the statute is designed to fill these needs. There is then a clear public purpose in providing means of access to such lands so that they may be utilized in the enumerated ways." It has been asserted that the court's decision in *Deseret* "utterly complicates what some thought might have otherwise been a straightforward argument that *Baycol* prohibits *Kelo*-style economic development takings. In *Deseret Ranches*, it was clear that all the direct benefits of the taking were private, and any public benefits were purely incidental. Yet the 'sensible utilization of land' was, for the Court, of such a dominant public purpose as to allow that rather lopsided outcome to be characterized as consistent with *Baycol.* One does not have to possess much imagination to think of how economic development takings could be portrayed as also serving the predominant public purpose of 'sensible utilization of land.'"[16]

In 1988, the court continued to broaden the application of the public purpose doctrine in *Fl. Dep't of Transp. v Fortune Federal Savings and Loan Ass'n,*[17] concluding that "[t]he term 'public purpose' does not mean simply that the land is used for a specific public function, i.e. a road or other right of way. Rather, the concept of public purpose must be read more broadly to include projects which benefit the state in a tangible, foreseeable way."

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[13] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
[14] *Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale*, 315 So.2d 451 (Fla. 1975).
[15] 349 So.2d 155 (Fla. 1977).
[16] Professor J. B. Ruhl, *Property Rights at Risk? Eminent Domain Law in Florida After The U.S. Supreme Court Decision In Kelo v. City of New London*, p. 11 (James Madison Institute Backgrounder, Number 46, Sept. 2005).
[17] *Dep't of Transp. v. Fortune Federal Sav. and Loan Ass'n*, 532 So.2d 1267 (Fla. 1988).

There is also a large body of case law addressing the "public purpose" necessary to support the issuance of public bonds or the spending of public funds. When the Florida Supreme Court upheld the Community Redevelopment Act in 1980[18], it equated the public purpose necessary to support the issuance of public bonds with the public purpose necessary to support a taking of private property by eminent domain. At least since 1968, the Court has broadly applied the public purpose concept in bond validation cases. However, there are early bond validation cases that appear to apply a narrow view of the public purpose doctrine.

b. Determinations of public purpose

The Legislature may authorize an entity to take property and, at the same time, declare that the taking serves a particular public purpose. However, the ultimate question of the validity of a legislatively declared public purpose is resolved by the courts.[19] Nonetheless, the courts' role in determining whether the power of eminent domain is exercised in furtherance of a legislatively declared public purpose is narrow.[20] In order to invalidate a statute that has a stated public purpose, the party challenging the statute must show that the stated purpose is arbitrary and capricious and so clearly erroneous as to be beyond the power of the legislature.[21] The threshold question for the courts is not whether the proposed use is a public one, but whether the Legislature might reasonably consider it a public one.[22]

While the question of whether the use for which private property is taken is a public use is ultimately a judicial question, where the Legislature declares a particular use to be a public use, the presumption is in favor of its declaration, and the courts will not interfere unless the use is clearly and manifestly of a private character.[23]

Similarly, when a local government's governing body determines that a taking of private property serves a statutory public purpose, the determination is entitled to judicial deference and is presumed valid and correct unless patently erroneous. Unless a condemning authority acts illegally, in bad faith, or abuses its discretion, its selection of land for condemnation will not be overruled by a court; a court is not authorized to substitute its judgment for that of a governmental body acting within the scope of its lawful authority.[24] The court will sustain the local government's determination that a taking serves the statutory public purpose as long as it is "fairly debatable".[25]

3. A condemning authority must offer evidence showing that the taking is reasonably, not absolutely, necessary to accomplish the public purpose of the taking.

If a governmental entity is authorized to take property for a valid public purpose, the entity must show that taking the property is reasonably, not absolutely, necessary in order to accomplish the declared public purpose. First, the condemning authority must show some evidence of a reasonable necessity for the taking. Once a reasonable necessity is shown, the exercise of the condemning authority's discretion will not be disturbed in the absence of illegality, bad faith, or gross abuse of discretion.[26]

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[18] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980).
[19] *Dep't of Transp. v. Fortune Federal Sav. and Loan Ass'n*, 532 So.2d 1267 (Fla. 1988).
[20] *Id.*
[21] *Id.*
[22] *Wilton v. St. Johns County*, 98 Fla. 26, 123 So. 527 (Fla. 1929).
[23] *Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (Fla. 1926).
[24] *Canal Authority v. Miller*, 243 So.2d 131 (Fla. 1970).
[25] *Panama City Beach Community Redevelopment Agency v. State*, 831 So.2d 662 (Fla. 2002); *JFR Inv. v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261 (Fla. 4th DCA 1995).
[26] *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).

4. A condemning authority must pay the property owner full compensation as determined by a 12-member jury.

If a court finds that a governmental entity is authorized to take private property for a valid public purpose, and that the entity has presented evidence showing that the property is reasonably necessary to accomplish the declared public purpose, the property owner must be paid full compensation for the taken property. Key aspects of the constitutional requirement for payment of full compensation may be summarized as follows:

- A property owner is entitled to full and just compensation.
- A twelve-member jury determines the amount of compensation.
- Determining the amount of just compensation is a judicial function that cannot be performed by the Legislature directly or indirectly.
- The Legislature may create an obligation to pay more than what the courts might consider full compensation.
- Generally, the just and full compensation due is the fair market value of the property at the time of the taking.
- A condemning authority must pay reasonable attorney's fees and costs.
- A landowner is entitled to compensation for the reasonable cost of moving personal property, including impact fees.
- Business damages are available only in the case of partial takings, not takings of a full parcel.

Impact of the *Kelo* Decision on Florida Law

The question of whether the *Kelo* decision impacts takings in Florida continues to be the subject of debate. Arguably, the *Kelo* decision has no direct impact on Florida's eminent domain law. Although the decision applies in Florida to the extent that a *Kelo*-type taking may not violate the U.S. Constitution, the decision does not mean that a *Kelo*-type taking is allowed under the Florida Constitution. Whether the Florida Constitution allows a *Kelo*-type taking must be decided by the Florida Supreme Court, not the U.S. Supreme Court. What remains uncertain is whether the *Kelo* decision will have an indirect impact on the Florida courts' interpretation and application of eminent domain law in any future attempts by cities or counties to take private property for economic development purposes.

Determining whether a *Kelo*-type taking may occur in Florida must be considered in two contexts:

1. First, whether a city or county taking of private property in a non-blighted or non-slum area for the purpose of economic development is permitted outside the context of Florida's Community Redevelopment Act; and

2. Second, whether *Kelo*-type takings are now occurring under the Community Redevelopment Act.

Kelo-type takings outside the Community Redevelopment Act context

Unlike Connecticut, the Florida Legislature has not enacted a statute that expressly authorizes takings of private property in non-blighted or non-slum areas for the purpose of economic development. Therefore, state agencies are prohibited from taking property for economic development purposes. Based on the absence of a statutory delegation of authority, it may appear that a *Kelo*-type taking cannot occur under any circumstances. As previously discussed, however, cities have and charter counties may have constitutional home rule power to take property by eminent domain for economic development purposes without an explicit authorization from the Legislature. In addition, current statutes grant broad home rule authority to cities and counties, including the authority to exercise the power of eminent domain for any municipal or county purpose, and declare that economic development is a public purpose for which cities and counties may expend public funds. It could be argued that,

since the Legislature has declared economic development a public purpose for spending public funds[27], economic development may be considered a public purpose for which cities and counties may exercise the power of eminent domain.

Based upon the uncertainty created by the current case law and the lack of case law directly on point, it is not possible to determine how the Florida courts will view takings of private property for economic development purposes in Florida if directly presented with the issue. What is certain is that there is not an explicit statutory or constitutional provision that prohibits cities or counties from taking private property in non-blighted or non-slum areas for purposes of increasing jobs, increasing the tax base, maximizing efficient use of property, or other general economic development purposes. Further, the Florida Supreme Court has never considered a case involving a taking of private property in non-blighted or non-slum areas by a city or county asserting home rule powers for the declared public purpose of economic development.

Therefore, the decision as to whether *Kelo*-type takings are permissible in Florida lies squarely in the judiciary, and will remain so unless the constitution or statutes are amended to restrict takings for economic development purposes or restrict transfers of taken property to private entities.

Takings in the context of the Community Redevelopment Act

After the *Kelo* decision was issued, the media and other interested parties focused primarily on Florida's Community Redevelopment Act (Act), alleging that abuses of the Act are occurring throughout Florida. However, the *Kelo* decision does not have a direct impact on takings in the redevelopment context due to the fact that the property at issue in *Kelo* was not blighted or taken under a "redevelopment" statute.

In 1980, the Florida Supreme Court upheld Florida's Community Redevelopment Act in its entirety. The Act authorizes the use of eminent domain for acquisition and clearance of private property for the public purpose of eliminating and preventing the recurrence of slum or blight conditions in a geographic area. The Act also authorizes "substantial private and commercial uses of the property after redevelopment." [28]

The Act imposes requirements that must be satisfied by a county or city that wishes to create a redevelopment agency, declare redevelopment areas, or issue revenue bonds to finance projects within these areas. Under the Act, a county or city may not exercise community redevelopment authority, including the power of eminent domain, until the county or city satisfies the statutory requirements. Those requirements include adoption of a resolution, supported by data and analysis, which makes a legislative finding that the conditions in the area meet the criteria of a "slum area" or "blighted area" as defined in statute,[29] and that the rehabilitation, conservation, or redevelopment of the area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the county or city.[30]

The Community Redevelopment Act does not specifically authorize takings for "economic development" purposes; rather, the Act authorizes the taking of property within a blighted or slum area for the public purpose of eliminating and preventing slum and blight conditions, and permits the transfer of taken property to private entities for redevelopment in order to accomplish that public purpose. Private property rights advocates assert that the Act is being used to take areas of property that are not genuinely blighted for purely economic development purposes. Much of the concern expressed by property rights advocates centers around the application of the statutory definition of "blighted area," and what many perceive as the vague and inappropriate criteria in the definition.

Soon after the *Kelo* decision was issued, an Order of Taking was entered by the Circuit Court in Volusia County in a case involving takings of private property on the Daytona Beach Boardwalk, which is

[27] ss. 125.045 and 166.021, F.S.
[28] *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980).
[29] § 163.355, F.S.
[30] § 163.355, F.S.

located within a community redevelopment area. The Order of Taking cites extensively to the *Kelo* decision, as well as to Florida judicial decisions, to uphold the takings in the case. Citing the *Kelo* decision, the circuit court opined that "[w]hen a taking serves a public purpose, the fact that the property ultimately is transferred to a private owner and that it confers a private benefits on others does not render the taking unconstitutional. The public use clause would be violated only if the taking were for purely private purposes or if the alleged public purpose were merely pretextual."[31]

Community Redevelopment Act issues addressed in case law

A large body of case law exists regarding the exercise of eminent domain under the Community Redevelopment Act, which includes the following significant judicial conclusions:

- A community redevelopment agency is not required to prove that the same level of blight exists when it seeks to condemn property as was present when the redevelopment plan was initially adopted.[32]
- Designations of blight or slum do not expire after a given period of time; therefore, property located within a redevelopment area is subject to taking for an indefinite period of time.[33]
- If a public purpose and reasonable necessity exists for the taking of property for slum or blight clearance, the fact that a landowner has begun to develop the property in accordance with the redevelopment plan does not give the owner an option to retain and develop the property unless approved by the redevelopment agency.[34]
- The general characteristics of a slum or blighted geographic area control whether property within the entire area is subject to taking, not the condition of an individual parcel.[35] Therefore, a parcel of property may be subject to taking by eminent domain if the parcel is located in an area designated as slum or blighted even if the parcel itself is not in a slum or blighted condition.

Summary of Key Points

The following may be considered a summary of the key aspects of the preceding discussion of the law:

- The decision as to whether a taking for economic development purposes is permissible in Florida lies squarely in the judiciary, and will remain so unless the constitution or statutes are amended to restrict such takings.
- The *Kelo* decision did not directly affect the fundamental principles of Florida's eminent domain law; however, for the first time, the U.S. Supreme Court approved, under the U.S. Constitution, a taking of private property in a non-blighted or non-slum area and subsequent transfer to private parties for the purpose of economic development.
- Whether the *Kelo* decision will have an indirect impact on the Florida courts' interpretation and application of the law in a future attempt by cities or counties to take private property for economic development purposes is unknown.
- There is not a Florida statute that explicitly prohibits the taking of private property for economic development purposes; therefore, cities and counties appear to have the underlying authority to initiate a taking for economic development purposes under their constitutional and statutory home rule power.

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[31] *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).
[32] *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Daytona Beach v. Mathas*, 2004-31846-CICI (Fla. Cir. Ct. Aug. 19, 2005).
[33] *Rukab v. City of Jacksonville Beach*, 866 So.2d 773 (Fla. 1st DCA 2004); *Batmasian v. Boca Raton Community Redevelopment Agency*, 580 So.2d 199 (Fla. 4th DCA 1991); *City of Jacksonville v. Griffin*, 346 So.2d 988 (Fla. 1977).
[34] *Post v. Dade County*, 467 So.2d 758 (Fla. 3rd DCA 1985); rev. den. *Post v. Dade County*, 479 So.2d 118 (Fla. 1985).
[35] *Berman v. Parker*, 348 U.S. 26 (1954); *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980); *Post v. Dade County*, 467 So.2d 758 (Fla. 3rd DCA 1985); rev. den. *Post v. Dade County*, 479 So.2d 118 (Fla. 1985); *Grubstein v. Urban Renewal Agency of City of Tampa*, 115 So.2d 745 (Fla. 1959).

- The Florida Supreme Court has not considered a case involving a taking for the declared public purpose of economic development. Therefore, whether the Court will uphold or prohibit such takings in the future is unknown.
- The Florida Supreme Court has upheld the Community Redevelopment Act, concluding that the elimination and prevention of slum and blight serves a public purpose and that the public purpose is not invalidated by the substantial involvement of private interests in redevelopment.
- The Community Redevelopment Act includes a broad definition of "blighted area," which may permit the taking of an individual parcel of property that does not appear to be blighted. Private property rights advocates claim that under the current definition of "blight," *Kelo*-type takings are occurring in Florida.
- The League of Cities and the Community Redevelopment Association assert that eminent domain is typically a last resort to complete the land assembly process. However, they predict that, without the power of eminent domain, "CRAs will have much difficulty in assembling land especially where many landowners are involved".

Effect of Proposed Changes

This House Joint Resolution proposes an amendment to the State Constitution to prohibit the transfer of ownership or control of private real property taken by eminent domain pursuant to a petition filed on or after January 2, 2007, to any natural person or private entity, except that:

> (a) Ownership or control of such property may be conveyed to:
> (1) A natural person or private entity for use in providing common carrier services or systems;
> (2) A natural person or private entity for use as a road or other right-of-way or means open to the public for transportation, whether at no charge or by toll;
> (3) A natural person or private entity that is a public or private utility for use in providing electricity services or systems, natural or manufactured gas services or systems, water and wastewater services or systems, stormwater or runoff services or systems, sewer services or systems, pipeline facilities, telephone services or systems, or similar services or systems;
> (4) A natural person or private entity for use in providing public infrastructure;
> (5) A natural person or private entity that occupies, pursuant to a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;
> (6) A natural person or private entity if the property was taken to eliminate an existing threat to public health or public safety as provided by general law;
> (7) A natural person or private entity if the property was owned and controlled by the condemning authority or a governmental entity for at least 5 years after the condemning authority acquired title to the property; or
> (8) A natural person or private entity in accordance with subsection (b).
> (b) If ownership of property is conveyed to a natural person or private entity pursuant to paragraph (a)(1), (2), (3), (4), (5), or (6), and that natural person or private entity retains ownership and control of the property for at least 5 years after acquiring title, the property may subsequently be transferred to another natural person or private entity without restriction.

Common Carriers

Subsection (a)(1) allows transfers of taken property to a natural person or private entity for use in providing common carrier services or systems. A common carrier is generally defined as "one who holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally....The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or

by a course of conduct, as to the service offered or performed.... To constitute a public conveyance a common carrier, it is not necessary that it come within the definition of a public utility so as to be subjected to the rules and regulations of a public utility commission."

Public Infrastructure

Subsection (a)(4) allows the transfer of taken property to a private person or entity if the property will be used for purposes of public infrastructure. Although the new statutory section does not define "public infrastructure", the term is defined in The American Heritage Dictionary as "[t]he basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communications systems, water and power lines, and public institutions including schools, post offices, and prisons."

Infrastructure has come to connote a diverse collection of constructed facilities and associated services, ranging from airports to energy supply to landfills to wastewater treatment. Many of the facilities are built and operated by governments, and thus fall easily into the category of public works, but others are built or operated, in whole or in part, by private enterprise or joint public-private partnership. What is today considered infrastructure has traditionally been viewed as separate systems of constructed facilities, supporting such functions as supplying water, enabling travel, and controlling floods.

A 1987 committee of the National Research Council, reporting on Infrastructure for the 21st Century adopted the term "public works infrastructure" including both specific functional modes—highways, streets, roads, and bridges; mass transit; airports and airways; water supply and water resources; wastewater management; solidwaste treatment and disposal; electric power generation and transmission; telecommunications; and hazardous waste management—and the combined system these modal elements comprise. Parkland, open space, urban forests, drainage channels and aquifers, and other hydrologic features also qualify as infrastructure, not only for their aesthetic and recreational value, but because they play important roles in supplying clean air and water.

C. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Please see Fiscal Comments.

2. Expenditures: Publication costs incurred by the Department of State in informing the public of this proposed committee amendment would be an estimated $50,000, assuming the ballot summary contains 75 or less words. Please see Fiscal Comments for additional information.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Please see Fiscal Comments.

2. Expenditures: Please see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Private entities who may, today, acquire taken property for "non-traditional" economic uses will no longer be permitted to acquire ownership or control of taken property from a condemning authority unless the transfer qualifies as an exception to the general prohibition. On the other hand, less private property may be taken given the prohibition on transfers to private entities except under limited circumstances.

D. FISCAL COMMENTS:

Impact of Local Governments: The amendment proposed by this joint resolution allows the transfer of taken property to a private entity for any use if the property is retained by the condemning authority, or a private party to whom property was transferred under one of the exceptions, for 5 years after acquiring title to the property. Requiring taken property to be retained for five years before the property may be transferred to a private entity for any use may result in some costs to the condemning authority, including costs of maintenance.

Impact on State Government: The amendment proposed by this joint resolution allows the transfer of taken property to a private entity for any use if the property is retained by the condemning authority, or a private party to whom property was transferred under one of the exceptions, for 5 years after acquiring title to the property. This provision applies to state agencies as well as any other condemning authority in the state. Requiring taken property to be retained for five years before the property may be transferred to a private entity for any use may result in some costs to a state agency condemning authority, including costs of maintenance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

2. Other: Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[36] Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[37] Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.[38]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

It is anticipated that an amendment will be offered in the Local Government Council to eliminate exception (a)(6), which allows the transfer of taken property to a natural person or private entity if the property was taken to eliminate an existing threat to public health or public safety as provided by general law. This amendment was recommended by the Select Committee to Protect Private Property Rights at its March 13, 2006 meeting.

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[36] *See* Art. XI, Sec. 1, Fla. Const.
[37] *See* Art. XI, Sec. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.
[38] *See* Art. XI, Sec. 5(c), Fla. Const.

