Local Government Council

Wednesday, January 25, 2006
1:00 p.m.
404 House Office Building

REVISED

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, January 25, 2006 01:00 pm
End Date and Time:	Wednesday, January 25, 2006 03:30 pm
Location:	404 HOB
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 103 CS Property Appraiser Assessments by McInvale
HB 267 CS Driver License Services by Bogdanoff
HB 343 Services for Seniors by Sobel
HJR 443 Property Tax Exemptions by Barreiro
HB 451 Affordable Housing for the Elderly by Machek

NOTICE FINALIZED on 01/13/2006 16:02 by ADEYEMO.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 103 CS Property Appraiser Assessments
SPONSOR(S): McInvale
TIED BILLS: **IDEN./SIM. BILLS:** SB 152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	6 Y, 2 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council		DiVagno	Hamby
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

Section 193.023, F.S., requires that real property must be physically inspected every three years for purposes of assessing the value of the property. This bill would require the property appraiser to physically inspect the property every 5 years. In addition, the property appraiser "may review image technology, as he or she deems necessary."

This bill would take effect upon becoming law.

The bill has no fiscal impact on the state, and an indeterminate fiscal impact on local revenues.

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:

Section 193.023, F.S., requires that real property must be physically inspected every three years for purposes of assessing the value of the property. This bill would require the property appraiser to physically inspect the property every five years. In addition, the property appraiser "may review image technology, as he or she deems necessary."

As noted in the background information, the change from physically inspecting property every three years to every five years would fall within the commonly accepted professional standards. In addition, while this statutory change would require that property be inspected every five years, property appraisers would be free to inspect property more often if they deemed it necessary or upon the request of the taxpayer or owner.

Background:

Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property for ad valorem taxation, with certain exceptions. Florida property appraisers have the statutory responsibility to list and determine the just value of all real property in each county each year for purposes of ad valorem taxation. Section 193.085(1), F.S.

Section 193.023, F.S., provides that property appraisers must complete an assessment of the value of all property no later than July 1 of each year, except that the Department of Revenue may for good cause extend the time for completion of assessment of all property. This section provides that in making the assessment of the value of real property, the property appraiser must physically inspect each property every three years to ensure that the tax roll meets all the requirements of law. In addition, the property appraiser must physically inspect any parcel of taxable real property upon the request of the taxpayer or owner. In valuing property in accordance with constitutional and statutory requirements, the property appraiser may adjust the assessed value placed on any parcel or group of parcels based on mass data collected, on ratio studies prepared by an agency authorized by law, or pursuant to regulations of the Department of Revenue.

Section 195.022, F.S., requires the Department of Revenue to provide aerial photographs at a minimum of every three years to the state's 67 property appraisers. Many property appraisers rely on the use of aerial photography for discovery, location, and identification of property characteristics. A schedule of counties to be flown each year (approximately one third of the state) has been developed to ensure that this requirement is met. This is accomplished through an interlocal agreement with the Department of Transportation to provide photo enlargements to the counties. However, due to workload and resource allocation, the Department of Transportation is often unable to fly all counties that have been scheduled. As a result, the Department of Revenue contracts with private aerial photography firms to fly the remaining counties.

The International Association of Assessing Officers publishes advisory standards to assist assessing officers in the improvement and standardization of their offices. The 2002 Standard on Mass Appraisal of Real Property recommends that property be physically reviewed and individually reappraised every four to six years.

C. SECTION DIRECTORY:

Section 1 of the bill amends s. 193.023, F.S., to require that property appraisers physically inspect property every five years instead of every three years. In addition, property appraisers may review, as they deem necessary, image technology."

Section 2 provides that the bill shall take effect 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:

   Indeterminate. To the extent that changes in physical inspection requirements result in changes in the tax roll they may either increase or decrease local revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Some property appraisers have expressed concerns that with a requirement that property be inspected every five years they will not be given enough resources to inspect property on a more regular basis.