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 6 of
3 Article X of the State Constitution relating to eminent
4 domain.
5
6 Be It Resolved by the Legislature of the State of Florida:
7
8 That the following amendment to Section 6 of Article X of
9 the State Constitution is agreed to and shall be submitted to
10 the electors of this state for approval or rejection at the next
11 general election or at an earlier special election specifically
12 authorized by law for that purpose:
13 ARTICLE X
14 MISCELLANEOUS
15 SECTION 6. Eminent domain.--
16 (a) No private property shall be taken except for a public
17 purpose and with full compensation therefor paid to each owner
18 or secured by deposit in the registry of the court and available
19 to the owner.
20 (b) Provision may be made by law for the taking of
21 easements, by like proceedings, for the drainage of the land of
22 one person over or through the land of another.
23 (c) If a petition is filed on or after January 2, 2007, to
24 initiate eminent domain proceedings regarding a parcel of real
25 property in this state, ownership or control of property
26 acquired pursuant to such petition shall not be conveyed by the
27 condemning authority or any other entity to a natural person or

28 private entity, except that ownership or control of property
29 acquired pursuant to such petition may be conveyed to:
30 (1) A natural person or private entity for use in
31 providing common carrier services or systems;
32 (2) A natural person or private entity for use as a road
33 or other right-of-way or means open to the public for
34 transportation, whether at no charge or by toll;
35 (3) A natural person or private entity that is a public or
36 private utility for use in providing electricity services or
37 systems, natural or manufactured gas services or systems, water
38 and wastewater services or systems, stormwater or runoff
39 services or systems, sewer services or systems, pipeline
40 facilities, telephone services or systems, or similar services
41 or systems;
42 (4) A natural person or private entity for use in
43 providing public infrastructure;
44 (5) A natural person or private entity that occupies,
45 pursuant to a lease, an incidental part of a public property or
46 a public facility for the purpose of providing goods or services
47 to the public;
48 (6) A natural person or private entity if the property was
49 taken to eliminate an existing threat to public health or public
50 safety that is likely to continue absent the exercise of eminent
51 domain, as provided by general law;
52 (7) A natural person or private entity if the property was
53 owned and controlled by the condemning authority or a
54 governmental entity for at least 5 years after the condemning
55 authority acquired title to the property; or

56 (8) A natural person or private entity in accordance with
57 subsection (d).
58 (d) If ownership of property is conveyed to a natural
59 person or private entity pursuant to paragraph (c)(1), (2), (3),
60 (4), (5), or (6), and that natural person or private entity
61 retains ownership and control of the property for at least 5
62 years after acquiring title, the property may subsequently be
63 transferred to another natural person or private entity without
64 restriction.
65 BE IT FURTHER RESOLVED that the following statement be
66 placed on the ballot:
67 CONSTITUTIONAL AMENDMENT
68 ARTICLE X, SECTION 6
69 EMINENT DOMAIN.--Proposing an amendment to the State
70 Constitution to prohibit the transfer of ownership or control of
71 private real property taken by eminent domain pursuant to a
72 petition filed on or after January 2, 2007, to any natural
73 person or private entity, except that:
74 (a) Ownership or control of such property may be conveyed
75 to:
76 (1) A natural person or private entity for use in
77 providing common carrier services or systems;
78 (2) A natural person or private entity for use as a road
79 or other right-of-way or means open to the public for
80 transportation, whether at no charge or by toll;
81 (3) A natural person or private entity that is a public or
82 private utility for use in providing electricity services or
83 systems, natural or manufactured gas services or systems, water

84 and wastewater services or systems, stormwater or runoff
85 services or systems, sewer services or systems, pipeline
86 facilities, telephone services or systems, or similar services
87 or systems;
88 (4) A natural person or private entity for use in
89 providing public infrastructure;
90 (5) A natural person or private entity that occupies,
91 pursuant to a lease, an incidental part of a public property or
92 a public facility for the purpose of providing goods or services
93 to the public;
94 (6) A natural person or private entity if the property was
95 taken to eliminate an existing threat to public health or public
96 safety as provided by general law;
97 (7) A natural person or private entity if the property was
98 owned and controlled by the condemning authority or a
99 governmental entity for at least 5 years after the condemning
100 authority acquired title to the property; or
101 (8) A natural person or private entity in accordance with
102 subsection (b).
103 (b) If ownership of property is conveyed to a natural
104 person or private entity pursuant to paragraph (a)(1), (2), (3),
105 (4), (5), or (6), and that natural person or private entity
106 retains ownership and control of the property for at least 5
107 years after acquiring title, the property may subsequently be
108 transferred to another natural person or private entity without
109 restriction.

Bill No. **HJR 1569**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Local Government Council
2 Representative(s) Cannon and Robaina offered the following:
3
4 **Amendment (with ballot statement amendment)**
5 Remove line(s) 48-64 and insert:
6 (6) A natural person or private entity if the property was
7 owned and controlled by the condemning authority or a
8 governmental entity for at least 5 years after the condemning
9 authority acquired title to the property; or
10 (7) A natural person or private entity in accordance with
11 subsection (d).
12 (d) If ownership of property is conveyed to a natural
13 person or private entity pursuant to paragraph (c)(1), (2), (3),
14 (4), or (5), and that natural person or private entity retains
15 ownership and control of the property for at least 5 years after
16 acquiring title, the property may subsequently be transferred to
17 another natural person or private entity without restriction.
18
19 ======= B A L L O T S T A T E M E N T A M E N D M E N T ======
20 Remove line(s) 94-109 and insert:
21 (6) A natural person or private entity if the property was
22 owned and controlled by the condemning authority or a

23 governmental entity for at least 5 years after the condemning
24 authority acquired title to the property; or
25 (7) A natural person or private entity in accordance with
26 subsection (d).
27 (d) If ownership of property is conveyed to a natural
28 person or private entity pursuant to paragraph (c)(1), (2), (3),
29 (4), or (5), and that natural person or private entity retains
30 ownership and control of the property for at least 5 years after
31 acquiring title, the property may subsequently be transferred to
32 another natural person or private entity without restriction.

HJR 1571

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1571 Assessment of Newly Established Homestead Property after Eminent Domain Taking of Previous Homestead Property
SPONSOR(S): Rubio
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Camechis	Hamby
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This joint resolution proposes to amendment the Florida Constitution's "Save Our Homes" property tax protections to provide that, when a person's homestead property in this state is taken by power of eminent domain and within two years the person purchases another property and establishes such property as homestead property, the newly established homestead property must be initially assessed at less than just value, as provided by general law. The difference between the new homestead property's just value and its assessed value in the first year the homestead is established may not exceed the difference between the previous homestead property's just value and its assessed value in the year the homestead property was taken by eminent domain. In addition, the assessed value of the new homestead property must equal or exceed the assessed value of the previous homestead property. Thereafter, the homestead property must be assessed as provided by the Constitution.

The proposed amendment will be submitted to the electors at the next general election or at an earlier special election specifically authorized by law for that purpose. If approved by the voters, this amendment will take effect January 2, 2007, and will apply to property tax valuations for the 2008 tax year. If approved by the voters, the proposed amendment will require enactment of implementing legislation.

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide for lower taxes: This joint resolution proposes to amend the Florida Constitution to provide "portability" of the Save Our Homes ad valorem property tax protections if a homestead property is taken by eminent domain by any entity authorized to exercise the power of eminent domain in Florida.

B. EFFECT OF PROPOSED CHANGES:

Introduction

In 1992, Florida voters approved the popularly named "Save Our Homes" amendment to the State Constitution to limit the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. The amendment also provided for a reassessment of homestead property at just value after any change of ownership.

This joint resolution proposes to amend the Florida Constitution to provide "portability" of the Save Our Homes ad valorem property tax protections if a homestead property is taken by eminent domain by any entity authorized to exercise the power of eminent domain in Florida. The amendment may limit the growth in the amount of revenue generated from property taxes absent an adjustment in millage rates, while providing homeowners protection from increased property taxes if a homeowner's property is taken by eminent domain.

Current Situation

Ad valorem property taxes are the single largest source of tax revenues for general purpose local governments in Florida. In FY 2002-03 (the last year for which published fiscal information is available), property taxes accounted for 31 percent of county governmental revenue (i.e., $6.3 billion), and almost 20 percent of municipal government revenue (i.e., $2.4 billion). Ad valorem property tax revenues also are the primary local revenue source for school districts. For that same fiscal year, school districts levied $8.4 billion in property taxes.

Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards, by the taxable value of property within that jurisdiction. Each entity may levy up to 10 mills and, in most cases, the real property must be assessed at just value. Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property.

In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership. The "Save Our Homes" constitutional amendment, originally proposed as a way to protect homeowners from being forced to sell their homes because of escalating property taxes caused by assessment increases, is now seen by some as keeping people from selling their homes and buying another home because of substantially higher property taxes resulting from the constitutionally required reassessment upon change in ownership.

Largely due to the recent surge in housing values and lack of corresponding millage rate reductions by local officials to offset double-digit increases in taxable values, ad valorem property tax revenues have increased substantially in recent years: 9.2 percent in 2002, 11.5 percent in 2003, and 10.4 percent in 2004. These annual property tax increases are twice as high as the 5 percent average increase

experienced between 1991 and 2000, but comparable to the 12.5 percent average annual increase from 1981 to 1990. Despite the growth in total taxable values, the statewide average actual millage rates have remained relatively unchanged, although on a generally downward trend. However, the differential between the actual millage rate and the so-called "roll back rate" (i.e., the millage rate necessary to generate the same amount of revenue as the prior year excluding new construction and boundary changes) is substantially more pronounced since 2000, than it was from 1990 to 1999. The taxable value of all real property has increased 53 percent over the past four years.

The amount of value removed from the tax rolls from the "Save Our Homes" provision is growing at a much faster rate than the amount of value removed by the homestead exemption. For example, in 2005, the amount of value excluded from the tax rolls as a result of the Save Our Homes provision grew by $81 billion over the previous year compared to $1.7 billion removed as a result of the homestead exemption.

Effect of Proposed Changes

This joint resolution proposes to amendment the Florida Constitution's "Save Our Homes" property tax protections to provide that, when a person's homestead property in this state is taken by power of eminent domain and within two years the person purchases another property and establishes such property as homestead property, the newly established homestead property must be initially assessed at less than just value, as provided by general law. The difference between the new homestead property's just value and its assessed value in the first year the homestead is established may not exceed the difference between the previous homestead property's just value and its assessed value in the year the homestead property was taken by eminent domain. In addition, the assessed value of the new homestead property must equal or exceed the assessed value of the previous homestead property. Thereafter, the homestead property must be assessed as provided by the Constitution.

The proposed amendment will be submitted to the electors at the next general election or at an earlier special election specifically authorized by law for that purpose. If approved by the voters, this amendment will take effect January 2, 2007, and will apply to property tax valuations for the 2008 tax year. If approved by the voters, the proposed amendment will require enactment of implementing legislation.

C. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: Publication costs incurred by the Department of State in informing the public of this proposed committee amendment would be an estimated $50,000, assuming the ballot summary contains 75 or less words. Please see Fiscal Comments for additional information.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The amendment may limit the growth in the amount of revenue generated from property taxes absent an adjustment in millage rates, while providing homeowners protection from increased property taxes if a homeowner's property is taken by eminent domain.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The amendment may limit the growth in the amount of revenue generated from property taxes absent an adjustment in millage rates, while providing homeowners protection from increased property taxes if a homeowner's property is taken by eminent domain.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

2. Other: Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[1] Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[2] Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.[3]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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[1] *See* Art. XI, Sec. 1, Fla. Const.
[2] *See* Art. XI, Sec. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.
[3] *See* Art. XI, Sec. 5(c), Fla. Const.

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 4 of
3 Article VII of the State Constitution to provide an
4 additional circumstance for assessing homestead property
5 at less than just value.
6
7 Be It Resolved by the Legislature of the State of Florida:
8
9 That the following amendment to Section 4 of Article VII of
10 the State Constitution is agreed to and shall be submitted to
11 the electors of this state for approval or rejection at the next
12 general election or at an earlier special election specifically
13 authorized by law for that purpose:
14 ARTICLE VII
15 FINANCE AND TAXATION
16 SECTION 4. Taxation; assessments.--By general law
17 regulations shall be prescribed which shall secure a just
18 valuation of all property for ad valorem taxation, provided:
19 (a) Agricultural land, land producing high water recharge
20 to Florida's aquifers, or land used exclusively for
21 noncommercial recreational purposes may be classified by general
22 law and assessed solely on the basis of character or use.
23 (b) Pursuant to general law tangible personal property
24 held for sale as stock in trade and livestock may be valued for
25 taxation at a specified percentage of its value, may be
26 classified for tax purposes, or may be exempted from taxation.
27 (c) All persons entitled to a homestead exemption under
28 Section 6 of this Article shall have their homestead assessed at

29 just value as of January 1 of the year following the effective
30 date of this amendment. This assessment shall change only as
31 provided herein.
32 (1) Assessments subject to this provision shall be changed
33 annually on January 1st of each year; but those changes in
34 assessments shall not exceed the lower of the following:
35 a. Three percent (3%) of the assessment for the prior
36 year.
37 b. The percent change in the Consumer Price Index for all
38 urban consumers, U.S. City Average, all items 1967=100, or
39 successor reports for the preceding calendar year as initially
40 reported by the United States Department of Labor, Bureau of
41 Labor Statistics.
42 (2) No assessment shall exceed just value.
43 (3) After any change of ownership, as provided by general
44 law, homestead property shall be assessed at just value as of
45 January 1 of the following year<u>, unless the provisions of</u>
46 <u>subsection (8) apply</u>. Thereafter, the homestead shall be
47 assessed as provided herein.
48 (4) New homestead property shall be assessed at just value
49 as of January 1st of the year following the establishment of the
50 homestead<u>, unless the provisions of subsection (8) apply</u>. That
51 assessment shall only change as provided herein.
52 (5) Changes, additions, reductions, or improvements to
53 homestead property shall be assessed as provided for by general
54 law; provided, however, after the adjustment for any change,
55 addition, reduction, or improvement, the property shall be
56 assessed as provided herein.

57 (6) In the event of a termination of homestead status, the
58 property shall be assessed as provided by general law.
59 (7) The provisions of this amendment are severable. If any
60 of the provisions of this amendment shall be held
61 unconstitutional by any court of competent jurisdiction, the
62 decision of such court shall not affect or impair any remaining
63 provisions of this amendment.
64 (8) When a person's homestead property in this state is
65 taken by power of eminent domain and within two years the person
66 purchases another property and establishes such property as
67 homestead property, the newly established homestead property
68 shall be initially assessed at less than just value, as provided
69 by general law. The difference between the new homestead
70 property's just value and its assessed value in the first year
71 the homestead is established may not exceed the difference
72 between the previous homestead property's just value and its
73 assessed value in the year the homestead property was taken by
74 eminent domain. In addition, the assessed value of the new
75 homestead property must equal or exceed the assessed value of
76 the previous homestead property. Thereafter, the homestead
77 property shall be assessed as provided herein.
78 (d) The legislature may, by general law, for assessment
79 purposes and subject to the provisions of this subsection, allow
80 counties and municipalities to authorize by ordinance that
81 historic property may be assessed solely on the basis of
82 character or use. Such character or use assessment shall apply
83 only to the jurisdiction adopting the ordinance. The

84 requirements for eligible properties must be specified by
85 general law.
86 (e) A county may, in the manner prescribed by general law,
87 provide for a reduction in the assessed value of homestead
88 property to the extent of any increase in the assessed value of
89 that property which results from the construction or
90 reconstruction of the property for the purpose of providing
91 living quarters for one or more natural or adoptive grandparents
92 or parents of the owner of the property or of the owner's spouse
93 if at least one of the grandparents or parents for whom the
94 living quarters are provided is 62 years of age or older. Such a
95 reduction may not exceed the lesser of the following:
96 (1) The increase in assessed value resulting from
97 construction or reconstruction of the property.
98 (2) Twenty percent of the total assessed value of the
99 property as improved.
100 BE IT FURTHER RESOLVED that the following statement be
101 placed on the ballot:
102 CONSTITUTIONAL AMENDMENT
103 ARTICLE VII, SECTION 4
104 ASSESSMENT OF NEWLY ESTABLISHED HOMESTEAD PROPERTY AFTER
105 EMINENT DOMAIN TAKING OF PREVIOUS HOMESTEAD PROPERTY.--Proposing
106 an amendment to the State Constitution to provide for assessing
107 at less than just value property purchased within 2 years after
108 a homestead is taken by eminent domain, if the newly purchased
109 property is established as homestead, to provide that the
110 difference between the new homestead property's just value and
111 its assessed value in the first year may not exceed the

112 difference between the previous homestead property's just value
113 and its assessed value in the year the previous homestead
114 property was taken by eminent domain and to provide that the
115 assessed value of the new homestead property must equal or
116 exceed the assessed value of the previous homestead property.

HB 1609

ANALYSIS WILL BE AVAILABLE LATER

Local Government Council

Wednesday, March 22, 2006
1:00 p.m.
404 House Office Building

Addendum A (3/21/2006 6:09 PM)

Analysis for HB 0675 CS
Analysis for HB 1609

Allan G. Bense
Speaker

Ken Sorensen
Chair

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 675 CS Public Records and Public Meetings
SPONSOR(S): Pickens
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	11 Y, 0 N, w/CS	Bell	Mitchell
2) Local Government Council		Nelson	Hamby
3) Governmental Operations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

Current Florida law specifies that the lessee of a public hospital shall not be construed to be "acting on behalf of" the lessor unless the lease document expressly provides to the contrary. HB 675 w/CS extends this provision to the purchaser of a public hospital.

The bill also provides that the records and certain portions of governing board meetings of a private corporation that leases or purchases a public hospital are confidential and not subject to the state's public records and open meetings laws.

The bill provides a public necessity statement which includes findings that:

- the Legislature always intended that private corporations that purchase public hospitals are not subject to public records and open meetings laws;
- private entities do not act on behalf of the public entities from which they purchase or lease a public hospital; and
- if the public records laws and open meetings laws apply to private corporations that purchase or lease public hospitals, public entities may find it difficult, if not impossible, to find a private corporation that is willing to purchase or lease such a hospital.

The bill provides for future review and repeal October 2, 2011, pursuant to the Open Government Sunset Review Act.

The bill specifies that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure, or any statutory provision allowing discovery or presuit disclosure of such records and information for the purpose of civil actions.

The effective date of the bill is upon becoming law. The bill also specifies that certain provisions of the act will apply to all private corporations that have purchased or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

This bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Public Meetings Laws

Section 24(a), Art. I of the State Constitution provides the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive and judicial branches of government, except with respect to records which are exempted or specifically made confidential. Section 24(b) of Art. 1 provides the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch of state government or of any collegial public body of a county, municipality, school district or special district at which official acts are to be taken or at which public business of such body is to be transacted or discussed shall be open and noticed to the public.

The Legislature may provide by general law passed by two-thirds vote for the exemption of records and meetings from these constitutional requirements. Any such law must state with specificity the public necessity justifying the exemption, and be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine and copy any state, county or municipal record, and s. 286.011, F.S., requires that all state, county or municipal meetings be open and noticed to the public. The "Open Government Sunset Review Act"[1] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and is no broader than is necessary to meet the public purpose that it serves. An identifiable public purpose if served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- protects sensitive personal information that, if released, would be defamatory or jeopardize an individual's[2] safety; or
- protects trade or business secrets.

Public Records Requirements of Leased Hospitals

Section 395.3036, F.S., provides that records of a private corporation that leases a public hospital or other public health care facilities are confidential and exempt from the provisions of s. 119.07(1), F.S. and s.24(a), Art. I of the State Constitution, and the meetings of the governing board of such a corporation are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, when the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., with

[1] Section 119.15, F.S.
[2] Only the identity of an individual may be exempted under this provision.

respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of the following five criteria:

- the public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility;
- the public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds;
- except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public, in the decision making process of the public lessor;
- the lease agreement does not expressly require the lessee to comply with the requirements of ss. 119.07(1) and 286.011, F.S.; and
- the public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Sale or Lease of a Public Hospital

Section 155.40, F.S., authorizes any county, district or municipal hospital organized and existing under the laws of Florida, acting by and through its governing board, to sell or lease the hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities. The term of any such lease, contract or agreement and the conditions, covenants and agreements contained therein must be determined by the governing board of the county, district or municipal hospital. The governing board of the hospital must find that the sale, lease or contract is in the best interests of the public and must state the basis of the finding. If the governing board of a county, district or municipal hospital decides to lease the hospital, it must give notice and comply with the requirements of the section.

Section 155.40(6), F.S., provides that, *unless otherwise expressly stated in the lease documents*, the transaction involving the sale or lease of a hospital *may not be construed* as: a transfer of a *governmental function* from the county, district or municipality to the private purchaser or lessee; constituting a financial interest of the public lessor in the private lessee; or making a private lessee an integral part of the public lessor's decisionmaking process. Under s. 155.40(7), F.S., the lessee of a hospital, pursuant to s. 155.40, F.S., or any special act of the Legislature, operating under a lease may not be construed to be "acting on behalf of" the lessor as that term is used in statute, *unless the lease document expressly provides to the contrary.*

When a newspaper and its publisher brought an action against a private lessee of a public hospital seeking mandamus, injunctive and declaratory relief regarding a public records request for the lessee's board minutes, the First District Court of Appeal found that the apparent purpose of ss.155.40(6) and (7), F.S., are to exempt private lessees from the public records and meetings laws as argued by Baker County Medical Services, Inc., in support of its argument for nondisclosure. The court held subsections 155.40(6) and (7), F.S., unconstitutional because there were not any legislative findings regarding public necessity for the exemption when the subsection was enacted by the Legislature. See, Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So.2d 189 (Fla. 1st DCA 2004).

Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation and Tanner Andrews

In 1957, the Florida Legislature created the West Volusia Hospital Authority (the "Authority"), as an independent taxing district (ch. 57-2085, s.1, L.O.F.). The Authority was empowered to establish, construct, operate and maintain such hospitals as in the elected governing board's opinion were necessary for the preservation of the public health, public good, and for the use of the people of the district, and to provide care to the indigent sick residing within the taxing district without charge in those facilities. The Authority developed, owned and operated the West Volusia Memorial Hospital as a

publicly-owned hospital. In 1993, the Authority entered into negotiations with Memorial Health Systems (MHS) to lease and operate West Volusia Memorial Hospital. This lease was executed on July 28, 1994.

In December 1994, News-Journal, a Florida corporation which publishes *The News-Journal*, a daily newspaper in Daytona Beach, Florida, filed a complaint in the Circuit Court seeking a declaratory decree that the records of MHS were subject to the Public Records Act and the Sunshine Law. The Circuit Court entered a final judgment in favor of MHS. On appeal, the Fifth District Court of Appeal reversed and held that MHS was subject to the Public Records Act and the Sunshine Law. The court concluded that MHS was "acting on behalf of the Authority." See, News-Journal Corp. v. Memorial Hospital-West Volusia, Inc., 695 So. 2d. 418, (Fla. 5th DCA 1997). The Supreme Court of Florida upheld the Fifth District Court of Appeal, noting that the totality of factors demonstrated that the authorized function of the Authority was transferred and delegated to a private corporation, a lessee. See, Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 383, (Fla. 1999).

On March 23, 2000, MHS advised the Authority that it intended to terminate the lease contract as of midnight September 30, 2000. The Authority was not interested in operating the hospital and eventually worked out a sale agreement with Adventist Health Systems, a not-for-profit Florida corporation, as authorized in s.155.40, F.S. Under the new ownership the name of the hospital was changed to Florida Hospital Deland.

In a recent action, the Circuit Court in Volusia County granted the newspaper's motion for final summary judgment and denied Memorial Hospital-West Volusia, Inc.'s motion for summary judgment.[3] The Circuit Court declared that the public records law applies to the Memorial Health System, *a purchaser (not a lessee) of a public hospital*, when it engaged in the function of operating the hospital and caring for the indigent within the taxing district of the Authority under and pursuant to the terms and conditions of the transfer documents.[4] The Circuit Court ordered that, as of the effective date of the transfer documents, Memorial Health System, *a purchaser (not a lessee) of a public hospital*, must comply with the Public Records and Meetings Laws.[5]

Effect of Proposed Changes

This bill extends s. 155.40(7), F.S., (which specifies that the *lessee* of a public hospital shall not be construed to be "acting on behalf of" the lessor unless the lease document expressly provides to the contrary) to the *purchaser* of such a hospital.

The bill also specifies that the records of a private corporation that leases or purchases a public hospital are confidential and not subject to s. 119.07(1) or s. 24(a), Art. I of the State Constitution, and that the meetings of the governing board of a private corporation that leases or purchases a public hospital are not subject to s. 286.011, or s. 24(b), Art. I of the State Constitution.

The bill provides a public necessity statement that includes findings that:

- the Legislature always intended that private corporations that purchase public hospitals are not subject to public records and open meetings laws;
- private entities do not act on behalf of the public entities from which they purchase or lease a public hospital; and
- if the public records laws and open meetings laws apply to private corporations that purchase or lease public hospitals, public entities may find it difficult, if not impossible, to find a private corporation that is willing to purchase or lease a public hospital.

The bill provides for future review and repeal of the exemptions on October 2, 2011, pursuant to the Open Government Sunset Review Act of 1995.

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[3] See , Memorial Hospital-West Volusia, Inc. v. News-Journal Corp. and Tanner Andrews, Case No. 2002-31972, Seventh Judicial Circuit, Volusia County, (February 16, 2005).
[4] Id.
[5] Id.

Additionally, the bill provides that it does not impact existing law relating to discovery of records and information that are otherwise discoverable under the Florida Rules of Civil Procedure, or any statutory provision allowing discovery or presuit disclosure of such records and information for the purpose of civil actions.

The effective date of the bill is upon becoming law. The bill also specifies that certain provisions of the act will apply to all private corporations that have purchased or leased public hospitals regardless of whether such purchase or lease occurred prior to the effective date of the act.

C. SECTION DIRECTORY:

Section 1.- Amends s. 155.40, F.S., to extend provisions (specifying that a lessee of a public hospital not be construed to be "acting on behalf of" the lessor) to the purchaser of such a hospital.

Section 2. - Provides a public necessity statement.

Section 3. – Provides that the act does not operate to change existing law relating to discover of records and information.

Section 4. - Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown. See, FISCAL COMMENTS, below.

2. Expenditures:

   Unknown. See, FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The provisions of the bill may impact the lease or sale of public hospitals by local governments.

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 action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

3. Other:

Section 6, Art. III of the State Constitution requires that, "every law shall embrace but one subject and matter properly connected." The bill may violate this provision because it appears to include substantive language as well as a public records and public meetings exemption.

Section 24(c), Art. I of the State Constitution requires that laws enacted pursuant to that subsection shall contain only exemptions from the requirements of subsections (a) or (b), and shall relate to one subject.

Section 24(c), Art. I of the State Constitution also requires that all public records include a public necessity statement that is narrowly drawn. The language in the bill may need to be narrowed in scope in order to meet this provision in the Constitution.

Section 24(c), Art. I, of the State Constitution, additionally requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration has the necessary rulemaking authority to carry out the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As a private corporation is not subject to Florida's public records and open meeting laws except when acting on behalf of a public agency,[6] such an exemption—particularly one drawn to a law which has been declared unconstitutional—may be problematic.

Section 3 of the bill is unnecessary because public records exemptions do not impact the Florida Rules of Civil Procedure.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2005, the Health Care Regulation Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute (CS). The CS provided a public necessity statement for the public records exemption, changed the bill to a public records exemption bill, and provides that the bill will take effect upon becoming law.

The analysis is drafted to the Committee Substitute.

[6] The definition of "agency" for purposes of ch. 119, F.S., includes a "a public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." See, also, s. 24(a) of Art. I of the State Constitution which provides that the constitutional right of acess to public records extends to "any public body, officer, or employee of the state, or persons acting on their behalf...." Recognizing the need to provide criteria for determining when a private entity is acting on behalf of a public agency, the Supreme Court has adopted a "totality of factors" approach which includes: the level of public funding; commingling of funds; whether the activity was conducted on publicly-owned property; whether services contracted for are an integral part of the public agency's chosen decision-making process; whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; the extent of the public agency's involvement with, regulation of, or control over the private entity; whether the private entity was created by the public agency; whether the public agency has a substantial financial interesting the private entity; and for whose benefit the private entity is functioning. News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So. 2d 1029 (Fla. 1992).

CHAMBER ACTION

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1 The Health Care Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5
6 A bill to be entitled
7 An act relating to public records and public meetings;
8 amending s. 155.40, F.S.; clarifying construction with
9 respect to actions of a lessee or purchaser of a county,
10 district, or municipal hospital; providing an exemption
11 from public records requirements for the records of a
12 private corporation that purchases or leases a public
13 hospital; providing for retroactive effect of the
14 exemption; providing an exemption from public meetings
15 requirements for that portion of a meeting of the
16 governing board of a private corporation that leases or
17 purchases a public hospital at which confidential and
18 exempt information is presented or discussed; providing an
19 exemption from public records requirements for any records
20 generated during a meeting of the governing board of the
21 private corporation that leases or purchases a public
22 hospital which are closed to the public; providing for
23 retroactive effect of the exemption; providing for future

24 review and repeal; providing a finding of public
25 necessity; clarifying operation of the act; providing an
26 effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Subsection (7) of section 155.40, Florida
31 Statutes, is amended, and subsection (8) is added to that
32 section, to read:
33 155.40 Sale or lease of county, district, or municipal
34 hospital; confidentiality of records; exemption from public
35 meetings requirements.--
36 (7) The lessee or purchaser of a hospital, pursuant to
37 this section or any special act of the Legislature, ~~operating~~
38 ~~under a lease~~ shall not be construed to be "acting on behalf of"
39 the lessor or seller as that term is used in statute, unless the
40 lease or purchase document expressly provides to the contrary.
41 (8)(a) The records of a private corporation that leases or
42 purchases a public hospital pursuant to this section are
43 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
44 of the State Constitution. This paragraph applies to records
45 held by a private corporation that leases or purchases a public
46 hospital pursuant to this section before, on, or after the
47 effective date of this exemption.
48 (b) That portion of a meeting of the governing board of a
49 private corporation that leases or purchases a public hospital
50 pursuant to this section at which information is presented or
51 discussed that is confidential and exempt under paragraph (a) is

52 closed to the public and exempt from s. 286.011 and s. 24(b),
53 Art. I of the State Constitution.
54 (c) Any records generated during a meeting of the
55 governing board of the private corporation that leases or
56 purchases a public hospital pursuant to this section that are
57 closed to the public under paragraph (b), such as minutes, tape
58 recordings, videotapes, transcriptions, or notes, are
59 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
60 of the State Constitution. This paragraph applies to records
61 generated during a meeting of the governing board of a private
62 corporation that leases or purchases a public hospital pursuant
63 to this section before, on, or after the effective date of this
64 exemption.
65 (d) This subsection is subject to the Open Government
66 Sunset Review Act in accordance with s. 119.15 and shall stand
67 repealed on October 2, 2011, unless reviewed and saved from
68 repeal through reenactment by the Legislature.
69 Section 2. The Legislature finds that it is a public
70 necessity that the records of a private corporation that
71 purchases a public hospital pursuant to s. 155.40, Florida
72 Statutes, be made confidential and exempt from public records
73 requirements. It is the further finding of the Legislature that
74 that portion of a meeting of the governing board of a private
75 corporation that leases or purchases a public hospital pursuant
76 to s. 155.40, Florida Statutes, at which confidential and exempt
77 information is presented or discussed be closed to the public
78 and exempt from public meetings requirements. It is the further
79 finding of the Legislature that any records generated during a

80 meeting of the governing board of the private corporation that
81 leases or purchases a public hospital pursuant to s. 155.40,
82 Florida Statutes, that are closed to the public be made
83 confidential and exempt from public records requirements. The
84 Legislature has always intended that private entities that
85 purchase public hospitals are not subject to the public records
86 and public meetings laws of the state because the private
87 entities do not act on behalf of the public entities from whom
88 they purchase a public hospital. Some recent court decisions,
89 however, have found that private entities that purchase public
90 hospitals are subject to public records and public meetings laws
91 and have failed to recognize that the public entity does not
92 retain any control over the private entity or the formerly
93 public hospital following the sale of a public hospital to a
94 private entity. Therefore, the Legislature finds that it is a
95 public necessity to confirm its intent that private entities
96 that purchase formerly public hospitals are not subject to the
97 public records laws or public meetings laws of the state. With
98 respect to lessees of public hospitals, such lessees also do not
99 act on behalf of the public entity except as provided in this
100 section and are not subject to the public records or public
101 meetings laws of the state. To find otherwise would place
102 private entities that purchase or lease public hospitals at a
103 competitive disadvantage compared to other private entities that
104 own or lease private hospitals that were not formerly public
105 hospitals and would serve as a disincentive to private entities
106 considering the purchase or lease of a public hospital. Public
107 entities choose to sell or lease their public hospitals to

108 private corporations when the public entity is no longer able to
109 operate the hospital in a fiscally responsible manner and where
110 taxpayers would otherwise be required to finance the operations
111 of the hospital beyond indigent care. If the public records laws
112 and public meetings laws apply to private corporations that
113 purchase or lease public hospitals, public entities may find it
114 difficult, if not impossible, to find a private corporation that
115 is willing to purchase or lease a public hospital. This could
116 force the public entity to close the hospital, which would
117 result in a reduction in health care services to the public, or
118 continue operating the hospital using public tax dollars to
119 subsidize recurring losses. Neither of these options is in the
120 best interest of the public. The Legislature, therefore, finds
121 that it is a public necessity to confirm that the state's public
122 records laws and public meetings laws do not apply to private
123 corporations that lease public hospitals where the lessee does
124 not act on behalf of the public entity. The Legislature further
125 finds that any private corporation that purchases a public
126 hospital, regardless of whether the corporation had previously
127 leased that public hospital, does not act on behalf of the
128 public entity.
129 Section 3. This act does not operate to change existing
130 law relating to discovery of records and information that are
131 otherwise discoverable under the Florida Rules of Civil
132 Procedure or any statutory provision allowing discovery or
133 presuit disclosure of such records and information for the
134 purpose of civil actions.
135 Section 4. This act shall take effect upon becoming a law.

HB 1609

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1609 Collection of Delinquent Property Taxes
SPONSOR(S): Goldstein
TIED BILLS: **IDEN./SIM. BILLS:** SB 1272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Finance & Tax Committee			
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

Tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. If taxes become delinquent, the tax collector may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include reasonable attorney fees and court costs in proceedings to recover delinquent taxes.

This bill allows tax collectors to contract with outside counsel to collect all delinquent personal property taxes. The outside counsels' fee is set at 33% of the total of the unpaid taxes, penalties, and costs. This fee is a collection fee, added in addition to the taxes, penalties, and costs. The bill provides for taxpayers to be informed of these new fees and compensation in their tax notices. The bill also contains an acceleration clause that adds any unpaid taxes attached to the property, to be included with the warrant for unpaid personal property taxes.

This bill would take effect July 1, 2006.

The potential fiscal impact is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill creates a 33% collection fee, paid by taxpayers, on unpaid personal property taxes, penalties, and costs.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. Taxes are due and payable on November 1st of each year, or as soon as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1st of the following year in which they are assessed, or 60 days from the mailing of the original notice, whichever is later. If the delinquency date for ad valorem taxes is later than April 1st of the year following the assessment on which taxes are due, all dates or time period regarding the collection of, or administrative procedures regarding the collection of, delinquent taxes shall be extended a like number of days. [1] If taxes become delinquent, the tax collect may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include the publication of notices and reasonable attorney fees and court costs in proceedings to recover delinquent taxes.[2]

Before May 1st of each year following the assessment, the tax collector prepares a roll of all unpaid personal property taxes. Prior to April 30th of the next year, the tax collector shall prepare warrants against the delinquent taxpayers. The warrants allow for the levy upon, and seizure of, tangible personal property. Within 30 days after preparing the warrants, the tax collector files a petition in the circuit court for the county they serve in. The petition describes the levies and nonpayment of taxes, the issuance of warrants, proof of publication of notices, and the names and addresses of all taxpayers who failed to pay taxes. There is one petition naming multiple delinquent taxpayers. The petition prays for an order ratifying and confirming the warrants, and directing the tax collector to levy upon and seize the personal property of all delinquent tax payers to satisfy payment of unpaid taxes.[3]

Upon filing a petition with the court, the tax collector must request the earliest time for a hearing, and the clerk of court shall notify each delinquent taxpayer listed in the petition that a petition is filed and, if ratified, warrants will be issued and their property will be seized and sold to pay unpaid taxes, plus costs, interest, attorney's fees, and other charges.[4]

The tax collector is authorized to employ counsel to conduct such suits. They may agree upon counsel's compensation, which may come out of the general office expense fund and be included in their budget.[5] These fees are allowed to be collected from delinquent taxpayers by adding them to the unpaid taxes.

Effect of Bill:

This bill requires the original tax notice to inform the taxpayer that any delinquent tangible personal property tax, penalty, and interest may be referred to contract legal counsel for collection. Additionally, the notice must inform the taxpayer of the contract counsel's compensation, and that it and certain

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[1] Section 197.333, F.S.
[2] Section 197.332, F.S.
[3] Section 197.413(2), F.S.
[4] Sections 197.413(4), (5), F.S.
[5] Section 197.413(3), F.S.

other costs, including court and advertising costs, will be added to the amount owed on delinquent taxes.

The bill accelerates the collection of unpaid taxes by allowing any current taxes assessed against the property that are unpaid, but not yet delinquent, to be included in the warrant to collect delinquent tangible personal property taxes.

The bill changes the current lien against the property into a personal debt liability against the owner of the property. The owner becomes personally liable for any unpaid personal property taxes, penalties, and interest. This subjects the owner of property with delinquent personal property taxes to a civil action for debt collection. Under current law, the tax collector can seize and then sell the personal property for satisfaction of the taxes owed. This bill will hold the property owner personally liable as well, giving the tax collector, and anyone with an interest in the debt, which would include contract counsel, a separate collection tool aimed at other assets than just tangible personal property.[6]

The bill also expands the tax collectors ability to use legal counsel in collecting unpaid taxes. The bill specifies that the tax collector may retain in-house counsel or, may contract with outside counsel to collect by suit, or other means, all delinquent tangible personal property taxes, and any other unpaid taxes also included in the warrant, as provided in the acceleration clause. The bill provides contract counsel a statutory compensation of 33% of the total amount of delinquent taxes, penalties, and interests collected. To pay this cost, the bill authorizes a collector's fee of 33% of delinquent taxes, penalties, and interests to be added to all personal property taxes, penalties, and interest reaming unpaid upon referral to contract counsel. In a warrant or other cause of action for unpaid taxes in which a collection fees has not been imposed, the bill allows the tax collector to recover attorney's fees in the amount of 33% of the amount of taxes, penalty, and interest adjudged by the court.

C. SECTION DIRECTORY:

Section 1: Amends s. 197.333, F.S., forming sub-sections (1) and (2), to require additional information in tax notices regarding contract counsel and their compensation.

Section 2: Amends s. 197.413 to accelerate the collection of unpaid taxes, create a personal liability for unpaid taxes, and provide contract counsel with statutorily set collection fee.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Operational Impact is to be determined by the Department of Revenue.[7]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See fiscal comments below.

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[6] E-mail from Glenna Hodge, Partner and Director of Governmental Affairs, Linebarger Goggan Blair & Sampson, LLP, March 21, 2006.

[7] Department of Revenue Bill Analysis, HB 1609.

2. Expenditures:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill creates a 33% collection fee, set in statute.

D. FISCAL COMMENTS:

The bill provides a tax collector and legal counsel an additional method of collecting unpaid taxes and fees by turning unpaid taxes, penalties, and costs into a personal debt, rather than a lien on the property. By making this a personal debt, collection can be undertaken in a civil action.

The bill also authorizes the creation of a 33% collection fee on all delinquent personal property taxes, and other unpaid taxes added to a delinquent personal property tax warrant, which takes attorney's fees out the tax collectors and courts hands.

With an 18% interest rate per year from the date of delinquency and an additional 33% of the total of unpaid taxes, penalties, and costs, a taxpayer, within a year, can potentially be personally liable for an additional 50% of what was additionally owed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

Opponents: The Florida Tax Collectors Association, Inc., opposes the bill. It is their position that tax collectors are already able to use legal counsel, the fees of which can already be added to the delinquent amounts. There is also concern with the changing of the lien on property into a personal debt and whether this is constitutional.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

Local Government Council

Wednesday, March 22, 2006
1:00 p.m.
404 House Office Building

Addendum B (3/21/2006 6:18 PM)

Allan G. Bense
Speaker

Ken Sorensen
Chair

Bill No. **HJR 33**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government Council
2 Representative(s) Domino offered the following:
3
4 **Amendment (with ballot statement and title amendments)**
5 Remove line(s) 23-104 and insert:
6 SECTION 4. Taxation; assessments.--By general law
7 regulations shall be prescribed which shall secure a just
8 valuation of all property for ad valorem taxation, provided:
9 (a) Agricultural land, land producing high water recharge
10 to Florida's aquifers, or land used exclusively for
11 noncommercial recreational purposes may be classified by general
12 law and assessed solely on the basis of character or use.
13 (b) Pursuant to general law tangible personal property
14 held for sale as stock in trade and livestock may be valued for
15 taxation at a specified percentage of its value, may be
16 classified for tax purposes, or may be exempted from taxation.
17 (c) All persons entitled to a homestead exemption under
18 Section 6 of this Article shall have their homestead assessed at
19 just value as of January 1 of the year following the effective
20 date of this amendment. This assessment shall change only as
21 provided herein.

22 (1) Assessments subject to this provision shall be changed
23 annually on January 1st of each year; but those changes in
24 assessments shall not exceed the lower of the following:
25 a. Three percent (3%) of the assessment for the prior
26 year.
27 b. The percent change in the Consumer Price Index for all
28 urban consumers, U.S. City Average, all items 1967=100, or
29 successor reports for the preceding calendar year as initially
30 reported by the United States Department of Labor, Bureau of
31 Labor Statistics.
32 (2) No assessment shall exceed just value.
33 (3) After any change of ownership, as provided by general
34 law, homestead property shall be assessed at just value as of
35 January 1 of the following year, unless the provisions of
36 paragraph (8) apply. Thereafter, the homestead shall be assessed
37 as provided herein.
38 (4) New homestead property shall be assessed at just value
39 as of January 1st of the year following the establishment of the
40 homestead, unless the provisions of paragraph (8) apply. That
41 assessment shall only change as provided herein.
42 (5) Changes, additions, reductions, or improvements to
43 homestead property shall be assessed as provided for by general
44 law; provided, however, after the adjustment for any change,
45 addition, reduction, or improvement, the property shall be
46 assessed as provided herein.
47 (6) In the event of a termination of homestead status, the
48 property shall be assessed as provided by general law.
49 (7) The provisions of this amendment are severable. If any
50 of the provisions of this amendment shall be held
51 unconstitutional by any court of competent jurisdiction, the

52 decision of such court shall not affect or impair any remaining
53 provisions of this amendment.
54 (8) When a person sells his or her homestead property
55 within this state and within one year purchases another property
56 and establishes such property as homestead property, the newly
57 established homestead property shall be initially assessed at
58 less than just value, as provided by general law. The difference
59 between the new homestead property's just value and its assessed
60 value in the first year the homestead is established may not
61 exceed the difference between the previous homestead's just
62 value and its assessed value in the year of sale. In addition,
63 to be assessed as provided in this paragraph, the assessed value
64 of the new homestead must equal or exceed the assessed value of
65 the previous homestead. Thereafter, the homestead shall be
66 assessed as provided herein. Homestead property located within a
67 fiscally constrained county may be exempt from this paragraph as
68 provided by general law and subject to approval of the electors
69 of the county voting in a referendum to be held no earlier than
70 November 1, 2009.
71 (d) The legislature may, by general law, for assessment
72 purposes and subject to the provisions of this subsection, allow
73 counties and municipalities to authorize by ordinance that
74 historic property may be assessed solely on the basis of
75 character or use. Such character or use assessment shall apply
76 only to the jurisdiction adopting the ordinance. The
77 requirements for eligible properties must be specified by
78 general law.
79 (e) A county may, in the manner prescribed by general law,
80 provide for a reduction in the assessed value of homestead
81 property to the extent of any increase in the assessed value of
82 that property which results from the construction or

83 reconstruction of the property for the purpose of providing
84 living quarters for one or more natural or adoptive grandparents
85 or parents of the owner of the property or of the owner's spouse
86 if at least one of the grandparents or parents for whom the
87 living quarters are provided is 62 years of age or older. Such a
88 reduction may not exceed the lesser of the following:
89 (1) The increase in assessed value resulting from
90 construction or reconstruction of the property.
91 (2) Twenty percent of the total assessed value of the
92 property as improved.
93
94 ======= B A L L O T S T A T E M E N T A M E N D M E N T ======
95 Remove line(s) 105-117 and insert:
96 BE IT FURTHER RESOLVED that the following statement be
97 placed on the ballot:
98 CONSTITUTIONAL AMENDMENT
99 ARTICLE VII, SECTION 4
100 HOMESTEAD PROPERTY ASSESSMENTS.--Proposing an amendment to
101 the State Constitution to provide for assessing at less than
102 just value property purchased within one year after a sale of
103 homestead property and established as new homestead property,
104 limited by the difference between the new homestead property's
105 just value and its assessed value in the first year the
106 homestead is established not exceeding the difference between
107 the previous homestead's just value and its assessed value in
108 the year of sale and the new homestead property's assessed value
109 equaling or exceeding the old homestead property's assessed
110 value.
111
112
113

114

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

116 Remove the entire title and insert:

117 House Joint Resolution

118 A joint resolution proposing an amendment to Section 4 of
119 Article VII of the State Constitution to provide an additional
120 circumstance for assessing homestead property at less than just
121 value.

Bill No. **951**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government Council
2 Representative Vana offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Charter; creation; form of government;
7 boundaries and powers.--
8 (1) CHARTER; CREATION.--
9 (a) This act, together with any future amendments thereto,
10 may be known as the "Charter of the Town of Loxahatchee Groves"
11 (the "charter"), and the Town of Loxahatchee Groves (the "town")
12 is hereby created.
13 (b) The Loxahatchee Groves area in Palm Beach County
14 includes a compact and contiguous rural community of
15 approximately 3,120 persons who are experiencing certain
16 impacts, such as the destruction of rural habitats and the
17 threat to equestrian, farming, and nursery businesses, resulting
18 from urbanization in the surrounding areas. The residents within
19 the town would like to control the effects of those impacts
20 through the incorporation of the town and its continued
21 existence as a historic, rural community with the benefits of
22 self-determination.

23 (c) It is in the best interests of the public health,
24 safety, and welfare of the residents of the Loxahatchee Groves
25 area to form a separate municipality for the Loxahatchee Groves
26 area with all the powers and authority necessary to provide
27 adequate and efficient municipal services to its residents.
28 (d) It is intended that this charter and the incorporation
29 of the Loxahatchee Groves area will serve to preserve and
30 protect the distinctive rural characteristics of the community,
31 such as low density, minimal lot coverage, substantial open
32 spaces, agricultural and nursery interests, and rural habitats,
33 and to acknowledge its close ties to the agriculture and
34 equestrian industries within the boundaries of the town.
35 (e) It is the intent of this charter and the incorporation
36 of the town to secure the benefits of self-determination and
37 affirm the values of representative democracy, citizen
38 participation, strong community leadership, professional
39 management, and regional cooperation.
40 (2) FORM OF GOVERNMENT.--The town shall have a council-
41 manager form of government.
42 (3)(a) CORPORATE BOUNDARIES.--The corporate boundaries of
43 the Town of Loxahatchee Groves shall be as described as follows:
44
45 That portion of Loxahatchee Sub-Drainage District,
46 Township 43 South, Range 41 East and Range 40 East,
47 Palm Beach County, Florida, being more particularly
48 described as follows:
49 Beginning at the Northwest corner of Section Eighteen
50 (18) in Township Forty-three (43) South, Range Forty-
51 one (41) East, Palm Beach County, Florida, and run
52 thence along the North line of Section Eighteen (18)
53 and Seventeen (17) of said Township to the Northeast

corner of Section Seventeen (17) in said Township and Range; thence run South along the Eastern boundary of Section Seventeen (17) to the Southeast corner of said Section;

Thence run East along the Northern boundary of Section Twenty-one (21) and of Section Twenty-two (22) to the Northeast corner of the Northwest quarter of the said Section Twenty-two (22); Thence run South along the East line of the Northwest quarter of said Section Twenty-two (22) to the Southeast corner of said Northwest quarter of said Section; Thence run West along the South line of the Southeast quarter of Northwest quarter of said Section Twenty-two (22) to the Southwest corner of said Southeast quarter of Northwest quarter of said Section; Thence run South along the East line of the West half of the Southwest quarter of Section Twenty-two (22) and of the West half of West half of Section Twenty-seven (27) and of the West half of West half of Section Thirty-four (34) to the North Right of Way line of State Road 80, in Section Thirty-four (34); Thence West along the Northern edge of the North Right of Way line of State Road 80, across the West half of West half of Section Thirty-four (34) and across Section Thirty-three (33), Thirty-two (32), and Thirty-one (31) in said Township to the point where the range line dividing ranges Forty (40) and Forty-one (41) East intersects said North Right of Way line of State Road 80;

Thence North along the West line of Sections Thirty-one (31), Thirty (30), Nineteen (19) and Eighteen (18) to the Point of Beginning, embracing approximately Six

85 Thousand Nine Hundred Thirty five and 56/100
86 (6,935.56) acres.
87 Said lands lying within the above described boundary
88 lines are described more particularly as follow, to
89 wit:
90 All of Section Seventeen (17), Eighteen (18), Nineteen
91 (19), Twenty (20), and Twenty-one (21) and the
92 Northwest quarter and West half of Southwest quarter
93 of Section Twenty-two (22); and West half of West half
94 of Section Twenty-seven (27); and all Section Twenty-
95 eight (28), Twenty-nine (29) and Thirty (30) and all
96 of Section Thirty-one (31) North of North Right of Way
97 line of State Road 80; and all of Section Thirty-three
98 (32) North of North Right of Way line of State Road
99 80; and all of Section Thirty-three (33) North of
100 North Right of Way line of State Road 80; and all of
101 the West half of West half of Section Thirty-four (34)
102 North of North Right of Way line of State Road 80; all
103 in Township Forty-three (43) South Range Forty-one
104 (41) East, all of said lands being situate in Palm
105 Beach County, State of Florida, according to the
106 United States official surveys of said lands.
107 TOGETHER WITH
108 The South 1/2 of Sections 7 and 8, T43S, R41E.
109 The South 1/2 of the East 1/4 of Section 12, The East
110 1/4 of Sections 13, 24, 25, T43S, R40E, and that part
111 of the East 1/4 of Section 36, T43S, R40E, lying North
112 of the North Right of Way of S.R. 80, all in Palm
113 Beach County, Florida, containing 1320 acres, more or
114 less.

115 LESS AND EXCEPT The All or Nothing Legislation Parcel
116 as described in Senate Bill No. 2616, Laws of Florida,
117 Chapter 99-425, formerly known as The Palms West
118 Hospital property
119 A parcel bounded by Southern Boulevard (S.R. 80) on
120 the South, the Southern boundary of the drainage/road
121 Right of Way known as collecting canal on the North,
122 Folsom/Crestwood of the East, and the Western boundary
123 of The All or Nothing Legislation Parcel as described
124 in Senate Bill No. 2616, Laws of Florida, Chapter 99-
125 425 on the west, said parcel being more particularly
126 described as follows:
127 A parcel of land located in the County of Palm Beach,
128 State of Florida, to wit:
129 The point of beginning being the intersection of the
130 Easterly line of Lot 4, Block K, Loxahatchee District,
131 according to the plat thereof on file in the Office of
132 the Clerk of the Circuit Court recorded in Plat Book
133 7, Page 81, of the Public Records of Palm Beach
134 County, Florida, and the Southerly boundary of the
135 "Collecting Canal" as shown on the Replat of
136 Loxahatchee Groves Subdivision according to the Plat
137 thereof, recorded in Plat Book 12, Page 29, of the
138 Public Records of Palm Beach County, Florida; Thence
139 Easterly along said Southerly boundary of the
140 "Collecting Canal" to the Easterly boundary of said
141 Replat of Loxahatchee Groves; Thence South along said
142 Easterly boundary line of the Replat of Loxahatchee
143 Groves to the North Right of Way line of State Road
144 80; Thence Westerly along said Northerly Right of Way

145 line of State Road 80 to the Easterly line of Lot 4,
146 Block K, Loxahatchee District;
147 Thence Northerly along said Easterly line of Lot 4 to
148 the Point of Beginning, and
149 A portion of Lot 4, Block "K," Loxahatchee District
150 subdivision, according to the map or plat thereof as
151 recorded in Plat Book 7, page 81, public records, Palm
152 Beach County, Florida, being more particularly described as
153 follows:
154 Commencing at the northeast corner of said lot 4; thence,
155 south 02°16'42" west, along the east line of said lot 4, a
156 distance of 834.00 feet for a point of beginning.
157 Thence, continue south 02°16'42" west along said east line,
158 a distance of 1221.92 feet, more or less, to the
159 intersection thereof with the north right-of-way line of
160 State Road No. 80 as recorded in official records book
161 12372, page 468, said public records; thence, north
162 88°08'61" west, departing said east line and along said
163 north right-of-way line, a distance of 260.20 feet; thence,
164 north 02°16'46" east, departing said right-of-way line, a
165 distance of 80.00 feet; thence, north 88°08'51" west, a
166 distance of 248.59 feet; thence, north 02°16'46" east, a
167 distance of 321.11; thence, north 88°08'51" west, a
168 distance of 275.01 feet, more or less, to the intersection
169 thereof with the west line of said lot 4; thence, north
170 02°16'46" east, along said west line, a distance of 806.33
171 feet; thence, south 89°12'21" east, departing said west
172 line and along the south line of the north 834.00 feet of
173 said lot 4, as measured along the east and west lines of
174 said lot 4, a distance of 784.02 feet to the point of
175 beginning.

176 Containing: 18.867 acres, more or less.
177 (b) The town shall not annex that area now known as
178 Callery-Judge Groves, generally described as that area of land
179 bounded on the north by M canal, on the south by the northern
180 border of the town, on the east by 140th, and on the west by M
181 canal.
182 (4) MUNICIPAL POWERS.--The town shall be a body corporate
183 and politic and shall have all available governmental,
184 corporate, and proprietary powers of a municipality under the
185 State Constitution and laws of the state, as fully and
186 completely as though such powers were specifically enumerated in
187 this charter, and may exercise them, except when prohibited by
188 law. Through the adoption of this charter, it is the intent of
189 the electors of the town that the municipal government
190 established herein have the broadest exercise of home rule
191 powers permitted under the State Constitution and laws of the
192 state. This charter and the powers of the town shall be
193 construed liberally in favor of the town. It is recognized that
194 certain services within the municipal boundaries are provided by
195 independent special districts created by special acts of the
196 Legislature and by Palm Beach County.
197 Section 2. Council; mayor and vice mayor.--
198 (1) TOWN COUNCIL.--There shall be a five-member town
199 council ("council") vested with all legislative powers of the
200 town, consisting of five members ("council members"), each
201 elected from and representing the town at large. Unless
202 otherwise stated within this charter, all charter powers shall
203 be exercised by the council.
204 (2) THE MAYOR; POWERS AND DUTIES.--
205 (a) The council, at its first regular meeting after the
206 fourth Tuesday of each March, shall elect from its members a

207 mayor who shall serve for a period of 1 year and who shall have
208 the same legislative powers and duties as any other council
209 member, except as provided herein.
210 (b) In addition to carrying out the regular duties of a
211 council member, the mayor shall preside at the meetings of the
212 council and shall be recognized as the head of town government
213 for service of process, ceremonial matters, and the signature or
214 execution of ordinances, contracts, deeds, bonds, and other
215 instruments and documents and for purposes of military law. The
216 mayor shall also serve as the ceremonial head of the town and
217 the town official designated to represent the town when dealing
218 with other entities. The mayor shall have no administrative
219 duties other than those necessary to accomplish these actions,
220 or such other actions as may be authorized by the town council,
221 consistent with general or special law.
222 (3) THE VICE MAYOR.--
223 (a) The council, at its first regular meeting after the
224 fourth Tuesday of each March, shall elect from its members a
225 vice mayor who shall serve for a period of 1 year and who shall
226 have the same legislative powers and duties while serving as any
227 other council member.
228 (b) The vice mayor shall serve as acting mayor during the
229 absence or disability of the mayor. In the absence of the mayor
230 and the vice mayor, the remaining council members shall select a
231 council member to serve as acting mayor.
232 Section 3. Election and terms of office.--
233 (1) TERM OF OFFICE.--Each council member shall be elected
234 at large for a 3-year term by the electors of the town in the
235 manner provided herein. Council members shall be sworn into
236 office at the first regularly scheduled meeting following their
237 election. Each council member shall remain in office until his

238 or her successor is elected and assumes the duties of the
239 position.
240 (2) SEATS.--The town council shall be divided into five
241 separate council seats to be designated as seats 1, 2, 3, 4, and
242 5, to be voted on townwide, with each qualified elector entitled
243 to vote for one candidate for each seat.
244 (3) QUALIFICATION.--Candidates for each council seat must
245 qualify for council elections by seat in accordance with
246 applicable general law, and the council members elected to those
247 seats shall hold the seats 1 through 5, respectively. To qualify
248 for office:
249 (a) Filing.--Each candidate for council member shall file
250 a written notice of candidacy with the town clerk at such time
251 and in such manner as may be prescribed by ordinance and shall
252 make payment to the town of any fees required by general law as
253 a qualifying fee.
254 (b) Registered elector.--Each candidate for council member
255 shall be a registered elector in the state.
256 (c) Residency.--Each candidate for council member shall
257 have maintained his or her domicile within the boundaries of the
258 town for a period of 1 year prior to qualifying for election
259 and, if elected, shall maintain such residency throughout his or
260 her term of office.
261 (d) Deadline.--Any resident of the town who wishes to
262 become a candidate for a council member seat shall qualify with
263 the town clerk no sooner than noon on the last Tuesday in
264 January, nor later than noon on the first Tuesday in February,
265 of the year in which the election is to be held.
266 (4) VACANCIES IN OFFICE; FORFEITURE; SUSPENSION; FILLING
267 OF VACANCIES.--

268 (a) Vacancies.--A vacancy in the office of mayor, vice
269 mayor, or any council member shall occur upon the death of the
270 incumbent, removal from office as authorized by law,
271 resignation, appointment to other public office which creates
272 dual office holding, judicially determined incompetence, or
273 forfeiture of office as described in paragraph (b).
274 (b) Forfeiture of office.--Any council member shall
275 forfeit his or her office upon determination by the council,
276 acting as a body, at a duly noticed public meeting that he or
277 she:
278 1. Lacks at any time, or fails to maintain during his or
279 her term of office, any qualification for the office prescribed
280 by this charter or otherwise required by law;
281 2. Is convicted of a felony or enters a plea of guilty or
282 nolo contendere to a crime punishable as a felony, even if
283 adjudication is withheld;
284 3. Is convicted of a first degree misdemeanor arising
285 directly out of his or her official conduct or duties, or enters
286 a plea of guilty or nolo contendere thereto, even if
287 adjudication of guilt has been withheld;
288 4. Is found to have violated any standard of conduct or
289 code of ethics established by law for public officials and has
290 been suspended from office by the Governor, unless subsequently
291 reinstated as provided by law; or
292 5. Is absent from three consecutive regular council
293 meetings without good cause, or for any other reason established
294 in this charter.
295
296 The council shall be the sole judge of the qualifications of its
297 members and shall hear all questions relating to forfeiture of a
298 council member's office, including whether good cause for

299 absence has been or may be established. The burden of
300 establishing good cause shall be on the council member in
301 question; however, any council member may at any time during any
302 duly held meeting move to establish good cause for his or her
303 absence or the absence of any other commission member from any
304 past, present, or future meeting or meetings, which motion, if
305 carried, shall be conclusive. A council member whose
306 qualifications are in question or who is otherwise subject to
307 forfeiture of his or her office shall not vote on any such
308 matters. The council member in question shall be entitled to a
309 public hearing on request regarding an alleged forfeiture of
310 office. If a public hearing is requested, notice thereof shall
311 be published in one or more newspapers of general circulation in
312 the town at least 1 week in advance of the hearing. Any final
313 determination by the council that a council member has forfeited
314 his or her office shall be made by resolution. All votes and
315 other acts of the council member in question prior to the
316 effective date of such resolution shall be valid regardless of
317 the grounds of forfeiture.
318 (c) Suspension from office.--Any council member shall be
319 suspended from office upon return of an indictment or issuance
320 of any information charging the council member with any crime
321 which is punishable as a felony or with any crime arising out of
322 his or her official duties which is punishable as a first degree
323 misdemeanor. Pursuant thereto:
324 1. During a period of suspension, a council member shall
325 not perform any official act, duty, or function or receive any
326 pay, allowance, emolument, or privilege of office.
327 2. If the council member is subsequently found not guilty
328 of the charge, or if the charge is otherwise dismissed, reduced,
329 or altered in such a manner that suspension would no longer be

330 required as provided herein, the suspension shall be lifted and
331 the council member shall be entitled to receive full back pay
332 and such other emoluments or allowances as he or she would have
333 been entitled to had the suspension not occurred.
334 (d) Filling of vacancies.--
335 1. If any vacancy occurs in the office of any council
336 member and the remainder of the council member's unexpired term
337 is less than 1 year and 81 days, the remaining council members
338 shall, within 30 days following the occurrence of such vacancy,
339 by majority vote, appoint a person to fill the vacancy for the
340 remainder of the unexpired term.
341 2. If any vacancy occurs in the office of any council
342 member and the remainder of the unexpired term is equal to or
343 exceeds 1 year and 81 days, the remaining council members shall,
344 within 30 days following the occurrence of such vacancy, by
345 majority vote, appoint a person to fill the vacancy until the
346 next regularly scheduled town election, at which time an
347 election shall be held to fill the vacancy.
348 3. If a vacancy occurs in the office of mayor and fewer
349 than 120 days remain in the term of the council member who was
350 elected mayor, the vice mayor shall serve as mayor until a new
351 mayor is elected by the council and assumes the duties of his or
352 her office. If a vacancy occurs in the office of mayor and 120
353 days or more remain in the term of the mayor, the vice mayor
354 shall serve as mayor until a new council member is elected and
355 the council elects a new mayor and vice mayor as provided by
356 this charter.
357 4. Any person appointed to fill a vacancy on the council
358 shall be required to meet the qualifications of the seat to
359 which he or she is appointed.

360 5. Notwithstanding any quorum requirements established
361 herein, if at any time the full membership of the council is
362 reduced to less than a quorum, the remaining members may, by
363 majority vote, appoint additional members to the extent
364 otherwise permitted or required under this subsection.
365 6. In the event that all the members of the council are
366 removed by death, disability, recall, forfeiture of office, or
367 resignation, or any combination thereof, the Governor shall
368 appoint interim council members who shall call a special
369 election within not fewer than 30 days or more than 60 days
370 after such appointment. Such election shall be held in the same
371 manner as the initial elections under this charter. However, if
372 there are fewer than 6 months remaining in any unexpired terms,
373 the interim council appointed by the Governor shall serve out
374 the unexpired terms. Appointees must meet all requirements for
375 candidates as provided in this charter.
376 (e) Compensation and expenses.--
377 1. Town council members shall be entitled to receive
378 reimbursement in accordance with general law for authorized
379 travel and per diem expenses incurred in the performance of
380 their official duties.
381 2. The town council, by not fewer than four affirmative
382 votes, may elect to provide for compensation and any increase in
383 such compensation by ordinance. However, no such ordinance
384 establishing or increasing compensation shall take effect until
385 the date of commencement of the terms of council members elected
386 at the next regular election which follows the adoption of such
387 ordinance.
388 Section 4. Administrative.--
389 (1) DESIGNATION OF CHARTER OFFICERS.--The town manager and
390 the town attorney are designated as charter officers, except

391 that the office of town attorney may be contracted to an
392 attorney or law firm.
393 (2) APPOINTMENT; REMOVAL; COMPENSATION; FILLING OF
394 VACANCIES.--
395 (a) The charter officers shall be appointed by a majority
396 vote of the full council and shall serve at the pleasure of the
397 council.
398 (b) The charter officers shall be removed from office only
399 by a super majority vote of the full council. Upon demand by a
400 charter officer, a public hearing shall be held prior to such
401 removal.
402 (c) The compensation of the charter officers shall be
403 fixed by the town council through the approval of an acceptable
404 employment contract.
405 (d) The town council shall begin the process to fill a
406 vacancy in a charter office within 90 days after the vacancy. An
407 acting town manager or an acting town attorney may be appointed
408 by the council during a vacancy in such charter office.
409 (e) A charter officer shall not be a member of the town
410 council or a candidate for town council while holding a charter
411 officer position.
412 (3) TOWN MANAGER.--The town manager shall be the chief
413 administrative officer of the town.
414 (a) The town council shall appoint a town manager who
415 shall be the administrative head of the municipal government
416 under the direction and supervision of the town council. The
417 town manager shall hold office at the pleasure of the town
418 council. The town manager shall be appointed by resolution
419 approving an employment contract between the town and the town
420 manager. The town manager shall receive such compensation as

421 determined by the town council through the adoption of an
422 appropriate resolution.
423 (b) The town manager shall have the minimum qualifications
424 of a combination of a bachelor's degree in public
425 administration, business administration, or other related fields
426 from an accredited college or university and 3 years' public
427 administration experience or 6 years' experience in a city
428 manager or assistant city manager position, preferably in an
429 International City/County Management Association-recognized
430 local government.
431 (c) It is preferred that the town manager be an
432 International City/County Management Association-credentialed
433 manager or obtain such credential within 2 years after being
434 appointed.
435 (d) During the absence or disability of the town manager,
436 the town council may by resolution designate some properly
437 qualified person to temporarily execute the functions of the
438 town manager. The person thus designated shall have the same
439 powers and duties as the town manager and shall be known while
440 serving as acting town manager. The town manager or acting town
441 manager may be removed by the town council at any time.
442 (e) As the chief administrative officer, the town manager
443 shall:
444 1. Direct and supervise the administration of all
445 departments, offices, and agencies of the town, except the
446 office of town attorney, and except as otherwise provided by
447 this charter or by law.
448 2. Appoint, suspend, or remove any employee of the town or
449 appointive administrative officer provided for, by, or under
450 this charter, except the office of town attorney, and except as
451 may otherwise be provided by law, this charter, or personnel

452 rules adopted pursuant to the charter. The town manager may
453 authorize any administrative officer who is subject to his or
454 her direction and supervision to exercise these powers with
455 respect to subordinates in that officer's department, office, or
456 agency.
457 3. Ensure that all laws, provisions of this charter, and
458 acts of the council are faithfully executed.
459 4. Prepare and submit the annual budget and capital
460 program to the council in the form prescribed by ordinance.
461 5. Attend meetings of the town council.
462 6. Draw and sign vouchers upon depositories as provided by
463 ordinance and keep, or cause to be kept, a true and accurate
464 account of same.
465 7. Sign all licenses issued by the town, issue receipts
466 for all moneys paid to the town, and deposit such moneys in the
467 proper depositories on the first banking day after receipt. The
468 town manager may delegate the responsibilities of this
469 subparagraph to an appropriate town employee who shall be
470 bonded.
471 8. Provide administrative services in support of the
472 official duties of the mayor and the council.
473 9. Keep the council advised as to the financial condition
474 and future needs of the town and make recommendations to the
475 council concerning the affairs of the town.
476 10. Submit to the council, and make available to the
477 public, a complete report on finances and administrative
478 activities of the town as of the end of each fiscal year.
479 11. Sign contracts on behalf of the town to the extent
480 authorized by ordinance.
481 12. Perform such other duties as are specified in this
482 charter or as may be required by the council.

483 (4) TOWN ATTORNEY.--
484 (a) The town attorney shall be employed under terms and
485 conditions deemed advisable by the town council, which may
486 include the appointment of a law firm.
487 (b) The town attorney shall be a member in good standing
488 with The Florida Bar, have been admitted to practice in the
489 state for at least 5 years, and have not less than 2 years'
490 experience in the practice of local government law.
491 (c) The town attorney has sole discretion to appoint,
492 promote, suspend, demote, remove, or terminate deputy and
493 assistant town attorneys, subject to the town's annual budget.
494 (d) The town attorney shall perform the following
495 functions in addition to other functions as designated by the
496 town council:
497 1. Serve as chief legal advisor to the town council, the
498 charter officers, and all town departments, offices, and
499 agencies.
500 2. Attend all regular and special town council meetings,
501 unless excused by the town council, and perform such
502 professional duties as may be required by law or by the council
503 in furtherance of the law.
504 3. Approve all contracts, bonds, and other instruments in
505 which the town is concerned and shall endorse on each his or her
506 approval of the form and correctness thereof. No contract with
507 the town shall take effect until his or her approval is so
508 endorsed thereon.
509 4. When requested to do so by the council, prosecute and
510 defend on behalf of the town all complaints, suits, and
511 controversies in which the town is a party.
512 5. Perform such other professional duties as required of
513 him or her by resolution of the council or as prescribed for

514 municipal attorneys in the general laws of the state which are
515 not inconsistent with this charter.
516 6. Prepare an annual budget for the operation of the
517 office of the town attorney and submit this budget to the town
518 manager for inclusion in the annual town budget, in accordance
519 with uniform town procedures.
520 (5) TOWN CLERK.--The town manager shall appoint a town
521 clerk or management firm to serve as town clerk (the "clerk").
522 The clerk shall give notice of council meetings to its members
523 and the public, keep minutes of its proceedings, and perform
524 such other duties as the council or town manager may prescribe
525 from time to time. The clerk shall report to the town manager.
526 (6) EXPENDITURE OF TOWN FUNDS.--No funds of the town shall
527 be expended except pursuant to duly approved appropriations or
528 for the payment of bonds, notes, or other indebtedness duly
529 authorized by the council and only from such funds so
530 authorized.
531 (7) TOWN BOARDS AND AGENCIES.--Except as otherwise
532 provided by law, the council may establish or terminate such
533 boards and agencies as it may deem advisable from time to time.
534 The boards and agencies shall report to the council. Members of
535 boards and agencies shall be appointed by the council by
536 resolution.
537 Section 5. Legislative.--
538 (1) REGULAR MEETINGS.--The council shall conduct regular
539 meetings at such times and places as the council shall prescribe
540 by resolution. Such meetings shall be public meetings within the
541 meaning of state law and shall be subject to notice and other
542 requirements of law applicable to public meetings.
543 (2) SPECIAL MEETINGS.--Special meetings may be held at the
544 call of the mayor or, in his or her absence, at the call of the

545 vice mayor. Special meetings may also be called upon the request
546 of a majority of the council members. Unless the meeting is of
547 an emergency nature, the person or persons calling such a
548 meeting shall provide not less than 72 hours' prior notice of
549 the meeting to the public.
550 (3) COMMENCEMENT.--All meetings shall be scheduled to
551 commence no earlier than 7 a.m. nor later than 10 p.m.
552 (4) RULES; ORDER OF BUSINESS.--The council shall determine
553 its own rules and order of business.
554 (5) QUORUM.--A majority of the full council shall
555 constitute a quorum.
556 (6) VALIDITY OF ACTION.--No action of the council shall be
557 valid unless adopted by an affirmative vote of the majority of
558 the full council, unless otherwise provided by law.
559 (7) LEGISLATIVE POWERS.--Except as otherwise prescribed
560 herein or as provided by law, the legislative powers of the town
561 shall be vested in the council. The council shall provide for
562 the exercise of its powers and for the performance of all duties
563 and obligations imposed on the town by law.
564 (8) DEPARTMENTS.--The council may establish such other
565 departments as it determines necessary for the efficient
566 administration and operation of the town. Such departments,
567 offices, or agencies shall be established by ordinance.
568 (9) CODE.--The council may adopt any standard code of
569 technical regulations by reference thereto in an adopting
570 ordinance and may amend the code in the adopting ordinance or
571 later amendatory ordinance. The procedures and requirements
572 governing such an adopting ordinance shall be as prescribed for
573 ordinances generally, except that:
574 (a) Requirements regarding distribution and filing of
575 copies of the ordinance shall not be construed to require

576 distribution and filing of copies of the adopted code of
577 technical regulations.
578 (b) A copy of each adopted code of technical regulations,
579 as well as of the adopting ordinance, shall be authenticated and
580 recorded by the town clerk.
581 (10) EMERGENCY ORDINANCES.--
582 (a) To meet a public emergency affecting life, health,
583 property, or the public peace, the council may adopt, in the
584 manner provided by general law, one or more emergency
585 ordinances, but such ordinances may not enact or amend a land
586 use plan or rezone private property; levy taxes; grant, renew,
587 or extend any municipal franchise; set service or user charges
588 for any municipal services; or authorize the borrowing of money,
589 except as provided under the emergency appropriations provisions
590 of this charter, if applicable. An emergency ordinance shall be
591 introduced in the form and manner prescribed for ordinances
592 generally, except that it shall be plainly designated in a
593 preamble as an emergency ordinance and shall contain, after the
594 enacting clause, a declaration stating that an emergency exists
595 and describing it in clear and specific terms.
596 (b) Upon the affirmative vote of four council members, an
597 emergency ordinance may be adopted with or without amendment or
598 rejected at the meeting at which it is introduced. After its
599 adoption, the ordinance shall be advertised and printed as
600 prescribed for other ordinances.
601 (c) Emergency ordinances shall become effective upon
602 adoption or at such other date as may be specified in the
603 ordinance.
604 (d) Every emergency ordinance, except emergency
605 appropriation ordinances, shall automatically be repealed as of
606 the 61st day following its effective date, but this shall not

607 prevent reenactment of the ordinance under regular procedures
608 or, if the emergency still exists, in the manner specified in
609 this section. An emergency ordinance may also be repealed by
610 adoption of a repealing ordinance in the same manner specified
611 in this section for adoption of emergency ordinances.
612 (11) EMERGENCY APPROPRIATIONS.--To meet a public emergency
613 affecting life, health, property, or the public peace, the
614 council, by resolution, may make emergency appropriations. To
615 the extent that there are no unappropriated revenues to meet
616 such appropriation, the council may by such emergency resolution
617 authorize the issuance of emergency notes, which may be renewed
618 from time to time, but the emergency notes and renewals in any
619 fiscal year shall be paid not later than the last day of the
620 fiscal year succeeding that in which the emergency
621 appropriations were made.
622 (12) RECORDKEEPING.--The council shall, in a properly
623 indexed book kept for the purpose, provide for the
624 authentication and recording in full of all minutes of meetings
625 and all ordinances and resolutions adopted by the council, and
626 the same shall at all times be a public record. The council
627 shall further maintain a current codification of all ordinances.
628 Such codification shall be printed and shall be made available
629 for distribution to the public on a continuing basis. All
630 ordinances or resolutions of the council shall be signed by all
631 council members and attested to by the town clerk.
632 (13) DUAL OFFICE HOLDING.--No present elected town
633 official shall hold any compensated appointive office or
634 employment of the town while in office, nor shall any former
635 council member be employed by the town until after the
636 expiration of 1 year from the time of leaving office.

637 (14) NONINTERFERENCE BY TOWN COUNCIL.--Except for the
638 purposes of inquiry and information, council members are
639 expressly prohibited from interfering with the performance of
640 the duties of any employee of the town government who is under
641 the direct or indirect supervision of the town manager or town
642 attorney. Such action shall be malfeasance within the meaning of
643 section 112.51, Florida Statutes. Recommendations for
644 improvements in the town government operations shall come
645 through the town manager, but each member of the council shall
646 be free to discuss or recommend improvements to the town
647 manager, and the council is free to direct the town manager to
648 implement specific recommendations for improvement in town
649 government operations.
650 Section 6. Budget and appropriations.--
651 (1) FISCAL YEAR.--The town shall have a fiscal year which
652 shall begin on the first day of October and shall end on the
653 last day of September of the following calendar year, unless
654 otherwise defined by general law. Such fiscal year shall also
655 constitute the annual budget and accounting year.
656 (2) BUDGET ADOPTION.--The council shall adopt a budget in
657 accordance with applicable general law, following a minimum of
658 two public hearings on the proposed budget. A resolution
659 adopting the annual budget shall constitute appropriation of the
660 amounts specified therein as expenditures from funds indicated.
661 (3) EXPENDITURES.--The budget shall not provide for
662 expenditures in an amount greater than the revenues budgeted.
663 (4) APPROPRIATIONS.--
664 (a) If, during the fiscal year, revenues in excess of
665 those estimated in the budget are available for appropriation,
666 the council by resolution may make supplemental appropriations
667 for the year in an amount not to exceed such excess.

668 (b) If, at any time during the fiscal year, it appears
669 probable to the town manager that the revenues available will be
670 insufficient to meet the amount appropriated, the town manager
671 shall report to the council without delay, indicating the
672 estimated amount of the deficit, any remedial action taken, and
673 recommendations as to any other steps that should be taken. The
674 council shall then take such further action as it deems
675 necessary to prevent or minimize any deficit and, for that
676 purpose, the council may by resolution reduce one or more
677 appropriations accordingly.
678 (c) No appropriation for debt service may be reduced or
679 transferred, and no appropriation may be reduced below any
680 amount required by law to be appropriated, or by more than the
681 unencumbered balance thereof. Other provisions of law to the
682 contrary notwithstanding, the supplemental and emergency
683 appropriations and reduction or transfer of appropriations
684 authorized by this section may be made effective immediately
685 upon adoption.
686 (5) BONDS; INDEBTEDNESS.--
687 (a) Subject to the referendum requirements of the State
688 Constitution, if applicable, the town may from time to time
689 borrow money and issue bonds or other obligations or evidence of
690 indebtedness (collectively, "bonds") of any type or character
691 for any of the purposes for which the town is now or hereafter
692 authorized by law to borrow money, including to finance the cost
693 of any capital or other project and to refund any and all
694 previous issues of bonds at or prior to maturity. Such bonds may
695 be issued pursuant to one or more resolutions adopted by a
696 majority of the council.
697 (b) The town may assume all outstanding indebtedness
698 related to facilities it acquires from other units of local

699 government and be liable for payment thereon in accordance with
700 its terms.
701 (6) REVENUE BONDS; LEASE-PURCHASE CONTRACTS.--Unless
702 authorized by the electors of the town at a duly held referendum
703 election, the council shall not authorize or allow to be
704 authorized the issuance of revenue bonds or enter into lease-
705 purchase contracts or any other unfunded multiyear contracts for
706 the purchase of real property or the construction of any capital
707 improvement, the repayment of which extends in excess of 36
708 months, unless mandated by state or federal governing agencies.
709 (7) ANNUAL AUDIT.--The council shall provide for an
710 independent annual financial audit of all town accounts and may
711 provide for more frequent audits as it deems necessary. Such
712 audits shall be made by a certified public accountant or a firm
713 of such accountants who have no personal interest, direct or
714 indirect, in the fiscal affairs of the town government or in any
715 of its officers. Residency in the town shall not be construed as
716 a prohibited interest.
717 Section 7. Elections.--
718 (1) ELECTORS.--Any person who is a resident of the town,
719 who has qualified as an elector of this state, and who registers
720 in the manner prescribed by law shall be an elector of the town.
721 (2) NONPARTISAN ELECTIONS.--All elections for the town
722 council members shall be conducted on a nonpartisan basis
723 without any designation of political party affiliation.
724 (3) ELECTION DATES.--A special election shall be held on
725 the second Tuesday in March 2007, and regular elections shall be
726 held on the second Tuesday in March of each election year,
727 provided as follows:
728 (a) For the two council member seats that received the
729 highest number of votes in the March 2007 election, the next

730 election to fill the council member seats shall be held on the
731 second Tuesday in March after the first Monday in March in 2010,
732 and every 3 years thereafter.
733 (b) For the two council member seats that received the
734 next highest number of votes in the March 2007 election, the
735 next election to fill the council member seats shall be held on
736 the second Tuesday in March after the first Monday in March in
737 2009, and every 3 years thereafter.
738 (c) For the remaining council member seat, the next
739 election to fill the council member seat shall be held on the
740 second Tuesday in March after the first Monday in March in 2008,
741 and every 3 years thereafter.
742 (d) Such town elections shall be general town elections.
743 (4) RUNOFF ELECTIONS.--In the event no candidate for an
744 office receives a majority of the votes cast for such office,
745 the person receiving the largest number of votes cast will be
746 elected. In the event two candidates receive an equal number of
747 votes, a runoff election shall be held on the fourth Tuesday in
748 March.
749 (5) TOWN CANVASSING BOARD.--The town canvassing board
750 shall be composed of those members of the town council who are
751 not candidates for reelection and the town clerk, who shall act
752 as chair. At the close of the polls of any town election, or as
753 soon thereafter as practicable, the canvassing board shall meet
754 at a time and place designated by the chair and shall proceed to
755 publicly canvass the vote as shown by the returns then on file
756 in the office of the town clerk, and then shall publicly canvass
757 the absentee elector ballots. The canvassing board shall prepare
758 and sign a certificate containing the total number of votes cast
759 for each candidate or other measure voted upon. The certificate
760 shall be placed on file with the town clerk.

761 (6) SPECIAL ELECTIONS.--Special municipal elections, when
762 required, shall be held in the same manner as regular elections,
763 except that the town council, by ordinance, shall fix the time
764 for holding such elections consistent with this charter and
765 state law.
766 (7) GENERAL ELECTION.--
767 (a) The ballot for the general election shall contain the
768 names of all qualified candidates for each respective council
769 member seat and shall instruct electors to cast one vote for
770 each council member seat, with a maximum of one vote per
771 candidate. The candidate for each council member seat receiving
772 the most votes shall be the duly elected council member for that
773 designated council member seat.
774 (b) No election for any council member seat shall be
775 required in any election if there is only one duly qualified
776 candidate for the council member seat.
777 (c) If more than one candidate for a designated council
778 member seat receive an equal and highest number of votes, the
779 candidates for the office receiving the highest vote in the
780 general election shall run again in the runoff election.
781 (d) The candidate receiving the highest number of votes
782 cast for the designated council member seat in the runoff
783 election shall be elected to the designated council member seat.
784 If the vote at the runoff election results in a tie, the outcome
785 shall be determined by lot.
786 (e) The term of office of any elected official shall
787 commence immediately after the election.
788 (f) All elected officers, before entering upon their
789 duties, shall take and subscribe to the following oath of
790 office:

791 "I do solemnly swear (or affirm) that I will support, protect,
792 and defend the Constitution and Government of the United States
793 and of the state, and the charter of the Town of Loxahatchee
794 Groves; that I am duly qualified to hold office under the
795 Constitution of the State and the charter of the Town of
796 Loxahatchee Groves; and that I will well and faithfully perform
797 the duties of council member upon which I am now about to
798 enter."
799 (g) The election laws of the state shall apply to all
800 elections.
801 (h) Any member of the town council may be removed from
802 office by the electors of the town following the procedures for
803 recall established by general law.
804 Section 8. Initiative and referendum.--
805 (1) POWER TO INITIATE AND RECONSIDER ORDINANCES.--
806 (a) The electors of the town shall have the power to
807 propose ordinances to the town council and, if the town council
808 fails to adopt an ordinance so proposed without any change in
809 substance, to adopt or reject it at a town election, provided
810 that such power shall not extend to the annual budget or capital
811 program or any ordinance appropriating money, levying taxes, or
812 setting salaries of town officers or employees.
813 (b)1. The town council shall have the power, by
814 resolution, to call for a referendum vote by the electors of the
815 town at any time, provided that the purpose of such referendum
816 is presented to the town at a public hearing at least 60 days
817 prior to the adoption of such resolution. Any resolution calling
818 for a referendum vote of the electors of the town must be passed
819 by the affirmative vote of not less than four members of the
820 council.

821 2. The electors of the town shall have the power to
822 require reconsideration by the town council of any adopted
823 ordinance and, if the town council fails to repeal an ordinance
824 so reconsidered, to approve or reject it at a town election,
825 provided that such power shall not extend to the annual budget
826 or capital program or any ordinance appropriating money, levying
827 taxes, or setting salaries of town officers or employees.
828 (2) COMMENCEMENT OF PROCEEDINGS.--Any 10 electors may
829 commence initiative or referendum proceedings by filing with the
830 town clerk an affidavit stating that they shall constitute the
831 petitioner's committee and be responsible for circulating the
832 petition and filing it in proper form stating their names and
833 addresses and specifying the address to which all notices to the
834 committee are to be sent, and setting out in full the proposed
835 initiative ordinance or citing the ordinance sought to be
836 reconsidered. Promptly after the affidavit of the petitioner's
837 committee is filed, the town clerk may, at the committee's
838 request, issue the appropriate petition blanks to the
839 petitioner's committee at the committee's expense.
840 (3) PETITIONS.--
841 (a) Initiative and referendum petitions must be signed by
842 electors of the town equal in number to at least 10 percent of
843 the total number of electors registered to vote in the last
844 regular town election.
845 (b) All papers of a petition shall be assembled as one
846 instrument of filing. Each signature shall be executed in ink
847 and shall be followed by the printed name and address of the
848 person signing. Petitions shall contain or have attached thereto
849 throughout their circulation the full text of the ordinance
850 proposed or sought to be reconsidered.

851 (c) Each paper of a petition shall have attached to it
852 when filed an affidavit executed by the circulator thereof
853 stating that he or she personally circulated the paper, the
854 number of signatures thereon, that all signatures were affixed
855 in his or her presence, that he or she believes them to be the
856 genuine signatures of the persons whose names they purport to
857 be, and that each signer had an opportunity before signing to
858 read the full text of the ordinance proposed or sought to be
859 reconsidered.
860 (d) Except as otherwise provided herein, all initiative
861 and referendum petitions must be filed within 60 days of the
862 date on which proceedings with respect to such initiative or
863 referendum are commenced, and all requirements of the process,
864 including, but not limited to, the submission of the signatures
865 required, must be completed no later than 90 days following the
866 date of filing such initiative or referendum petition.
867 (4) PROCEDURE FOR FILING.--
868 (a) Within 20 days after an initiative petition or a
869 referendum petition is filed, the town clerk shall complete a
870 certificate as to its sufficiency, specifying, if it is
871 insufficient, the particulars wherein it is defective, and shall
872 promptly send a copy of the certificate to the petitioner's
873 committee by registered mail. Grounds for insufficiency are only
874 those specified herein that are not met. A petition certified
875 insufficient for lack of the required number of valid signatures
876 may be amended once if the petitioner's committee files a notice
877 of intent to amend it with the designated official within 2
878 business days after receiving the copy of the certificate and
879 files a supplementary petition upon additional papers within 10
880 days after receiving the copy of such certificate. Such
881 supplementary petition shall comply with original petition

882 requirements, and within 5 days after it is filed the town clerk
883 shall complete a certificate as to the sufficiency of the
884 petition as amended and promptly send a copy of such certificate
885 to the petitioner's committee by registered mail. If a petition
886 or an amended petition is certified sufficient, or if a petition
887 or amended petition is certified insufficient and the
888 petitioner's committee does not elect to amend or request the
889 town council review within the time required, the town clerk
890 shall promptly present a certificate to the town council and
891 such certificate shall then be a final determination as to the
892 sufficiency of the petition.
893 (b) If a petition has been certified insufficient and the
894 petitioner's committee does not file notice of intent to amend
895 it or if an amended petition has been certified insufficient,
896 the committee may, within 2 business days after receiving the
897 copy of such certificate, file a request that it be reviewed by
898 the town council. The town council shall review the certificate
899 at its next meeting following the town council's filing of such
900 request and approve or disapprove it, and determination shall
901 then be final as to the sufficiency of the petition.
902 (5) ACTION ON PETITIONS.--
903 (a) When an initiative or referendum petition has been
904 determined sufficient, the town council shall promptly consider
905 the proposed initiative ordinance or reconsider the referendum
906 ordinance by voting its repeal. If the town council fails to
907 adopt a proposed initiative ordinance without any change in
908 substance within 45 days or fails to repeal the referendum
909 ordinance within 30 days after the date on which the petition is
910 determined to be sufficient, it shall submit the proposed
911 initiative or referendum ordinance to the electors of the town.
912 If the town council fails to act on a proposed initiative

913 ordinance or a referendum ordinance within the time period
914 specified, the town council shall be deemed to have failed to
915 adopt the proposed initiative ordinance or failed to repeal the
916 referendum ordinance on the last day that the town council was
917 authorized to act on such matter.
918 (b) The vote of the town on a proposed initiative or
919 referendum ordinance shall be held not fewer than 30 days or
920 more than 60 days from the date the town council acted or was
921 deemed to have acted pursuant to this charter. If no regular
922 election is to be held within the period described in this
923 paragraph, the town council shall provide for a special
924 election, except that the town council may, in its discretion,
925 provide for a special election at an earlier date within the
926 described period. Copies of the proposed initiative or
927 referendum ordinance shall be made available at the polls.
928 (c) An initiative or referendum petition may be withdrawn
929 at any time prior to the 15th day preceding the day scheduled
930 for a vote of the town by filing with the town clerk a request
931 for withdrawal signed by at least eight members of the
932 petitioner's committee. Upon the filing of such request, the
933 petition shall have no further force or effect and all
934 proceedings thereon shall be terminated.
935 (6) RESULTS OF ELECTION.--
936 (a) If a majority of the qualified electors voting on a
937 proposed initiative ordinance vote in its favor, it shall be
938 considered adopted upon certification of the election results.
939 If conflicting ordinances are approved at the same election, the
940 one receiving the greatest number of affirmative votes shall
941 prevail to the extent of such conflict.

942 (b) If a majority of the qualified electors voting on a
943 referendum ordinance vote against it, it shall be considered
944 repealed upon certification of the election results.
945 Section 9. General provisions.--
946 (1) SEVERABILITY.--If any section or part of any section
947 of this charter shall be held invalid by a court of competent
948 jurisdiction, such holding shall not affect the remainder of
949 this charter or the context in which such section or part of a
950 section so held invalid may appear, except to the extent that an
951 entire section or part of a section may be inseparably connected
952 in meaning and effect with the section or part of a section to
953 which such holding shall directly apply.
954 (2) TOWN PERSONNEL SYSTEM.--All new employments,
955 appointments, and promotions of town officers and employees
956 shall be made pursuant to personnel procedures to be established
957 by the town manager from time to time.
958 (3) CHARITABLE CONTRIBUTIONS.--The town shall not make any
959 charitable contribution to any person or entity unless
960 authorized by the council.
961 (4) VARIATION OF PRONOUNS.--All pronouns and any
962 variations thereof used in this charter shall be deemed to refer
963 to masculine, feminine, neutral, singular, or plural as the
964 identity of the person or persons shall require and are not
965 intended to describe, interpret, define, or limit the scope,
966 extent, or intent of this charter.
967 (5) CALENDAR DAY.--For the purpose of this charter, a day
968 shall mean a calendar day.
969 (6) CHARTER REVIEW COMMITTEE.--
970 (a) At its first regular meeting in March 2012, and every
971 10th year thereafter, the town council may appoint a charter
972 review committee consisting of 15 individuals who are not

973 members of the town council to serve in an advisory capacity to
974 the town council.
975 (b) Each council member shall recommend and nominate three
976 individuals to serve on the committee as regular members, which
977 appointments shall be approved by a majority vote of the town
978 council. Individuals appointed to the charter review committee
979 shall be citizens of the town.
980 (c) The charter review committee shall appoint its own
981 chair and vice chair and adopt its own rules and procedures.
982 (d) The town clerk and the town attorney shall advise the
983 town council in advance of the date when such appointments may
984 be made.
985 (e) If appointed, the charter review committee shall
986 commence its proceedings within 30 days after the committee is
987 appointed by the town council. The committee shall review the
988 charter and provide input to the town council to modernize and
989 improve the charter. The public shall be given an opportunity to
990 speak and participate at charter review committee meetings in
991 accordance with the rules of the charter review committee.
992 (f) All recommendations by the charter review committee
993 shall be forwarded to the town council in ordinance form for
994 consideration no later than the 1st day of March of the year
995 following the appointment of the charter review committee, and
996 in sufficient time for any recommendations to be considered by
997 the town council as provided herein.
998 (g) The town council shall consider the recommendations of
999 the charter review committee at the regular meeting in November
1000 and the regular meeting in December of the year following
1001 appointment of the charter review committee.
1002 (7) CHARTER AMENDMENTS.--This charter may be amended in
1003 accordance with the provisions for charter amendments as

1004 specified in general law or as may otherwise be provided by
1005 general law. The form, content, and certification of any
1006 petition to amend shall be established by ordinance.
1007 (8) INITIATION BY PETITION.--The electors of the town may
1008 propose amendments to this charter by petition to be submitted
1009 to the council to be placed before the electors, as provided by
1010 general law.
1011 (9) STANDARDS OF CONDUCT.--All elected officials and
1012 employees of the town shall be subject to the standards of
1013 conduct for public officers and employees set by general law. In
1014 addition, the town council shall, no later than 6 months from
1015 the effective date of incorporation, establish by ordinance a
1016 code of ethics for officials and employees of the town which may
1017 be supplemental to general law, but in no case may such an
1018 ordinance diminish the provisions of general law. The intent of
1019 this subsection is to require more stringent standards than
1020 those provided under general law.
1021 (10) LAND USE, REZONING.--Any change to the town's future
1022 land use map, or any change to the zoning designation for any
1023 parcel within the town shall require the affirmative vote of no
1024 fewer than four members of the town council.
1025 Section 10. Transition schedule.--
1026 (1) REFERENDUM.--The Palm Beach County Commission shall
1027 hold the referendum election called for by this act on October
1028 10, 2006, at which time the following question shall be placed
1029 upon the ballot:
1030
1031 "Shall the creation of the Town of Loxahatchee Groves and its
1032 charter be approved?"
1033
1034 Yes

1035
1036 No
1037
1038 (2) INITIAL ELECTION OF COUNCIL MEMBERS; DATES.--
1039 (a) Following the adoption of this charter, the Palm Beach
1040 County Commission shall call a special election for the election
1041 of the five town council members to be held on March 13, 2007.
1042 Candidates for the election shall qualify for seat 1, seat 2,
1043 seat 3, seat 4, and seat 5. The candidate receiving the highest
1044 number of votes for that seat shall be elected. If more than one
1045 candidate for a designated council member seat receives an equal
1046 and highest number of votes, then the candidates receiving the
1047 highest votes in the general election shall run again in the
1048 runoff election which shall be held on March 27, 2007.
1049 (b) Any individual who wishes to run for one of the five
1050 initial seats on the council shall qualify as a candidate with
1051 the Palm Beach County Supervisor of Elections in accordance with
1052 the provisions of this charter and general law.
1053 (c) The Palm Beach County Commission shall appoint a
1054 canvassing board which shall certify the results of the
1055 election.
1056 (d) Those candidates who are elected on March 13, 2007,
1057 and March 27, 2007, shall take office at the initial town
1058 council meeting, which shall be held at 7 p.m. on March 29,
1059 2007.
1060 (3) CREATION AND ESTABLISHMENT OF THE TOWN.--For the
1061 purpose of compliance with section 200.066, Florida Statutes,
1062 relating to assessment and collection of ad valorem taxes, the
1063 town is hereby created and established effective November 1,
1064 2006; notwithstanding anything to the contrary contained herein,

1065 the town, although created and established as of November 1,
1066 2006, shall not be operational until March 30, 2007.
1067 (4) FIRST YEAR EXPENSES.--The town council, in order to
1068 provide moneys for the expenses and support of the town, shall
1069 have the power to borrow money necessary for the operation of
1070 town government until such time as a budget is adopted and
1071 revenues are raised in accordance with the provisions of this
1072 charter.
1073 (5) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--All
1074 applicable county ordinances currently in place at the time of
1075 passage of the referendum, unless specifically referenced
1076 herein, shall remain in place until and unless rescinded by
1077 action of the town council, except that a county ordinance,
1078 rule, or regulation which is in conflict with an ordinance,
1079 rule, or regulation of the town shall not be effective to the
1080 extent of such conflict, except as otherwise provided by the
1081 Palm Beach County Charter, as may be amended from time to time.
1082 Any existing Palm Beach County ordinances, rules, and
1083 regulations as of October 12, 2006, shall not be altered,
1084 changed, rescinded, or added to, nor shall any variance be
1085 granted thereto insofar as such action would affect the town
1086 without the approval of the town council.
1087 (6) TEMPORARY EMERGENCY ORDINANCES.--The town council
1088 shall adopt ordinances and resolutions required to effect the
1089 transition. Ordinances adopted within 60 days after the first
1090 council meeting may be passed as emergency ordinances. These
1091 transitional ordinances, passed as emergency ordinances, shall
1092 be effective for no longer than 90 days after adoption and
1093 thereafter may be readopted, renewed, or otherwise continued
1094 only in the manner normally prescribed for ordinances.

1095 (7) TRANSITIONAL COMPREHENSIVE PLAN AND LAND DEVELOPMENT
1096 REGULATIONS.--
1097 (a) Until such time as the town adopts a comprehensive
1098 plan, the Palm Beach County Future Land Use Map, the Palm Beach
1099 County Zoning Map, and all other applicable provisions
1100 applicable to the town, of the Comprehensive Plan and Land
1101 Development Regulations of Palm Beach County, as the same exist
1102 on the day the town commences corporate existence, shall remain
1103 in effect as the town's transitional comprehensive plan and land
1104 development regulations. However, all planning functions,
1105 duties, and authority shall thereafter be vested in the Town
1106 Council of Loxahatchee Groves which shall also be deemed the
1107 local planning agency until the council establishes a separate
1108 local planning agency.
1109 (b) Upon this act becoming a law, no changes in the future
1110 land use map or the zoning districts within the boundaries of
1111 the town shall be considered for alteration, amendment, or other
1112 modification in any way until such time as the town adopts
1113 appropriate procedures as referenced in this act.
1114 (c) All powers and duties of the planning commission,
1115 zoning authority, any boards of adjustment, and the County
1116 Commission of Palm Beach County, as set forth in these
1117 transitional zoning and land use regulations, shall be vested in
1118 the Town Council of Loxahatchee Groves until such time as the
1119 town council delegates all or a portion thereof to another
1120 entity.
1121 (d) Subsequent to the passage of this act, no amendment of
1122 the comprehensive plan or land development regulations enacted
1123 by the Palm Beach County Commission shall be deemed as an
1124 amendment of the town's transitional comprehensive plan or land
1125 development regulations or otherwise take effect within the

1126 town's corporate limits except in accordance with the
1127 requirements, and upon adoption of the procedures specified in
1128 this act.
1129 (e)1. The owner or assigns of the 97+/- acre property
1130 located at the northwest corner of B-Road and Southern
1131 Boulevard, commonly known as the "Simon property," have applied
1132 for a land use change through the Palm Beach County
1133 comprehensive plan amendment process (LGA 2004-00037). This
1134 parcel and it owners and assigns will remain subject to the Palm
1135 Beach County comprehensive plan and approval process until such
1136 time as the town adopts its own comprehensive plan.
1137 2. In the event that the town initiates a review and
1138 approval process in a timeframe that is faster than presently
1139 expected, the owner or assigns of the Simon property may elect,
1140 at their own option, to go through the town's zoning approval
1141 process.
1142 (8) COMMUNICATIONS SERVICES TAX.--The communications
1143 services tax imposed under s. 202.19, F.S., by Palm Beach County
1144 will continue within the town boundaries during the period
1145 commencing with the date of incorporation through December 31,
1146 2007. Revenues from the tax shall be shared by Palm Beach
1147 County with the town in proportion to the projected town
1148 population estimate of the Palm Beach County Planning Division
1149 compared with the unincorporated population of Palm Beach County
1150 before the incorporation of Loxahatchee Groves.
1151 (9) STATE SHARED REVENUES.--The Town of Loxahatchee Groves
1152 shall be entitled to participate in all shared revenue programs
1153 of the state available to municipalities effective April 1,
1154 2007. The provisions of section 218.23(1), Florida Statutes,
1155 shall be waived for the purpose of eligibility to receive
1156 revenue sharing funds from the date of incorporation through the

1157 state fiscal year 2009-2010. Initial population estimates for
1158 calculating eligibility for shared revenues shall be determined
1159 by the University of Florida Bureau of Economic and Business
1160 Research. Should the bureau be unable to provide an appropriate
1161 population estimate, the Palm Beach County Planning Division
1162 estimate should be utilized. For the purposes of qualifying for
1163 revenue sharing, the following revenue sources shall be
1164 considered: municipal service taxing units, fire municipal
1165 service taxing units, water control district revenues,
1166 occupational license taxes, ad valorem taxes, public utility
1167 service taxes, communication services tax, and franchise fees.
1168 (10) GAS TAX REVENUES.--The town shall be entitled to
1169 receive local option gas tax revenues beginning October 1, 2007.
1170 This specifically includes the relevant statutorily referenced
1171 interlocal agreements.
1172 (11) WAIVER.--The provisions of section 218.23(1), Florida
1173 Statutes, shall be waived for the purpose of conducting audits
1174 and financial reporting through fiscal year 2007-2008.
1175 Section 11. Continuation, merger, and dissolution of
1176 existing districts and service providers.--
1177 (1) PALM BEACH COUNTY FIRE RESCUE MUNICIPAL SERVICE TAXING
1178 UNIT; CONTINUATION.--Notwithstanding the incorporation of the
1179 Town of Loxahatchee Groves, that portion of the Palm Beach
1180 County Fire Rescue Municipal Service Taxing Unit, a special
1181 taxing district created by the Palm Beach County Commission that
1182 lies within the boundaries of the Town of Loxahatchee Groves, is
1183 authorized to continue in existence until the town adopts an
1184 ordinance to the contrary. However, the town shall not establish
1185 a town fire department without a referendum.
1186 (2) LAW ENFORCEMENT.--Law enforcement services will be
1187 provided by contract with the Palm Beach County Sheriff's

1188 Office, or contracted with other law enforcement agencies, until
1189 the town adopts an ordinance to the contrary, provided that the
1190 town shall not establish a town police department without a
1191 referendum.
1192 (3) PALM BEACH COUNTY LIBRARY DISTRICT;
1193 CONTINUATION.--Notwithstanding the incorporation of the Town of
1194 Loxahatchee Groves, that portion of the Palm Beach County
1195 Library District, a dependent district of Palm Beach County
1196 created by chapter 2000-405, Laws of Florida, that lies within
1197 the boundaries of the Town of Loxahatchee Groves, is authorized
1198 but not required to continue in existence, provided that in
1199 order to be excluded from the library district the town shall
1200 establish a municipal-funded library.
1201 (4) PALM BEACH COUNTY MUNICIPAL SERVICE TAXING UNIT
1202 B.--That portion of Palm Beach County Municipal Service Taxing
1203 Unit B, a dependent district of Palm Beach County created by the
1204 Palm Beach Commission that lies within the boundaries of the
1205 Town of Loxahatchee Groves, shall cease to exist within the
1206 municipal boundaries of the Town of Loxahatchee Groves on
1207 October 10, 2006.
1208 (5) PALM BEACH COUNTY MUNICIPAL SERVICE TAXING UNIT
1209 F.--That portion of Palm Beach County Municipal Service Taxing
1210 Unit F, a dependent district of Palm Beach County created by the
1211 Palm Beach County Commission that lies within the boundaries of
1212 the Town of Loxahatchee Groves, shall cease to exist within the
1213 municipal boundaries of the Town of Loxahatchee Groves on
1214 October 10, 2006.
1215 (6) LOXAHATCHEE GROVES WATER CONTROL DISTRICT;
1216 CONTINUATION.--Notwithstanding the incorporation of the Town of
1217 Loxahatchee Groves, the Loxahatchee Groves Water Control

1218 District, an independent special district created pursuant to
1219 the laws of the state, is authorized to continue in existence.
1220 (7) LOXAHATCHEE GROVES PARK;
1221 CONTINUATION.--Notwithstanding the incorporation of the Town of
1222 Loxahatchee Groves, the Loxahatchee Groves Park will continue to
1223 be operated by the Palm Beach County Department of Parks and
1224 Recreation, in accordance with existing Palm Beach County
1225 standards. All planned improvements to the park shall be subject
1226 to approval of the Town of Loxahatchee Groves but are the
1227 responsibility of Palm Beach County. Nothing contained herein
1228 shall prevent Palm Beach County and the Town of Loxahatchee
1229 Groves from entering into an interlocal agreement related to
1230 maintenance, planned improvements, sale, or transfer of the
1231 park.
1232 Section 12. Repeal.--Section 6 of section 2 of chapter 99-
1233 425, Laws of Florida, is repealed.
1234 Section 13. Waivers.--The thresholds established by
1235 section 165.061, Florida Statutes, for incorporation have been
1236 met with the following exceptions:
1237 (1) A waiver is granted to provisions of section
1238 165.061(1)(b), Florida Statutes, relating to minimum population
1239 requirements of 5,000, due to the rural character of the Town of
1240 Loxahatchee Groves.
1241 (2) A waiver is granted to provisions of section
1242 165.061(1)(c), Florida Statutes, relating to the minimum density
1243 of population of 1.5 persons per acre, to protect the historic,
1244 rural, and agricultural character of the town from surrounding
1245 development pressure.
1246 (3) A waiver is granted to provisions of section
1247 165.061(1)(d), Florida Statutes, relating to the minimum
1248 distance of 2 miles from the town to an existing municipality

1249 due to the marked difference in character between the town, a
1250 historic and rural community, and surrounding communities with
1251 significantly greater density and urban characteristics.
1252 Section 14. This act shall only take effect upon approval
1253 by a majority of those qualified electors residing within the
1254 proposed corporate limits of the proposed Town of Loxahatchee
1255 Groves as described in section 1, voting in a referendum
1256 election to be called by the Board of County Commissioners of
1257 Palm Beach County and to be held on October 10, 2006, in
1258 accordance with the provisions relating to elections currently
1259 in force, except that section 10(1) and this section shall take
1260 effect upon this act becoming a law.
1261
1262
1263 ========== T I T L E A M E N D M E N T ==========
1264 Remove the entire title and insert:
1265 A bill to be entitled
1266 An act relating to Palm Beach County; creating the Town of
1267 Loxahatchee Groves; providing a charter; providing
1268 legislative intent; providing a council-manager form of
1269 government; providing boundaries; providing municipal
1270 powers; providing for a town council; providing for
1271 membership, qualifications, terms, powers, and duties of
1272 its members, including the mayor; providing for a vice
1273 mayor; providing general powers and duties; providing
1274 circumstances resulting in vacancy in office; providing
1275 grounds for forfeiture and suspension; providing for
1276 filling of vacancies; providing for compensation and
1277 expenses; providing for appointment of charter officers,
1278 including a town manager and town attorney; providing for
1279 removal, compensation, and filling of vacancies; providing

1280 qualifications, powers, and duties; providing for
1281 meetings; providing for adoption, distribution, and
1282 recording of technical codes; providing for recordkeeping;
1283 providing a limitation upon employment of council members;
1284 prohibiting certain interference with town employees;
1285 establishing the fiscal year; providing for adoption of
1286 annual budget and appropriations; providing for
1287 supplemental, reduction, and transfer of appropriations;
1288 providing for limitations; providing for referendum
1289 requirements for revenue bonds and other multiyear
1290 contracts; providing for financial audit; providing for
1291 nonpartisan elections and matters relative thereto;
1292 providing for recall; providing for initiative and
1293 referenda; providing for future amendments of the charter;
1294 providing for standards of conduct in office; providing
1295 for severability; providing for a personnel system;
1296 providing for charitable contributions; providing for land
1297 use changes; providing the town a transitional schedule
1298 and procedures for first election; providing for first-
1299 year expenses; providing for adoption of transitional
1300 ordinances, resolutions, comprehensive plan, and local
1301 development regulations; providing for sharing of
1302 communications services tax; providing for accelerated
1303 entitlement to state-shared revenues; providing for gas
1304 tax revenue; provides for providing for continuation of
1305 the Palm Beach County Fire Rescue Municipal Service Taxing
1306 Unit; providing for law enforcement; providing for
1307 continuation of the Palm Beach County Library District;
1308 providing for dissolution of the Palm Beach County
1309 Municipal Service Taxing Unit B and dissolution of the
1310 Palm Beach County Municipal Service Taxing Unit F;

1311 providing for continuation of the Loxahatchee Groves Water
1312 Control District; providing for continuation of
1313 Loxahatchee Groves Park; repealing s. 6 of s. 2 of chapter
1314 99-425, Laws of Florida, relating to a restriction on
1315 annexation of the Loxahatchee Groves Water Control
1316 District; providing for waivers; requiring a referendum;
1317 providing effective dates.
1318
1319

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government Council
2 Representative Seiler offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line(s) 45-57 and insert:
6 appropriate property appraiser. Upon releasing its findings,
7 the department shall notify the chairperson of the appropriate
8 county commission or the corresponding official under a
9 consolidated charter that the department's findings are
10 available upon request. The department shall, within 90 days
11 after receiving a written request from the chairperson of the
12 appropriate county commission or the corresponding official
13 under a consolidated charter, forward a copy of its findings,
14 including the confidence interval for the median and such other
15 measures for each classification or subclassification studied
16 and for the roll as a whole, and related statistical and
17 analytical details, to the requesting party.
18
19 ========== T I T L E A M E N D M E N T ==========
20 Remove line(s) 3-16 and insert:

21 s. 195.096, F.S.; requiring the Department of Revenue to notify
22 the county commissioner or the corresponding officer under a
23 consolidated that its findings regarding the review of the
24 county tax assessment roll are available upon request; requiring
25 the Department of Revenue to forward its findings within 90 days
26 of a request; providing an effective date.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government Council
2 Representative Planas offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 51-53 and insert:
6 (4) The department shall adopt by rule a determination of the
7 appropriate incentive for encouraging the construction of
8 inclusive playgrounds. The term "inclusive
9
10 ========== D I R E C T O R Y A M E N D M E N T ==========
11 Remove line(s) 14 and insert:
12 Governments; inclusive playgrounds.
13
14 ========== T I T L E A M E N D M E N T ==========
15 Remove line(s) 5-6 and insert:
16 governments to construct inclusive playgrounds; defining
17 the term "inclusive playground"; providing an effective

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Local Government
2 Representative Murzin offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Notwithstanding subsection (3) of section 109
10 of chapter 2000-141, Laws of Florida, the Florida Building
11 Commission may update or modify the wind-design standard
12 applicable to construction in this state as adopted within the
13 Florida Building Code in accordance with the requirements of s.
14 553.73, Florida Statutes. The Florida Building Commission is
15 specifically authorized to identify within the Florida Building
16 Code those areas of the state from the eastern border of
17 Franklin County west to the Florida-Alabama line which are
18 subject to the windborne-debris requirements of the code. The
19 Florida Building Commission's initial designation of wind lines
20 for this region shall address the results of the study required
21 by section 39 of chapter 2005-147, Laws of Florida. The initial
22 designation of those areas after July 1, 2006, is subject to

23 only the rule-adoption procedures of chapter 120, Florida
24 Statutes, notwithstanding the code-development procedures of
25 chapter 553, Florida Statutes. This section shall not take
26 effect for 6 months following the completion of rulemaking or
27 May 31, 2007, whichever occurs sooner. The provisions of
28 subsection (3) of section 109 of chapter 2000-141, Laws of
29 Florida, are expressly superseded.
30 Section 2. Subsection (10) of section 553.71, Florida
31 Statutes, is repealed.
32 Section 3. Subsection (6) of section 553.73, Florida
33 Statutes, is amended to read:
34 553.73 Florida Building Code.--
35 (6)(a) The commission, by rule adopted pursuant to ss.
36 120.536(1) and 120.54, shall update the Florida Building Code
37 every 3 years. When updating the Florida Building Code, the
38 commission shall select the most current version of the
39 International Building Code, the International Fuel Gas Code,
40 the International Mechanical Code, the International Plumbing
41 Code, and the International Residential Code, all of which are
42 adopted by the International Code Council, and the National
43 Electrical Code, which is adopted by the National Fire
44 Protection Association, to form the foundation codes of the
45 updated Florida Building Code, if the version has been adopted
46 by the applicable model code entity ~~International Code Council~~
47 and made available to the public at least 6 months prior to its
48 selection by the commission.
49 (b) Codes regarding noise contour lines shall be reviewed
50 annually, and the most current federal guidelines shall be
51 adopted.
52 (c) The commission may modify any portion of the
53 foundation codes only as needed to accommodate the specific

54 needs of this state, maintaining Florida-specific amendments
55 previously adopted by the commission and not addressed by the
56 updated foundation code. Standards or criteria referenced by the
57 codes shall be incorporated by reference. If a referenced
58 standard or criterion requires amplification or modification to
59 be appropriate for use in this state, only the amplification or
60 modification shall be set forth in the Florida Building Code.
61 The commission may approve technical amendments to the updated
62 Florida Building Code after the amendments have been subject to
63 the conditions set forth in paragraphs (3)(a)-(d). Amendments to
64 the foundation codes which are adopted in accordance with this
65 subsection shall be clearly marked in printed versions of the
66 Florida Building Code so that the fact that the provisions are
67 Florida-specific amendments to the foundation codes is readily
68 apparent.
69 (d) The commission shall further consider the commission's
70 own interpretations, declaratory statements, appellate
71 decisions, and approved statewide and local technical amendments
72 and shall incorporate such interpretations, statements,
73 decisions, and amendments into the updated Florida Building Code
74 only to the extent that they are needed to modify the foundation
75 codes to accommodate the specific needs of the state. A change
76 made by an institute or standards organization to any standard
77 or criterion that is adopted by reference in the Florida
78 Building Code does not become effective statewide until it has
79 been adopted by the commission. Furthermore, the edition of the
80 Florida Building Code which is in effect on the date of
81 application for any permit authorized by the code governs the
82 permitted work for the life of the permit and any extension
83 granted to the permit.

84 (e) A rule updating the Florida Building Code in
85 accordance with this subsection shall take effect no sooner than
86 6 months after publication of the updated code. Any amendment
87 to the Florida Building Code which is adopted upon a finding by
88 the commission that the amendment is necessary to protect the
89 public from immediate threat of harm takes effect immediately.
90 (f) Upon the conclusion of a triennial update to the
91 Florida Building Code and notwithstanding other provisions of
92 this subsection or subsection (3), the commission may address
93 the issues identified in this subsection by amending the Florida
94 Building Code, subject only to the rule-adoption procedures of
95 chapter 120. Following the approval of any amendments to the
96 Florida Building Code by the commission and publication on the
97 commission's website, authorities having jurisdiction to enforce
98 the Florida Building Code are authorized to enforce the
99 amendments. The commission may approve only amendments that are
100 needed to:
101 1. Address conflicts within the updated Florida Building
102 Code;
103 2. Address conflicts between the updated Florida Building
104 Code and the Florida Fire Prevention Code adopted pursuant to
105 chapter 633;
106 3. Address the omission of Florida-specific amendments
107 that were previously adopted in the Florida Building Code if the
108 omission is not supported by a specific recommendation of a
109 technical advisory committee or a particular action by the
110 commission; or
111 4. Address unintended results from the integration of
112 Florida-specific amendments that were previously adopted with
113 the model code.

114 Section 4. Subsection (5) is added to section 553.775,
115 Florida Statutes, to read:
116 553.775 Interpretations.--
117 (5) Notwithstanding other provisions of this section, the
118 Florida Accessibility Code for Building Construction and chapter
119 11 of the Florida Building Code may not be interpreted by, and
120 is not subject to review under, any of the procedures specified
121 in this section. This subsection has no effect on the authority
122 of the commission to waive the Florida Accessibility Code for
123 Building Construction as provided in s. 553.512.
124 Section 5. Section 553.791, Florida Statutes, is amended
125 to read:
126 553.791 Alternative plans review and inspection.--
127 (1) As used in this section, the term:
128 (a) "Applicable codes" means the Florida Building Code and
129 any local technical amendments to the Florida Building Code but
130 does not include the applicable minimum fire prevention and
131 firesafety codes adopted pursuant to chapter 633.
132 (b) "Building" means any construction, erection,
133 alteration, demolition, or improvement of, or addition to, any
134 structure for which permitting by a local enforcement agency is
135 required.
136 (c) "Building code inspection services" means those
137 services described in s. 468.603(6) and (7) involving the review
138 of building plans to determine compliance with applicable codes
139 and those inspections required by law of each phase of
140 construction for which permitting by a local enforcement agency
141 is required to determine compliance with applicable codes.
142 (d) "Duly authorized representative" means an agent of the
143 private provider identified in the permit application who
144 reviews plans or performs inspections as provided by this

145 section and who is licensed as an engineer under chapter 471 or
146 as an architect under chapter 481 or who holds a standard
147 certificate under part XII of chapter 468.
148 (e) "Local building official" means the individual within
149 the governing jurisdiction responsible for direct regulatory
150 administration or supervision of plans review, enforcement, and
151 inspection of any construction, erection, alteration,
152 demolition, or substantial improvement of, or addition to, any
153 structure for which permitting is required to indicate
154 compliance with applicable codes and includes any duly
155 authorized designee of such person.
156 (f) "Permit application" means a properly completed and
157 submitted application for the requested building or construction
158 permit, including:
159 1. The plans reviewed by the private provider.
160 2. The affidavit from the private provider required
161 pursuant to subsection (5).
162 3. Any applicable fees.
163 4. Any documents required by the local building official
164 to determine that the fee owner has secured all other government
165 approvals required by law.
166 (g) "Private provider" means a person licensed as an
167 engineer under chapter 471 or as an architect under chapter 481.
168 For purposes of performing inspections under this section for
169 additions and alterations that are limited to 1,000 square feet
170 or less to residential buildings, the term "private provider"
171 also includes a person who holds a standard certificate under
172 part XII of chapter 468.
173 (h) "Request for certificate of occupancy or certificate
174 of completion" means a properly completed and executed
175 application for:

176 1. A certificate of occupancy or certificate of
177 completion.
178 2. A certificate of compliance from the private provider
179 required pursuant to subsection (10).
180 3. Any applicable fees.
181 4. Any documents required by the local building official
182 to determine that the fee owner has secured all other government
183 approvals required by law.
184 (2) Notwithstanding any other provision of law or local
185 government ordinance or local policy, the fee owner of a
186 building or structure, or the fee owner's contractor upon
187 written authorization from the fee owner, may choose to use a
188 private provider to provide building code inspection services
189 with regard to such building or structure and may make payment
190 directly to the private provider for the provision of such
191 services. All such services shall be the subject of a written
192 contract between the private provider, or the private provider's
193 firm, and the fee owner. The fee owner may elect to use a
194 private provider to provide plans review or required building
195 inspections, or both. However, if the fee owner or the fee
196 owner's contractor uses a private provider to provide plans
197 review, the local building official, in his or her discretion
198 and pursuant to duly adopted policies of the local enforcement
199 agency, may require the fee owner or the fee owner's contractor
200 to use a private provider to also provide required building
201 inspections.
202 (3) A private provider and any duly authorized
203 representative may only perform building code inspection
204 services that are within the disciplines covered by that
205 person's licensure or certification under chapter 468, chapter
206 471, or chapter 481. A private provider may not provide building

207 code inspection services pursuant to this section upon any
208 building designed or constructed by the private provider or the
209 private provider's firm.
210 (4) A fee owner or the fee owner's contractor using a
211 private provider to provide building code inspection services
212 shall notify the local building official at the time of permit
213 application, or no less than 7 business days prior to the first
214 scheduled inspection by the local building official or building
215 code enforcement agency for a private provider performing
216 required inspections of construction under this section, on a
217 form to be adopted by the commission. This notice shall include
218 the following information:
219 (a) The services to be performed by the private provider.
220 (b) The name, firm, address, telephone number, and
221 facsimile number of each private provider who is performing or
222 will perform such services, his or her professional license or
223 certification number, qualification statements or resumes, and,
224 if required by the local building official, a certificate of
225 insurance demonstrating that professional liability insurance
226 coverage is in place for the private provider's firm, the
227 private provider, and any duly authorized representative in the
228 amounts required by this section.
229 (c) An acknowledgment from the fee owner in substantially
230 the following form:
231 I have elected to use one or more private providers to provide
232 building code plans review and/or inspection services on the
233 building or structure that is the subject of the enclosed permit
234 application, as authorized by s. 553.791, Florida Statutes. I
235 understand that the local building official may not review the
236 plans submitted or perform the required building inspections to
237 determine compliance with the applicable codes, except to the

238 extent specified in said law. Instead, plans review and/or
239 required building inspections will be performed by licensed or
240 certified personnel identified in the application. The law
241 requires minimum insurance requirements for such personnel, but
242 I understand that I may require more insurance to protect my
243 interests. By executing this form, I acknowledge that I have
244 made inquiry regarding the competence of the licensed or
245 certified personnel and the level of their insurance and am
246 satisfied that my interests are adequately protected. I agree to
247 indemnify, defend, and hold harmless the local government, the
248 local building official, and their building code enforcement
249 personnel from any and all claims arising from my use of these
250 licensed or certified personnel to perform building code
251 inspection services with respect to the building or structure
252 that is the subject of the enclosed permit application.
253
254 If the fee owner or the fee owner's contractor makes any
255 changes to the listed private providers or the services to be
256 provided by those private providers, the fee owner or the fee
257 owner's contractor shall, within 1 business day after any
258 change, update the notice to reflect such changes. In addition,
259 the fee owner or the fee owner's contractor shall post at the
260 project site, prior to the commencement of construction and
261 updated within 1 business day after any change, on a form to be
262 adopted by the commission, the name, firm, address, telephone
263 number, and facsimile number of each private provider who is
264 performing or will perform building code inspection services,
265 the type of service being performed, and similar information for
266 the primary contact of the private provider on the project.
267 (5) Once construction has commenced and the local building
268 official is unable to provide inspection services in a timely

269 manner, the fee owner or the fee owner's contractor may elect to
270 use a private provider to provide inspection services by
271 notifying the local building official of their intention no less
272 than 7 business days prior to the next scheduled inspection
273 using the notice provided for in paragraphs (a)-(c) of
274 subsection (4).
275 (6) ~~(5)~~ A private provider performing plans review under
276 this section shall review construction plans to determine
277 compliance with the applicable codes. Upon determining that the
278 plans reviewed comply with the applicable codes, the private
279 provider shall prepare an affidavit or affidavits on a form
280 adopted by the commission certifying, under oath, that the
281 following is true and correct to the best of the private
282 provider's knowledge and belief:
283 (a) The plans were reviewed by the affiant, who is duly
284 authorized to perform plans review pursuant to this section and
285 holds the appropriate license or certificate.
286 (b) The plans comply with the applicable codes.
287 (7) ~~(6)~~ (a) No more than 30 business days after receipt of a
288 permit application and the affidavit from the private provider
289 required pursuant to subsection (5), the local building official
290 shall issue the requested permit or provide a written notice to
291 the permit applicant identifying the specific plan features that
292 do not comply with the applicable codes, as well as the specific
293 code chapters and sections. If the local building official does
294 not provide a written notice of the plan deficiencies within the
295 prescribed 30-day period, the permit application shall be deemed
296 approved as a matter of law, and the permit shall be issued by
297 the local building official on the next business day.
298 (b) If the local building official provides a written
299 notice of plan deficiencies to the permit applicant within the

300 prescribed 30-day period, the 30-day period shall be tolled
301 pending resolution of the matter. To resolve the plan
302 deficiencies, the permit applicant may elect to dispute the
303 deficiencies pursuant to subsection (12) or to submit revisions
304 to correct the deficiencies.
305 (c) If the permit applicant submits revisions, the local
306 building official has the remainder of the tolled 30-day period
307 plus 5 business days to issue the requested permit or to provide
308 a second written notice to the permit applicant stating which of
309 the previously identified plan features remain in noncompliance
310 with the applicable codes, with specific reference to the
311 relevant code chapters and sections. If the local building
312 official does not provide the second written notice within the
313 prescribed time period, the permit shall be issued by the local
314 building official on the next business day.
315 (d) If the local building official provides a second
316 written notice of plan deficiencies to the permit applicant
317 within the prescribed time period, the permit applicant may
318 elect to dispute the deficiencies pursuant to subsection (12) or
319 to submit additional revisions to correct the deficiencies. For
320 all revisions submitted after the first revision, the local
321 building official has an additional 5 business days to issue the
322 requested permit or to provide a written notice to the permit
323 applicant stating which of the previously identified plan
324 features remain in noncompliance with the applicable codes, with
325 specific reference to the relevant code chapters and sections.
326 (8) ~~(7)~~ A private provider performing required inspections
327 under this section shall inspect each phase of construction as
328 required by the applicable codes. The private provider shall be
329 permitted to send a duly authorized representative to the
330 building site to perform the required inspections, provided all

331 required reports and certifications are prepared by and bear the
332 signature of the private provider. The duly authorized
333 representative must be an employee of the private provider
334 entitled to receive unemployment compensation benefits under
335 chapter 443. The contractor's contractual or legal obligations
336 are not relieved by any action of the private provider.
337 (9) ~~(8)~~ A private provider performing required inspections
338 under this section shall provide notice to the local building
339 official of the date and approximate time of any such inspection
340 no later than the prior business day by 2 p.m. local time or by
341 any later time permitted by the local building official in that
342 jurisdiction. The local building official may visit the
343 building site as often as necessary to verify that the private
344 provider is performing all required inspections.
345 (10) ~~(9)~~ Upon completing the required inspections at each
346 applicable phase of construction, the private provider shall
347 record such inspections on a form acceptable to the local
348 building official. These inspection records shall reflect those
349 inspections required by the applicable codes of each phase of
350 construction for which permitting by a local enforcement agency
351 is required. The private provider, before leaving the project
352 site, shall post each completed inspection record, indicating
353 pass or fail, at the site and provide the record to the local
354 building official within 2 business days. The local building
355 official may waive the requirement to provide a record of each
356 inspection within 2 business days if the record is posted at the
357 project site and all such inspection records are submitted with
358 the certificate of compliance. Records of all required and
359 completed inspections shall be maintained at the building site
360 at all times and made available for review by the local building
361 official. The private provider shall report to the local

362 enforcement agency any condition that poses an immediate threat
363 to public safety and welfare.
364 (11) ~~(10)~~ Upon completion of all required inspections, the
365 private provider shall prepare a certificate of compliance, on a
366 form acceptable to the local building official, summarizing the
367 inspections performed and including a written representation,
368 under oath, that the stated inspections have been performed and
369 that, to the best of the private provider's knowledge and
370 belief, the building construction inspected complies with the
371 approved plans and applicable codes. The statement required of
372 the private provider shall be substantially in the following
373 form:
374 To the best of my knowledge and belief, the building components
375 and site improvements outlined herein and inspected under my
376 authority have been completed in conformance with the approved
377 plans and the applicable codes.
378 (12) ~~(11)~~ No more than 2 business days after receipt of a
379 request for a certificate of occupancy or certificate of
380 completion and the applicant's presentation of a certificate of
381 compliance and approval of all other government approvals
382 required by law, the local building official shall issue the
383 certificate of occupancy or certificate of completion or provide
384 a notice to the applicant identifying the specific deficiencies,
385 as well as the specific code chapters and sections. If the local
386 building official does not provide notice of the deficiencies
387 within the prescribed 2-day period, the request for a
388 certificate of occupancy or certificate of completion shall be
389 deemed granted and the certificate of occupancy or certificate
390 of completion shall be issued by the local building official on
391 the next business day. To resolve any identified deficiencies,
392 the applicant may elect to dispute the deficiencies pursuant to

393 subsection (12) or to submit a corrected request for a
394 certificate of occupancy or certificate of completion.
395 (13) ~~(12)~~ If the local building official determines that
396 the building construction or plans do not comply with the
397 applicable codes, the official may deny the permit or request
398 for a certificate of occupancy or certificate of completion, as
399 appropriate, or may issue a stop-work order for the project or
400 any portion thereof as provided by law, if the official
401 determines that such noncompliance poses a threat to public
402 safety and welfare, subject to the following:
403 (a) The local building official shall be available to meet
404 with the private provider within 2 business days to resolve any
405 dispute after issuing a stop-work order or providing notice to
406 the applicant denying a permit or request for a certificate of
407 occupancy or certificate of completion.
408 (b) If the local building official and private provider
409 are unable to resolve the dispute, the matter shall be referred
410 to the local enforcement agency's board of appeals, if one
411 exists, which shall consider the matter at its next scheduled
412 meeting or sooner. Any decisions by the local enforcement
413 agency's board of appeals, or local building official if there
414 is no board of appeals, may be appealed to the commission as
415 provided by this chapter.
416 (c) Notwithstanding any provision of this section, any
417 decisions regarding the issuance of a building permit,
418 certificate of occupancy, or certificate of completion may be
419 reviewed by the local enforcement agency's board of appeals, if
420 one exists. Any decision by the local enforcement agency's board
421 of appeals, or local building official if there is no board of
422 appeals, may be appealed to the commission as provided by this

423 chapter, which shall consider the matter at the commission's
424 next scheduled meeting.
425 (14) ~~(13)~~ For the purposes of this section, any notice to
426 be provided by the local building official shall be deemed to be
427 provided to the person or entity when successfully transmitted
428 to the facsimile number listed for that person or entity in the
429 permit application or revised permit application, or, if no
430 facsimile number is stated, when actually received by that
431 person or entity.
432 (15) ~~(14)~~(a) No local enforcement agency, local building
433 official, or local government may adopt or enforce any laws,
434 rules, procedures, policies, qualifications, or standards more
435 stringent than those prescribed by this section.
436 (b) A local enforcement agency, local building official,
437 or local government may establish, for private providers and
438 duly authorized representatives working within that
439 jurisdiction, a system of registration to verify compliance with
440 the licensure requirements of paragraph (1)(g) and the insurance
441 requirements of subsection (15).
442 (c) Nothing in this section limits the authority of the
443 local building official to issue a stop-work order for a
444 building project or any portion of such order, as provided by
445 law, if the official determines that a condition on the building
446 site constitutes an immediate threat to public safety and
447 welfare.
448 (16) ~~(15)~~ A private provider may perform building code
449 inspection services on a building project under this section
450 only if the private provider maintains insurance for
451 professional liability covering all services performed as a
452 private provider. Such insurance shall have minimum policy
453 limits of $1 million per occurrence and $2 million in the

454 aggregate for any project with a construction cost of $5 million
455 or less and $2 million per occurrence and $4 million in the
456 aggregate for any project with a construction cost of over $5
457 million. Nothing in this section limits the ability of a fee
458 owner to require additional insurance or higher policy limits.
459 For these purposes, the term "construction cost" means the total
460 cost of building construction as stated in the building permit
461 application. If the private provider chooses to secure claims-
462 made coverage to fulfill this requirement, the private provider
463 must also maintain coverage for a minimum of 5 years subsequent
464 to the performance of building code inspection services. The
465 insurance required under this subsection shall be written only
466 by insurers authorized to do business in this state with a
467 minimum A.M. Best's rating of A. Before providing building code
468 inspection services within a local building official's
469 jurisdiction, a private provider must provide to the local
470 building official a certificate of insurance evidencing that the
471 coverages required under this subsection are in force.
472 (17) ~~(16)~~ When performing building code inspection
473 services, a private provider is subject to the disciplinary
474 guidelines of the applicable professional board with
475 jurisdiction over his or her license or certification under
476 chapter 468, chapter 471, or chapter 481. All private providers
477 shall be subject to the disciplinary guidelines of s.
478 468.621(1)(c)-(h). Any complaint processing, investigation, and
479 discipline that arise out of a private provider's performance of
480 building code inspection services shall be conducted by the
481 applicable professional board.
482 (18) ~~(17)~~ Each local building code enforcement agency may
483 audit the performance of building code inspection services by
484 private providers operating within the local jurisdiction. Work

485 on a building or structure may proceed after inspection and
486 approval by a private provider if the provider has given notice
487 of the inspection pursuant to subsection (8) and, subsequent to
488 such inspection and approval, the work may not be delayed for
489 completion of an inspection audit by the local building code
490 enforcement agency.
491 (19) ~~(18)~~ The local government, the local building
492 official, and their building code enforcement personnel shall be
493 immune from liability to any person or party for any action or
494 inaction by a fee owner of a building, or by a private provider
495 or its duly authorized representative, in connection with
496 building code inspection services as authorized in this act.
497 Section 6. This act shall take effect July 1, 2006.
498
499 ========== T I T L E A M E N D M E N T ==========
500 Remove the entire title and insert:
501 An act relating to building codes; authorizing the Florida
502 Building Commission to update and modify the standard for
503 wind design; repealing s. 553.71(10), F.S., relating to a
504 definition of the term "exposure category C"; amending s.
505 553.73, F.S.; revising the requirements for selecting codes
506 to form the updated Florida Building Code; authorizing the
507 Florida Building Commission to approve and publish
508 amendments to the Florida Building Code under certain
509 circumstances; authorizing certain authorities to enforce
510 the amendments to the Florida Building Code; amending s.
511 553.775, F.S.; prohibiting certain procedures from being
512 invoked to interpret the Florida Accessibility Code for
513 Building Construction and chapter 11 of the Florida
514 Building Code; amending s. 553.791, F.S.; providing for the
515 use of private providers of building code inspection

516 services following commencement of construction; providing
517 an effective date.