The bill states that the property appraiser may review "image technology". Image technology is not defined in the bill or the statutes and no common definition of the term exists. As such, it is uncertain exactly what the bill is referring to. In addition, by specifying that "image technology" is different from a physical inspection, the language may prevent property appraisers from using emerging technology to perform physical inspections in the future.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On November 10, 2005, the Committee on Finance and Tax adopted one amendment to this bill. The amendment removed language which would have "required" the property appraiser to review certain images "as he or she deems necessary." The use of the word "required" appeared to make this review mandatory, while the discretion granted to the property appraiser by the later phrase made this review voluntary. The language was changed so that it could not be read as creating a new duty on the part of the property appraiser. In addition, while the original bill stated that the property appraiser may review satellite imaging, aerial photos, and other "similar imagery", the committee substitute provides that they may review "image technology".

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 property appraiser assessments; amending s. 193.023, F.S.; revising property appraisers' authority for inspecting real property for assessment purposes in addition to physical inspections; reducing the required frequency of physical inspections; providing an effective date.

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

Section 1. Subsection (2) of section 193.023, Florida Statutes, is amended to read:

193.023 Duties of the property appraiser in making assessments.--

(2) In making his or her assessment of the value of real property, the property appraiser is required to ~~inspect~~ physically <u>inspect</u> the property every <u>5</u> ~~3~~ years<u>, and may review image technology, as the property appraiser deems necessary,</u> to ensure that the tax roll meets all the requirements of law.

24 However, the property appraiser shall physically inspect any
25 parcel of taxable real property upon the request of the taxpayer
26 or owner.
27 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 CS Driver License Services
SPONSOR(S): Bogdanoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	11 Y, 1 N, w/CS	Thompson	Miller
2) Local Government Council		Smith T.L.S.	Hamby
3) Transportation & Economic Development Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 267 W/CS requires the Department of Highway Safety and Motor Vehicles (DHSMV) to study the outsourcing of driver's licensing services to a provider or other governmental agency, in whole or in part, while retaining responsibility and accountability for the services. The bill requires DHSMV to present their recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2007. The study must provide the following:

- A detailed description of services to be outsourced and a description of the department's current performance of the service;
- A cost-benefit analysis including a detailed plan and implementation timeline;
- A statement of the potential effect on applicable revenues and expenditures;
- A public-records compliance plan; and
- A transition and implementation plan addressing personnel issues and performance standards.

This bill also expands current law to allow DHSMV to use county constitutional officers, other than tax collectors, as driver license service agents in those counties where the tax collector is not elected or where the tax collector does not provide the services.

This bill will have no fiscal impact on the department and will take effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill requires DHSMV to study the out-sourcing of driver's licensing services to a provider or other governmental agency. This bill also authorizes DHSMV's to contract with other county constitutional officers for driver license services in certain counties.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 322, F.S., provides for laws related to Drivers' Licenses. The DHSMV's Division of Driver Licenses, Driver License Program administers driver license-related activities, which are intended to increase consumer protection and promote public safety by licensing only those drivers who demonstrate the necessary knowledge, skills, and abilities to operate motor vehicles on Florida's roads; controlling and improving problem drivers by suspending and revoking the licenses of drivers who abuse their driving privileges; monitoring drivers to ensure they carry the required insurance to be financially responsible for their actions; and maintaining driver history records. According to DHSMV, there were an estimated 15,483,582 licensed Florida drivers in 2004-05. The DHSMV estimates in 2005-06 there are an estimated 15,888,511 licensed Florida drivers and 7,780,552 applicants to be processed in field offices.

Driver license-related activities are divided into 4 service categories: (1) Driver Licensure Service Category which provides licensing services including issuing driver licenses and identification cards; answering customer inquiries over the telephone and Internet; maintaining comprehensive driver history; and maintaining the statewide traffic citation system; (2) Motorists Financial Responsibility Compliance Service Category which is responsible for ensuring licensed drivers comply with Florida automobile insurance laws and requirements to carry Personal Injury Protection (PIP) and Property Damage Liability (PDL) insurance coverage, and Bodily Injury Liability coverage if required; (3) Identification and Control of Problem Drivers Service Category which is responsible for identifying and controlling problem drivers through suspending, revoking, disqualifying, and canceling driving privileges, conducting administrative reviews for issuance of limited restricted licenses for offenders, and approving course curriculum and evaluating driver improvement-related course programs; and (4) Executive Direction and Support Services Service Category which administers general business functions, provides leadership and direction, and supports all driver license-related activities.

There are seven state bureaus responsible for activities that support the acquisition or suspension of driving privileges. The Driver License Program consists of the following Bureaus:

- The Bureau of Field Operations. There are three field operations bureaus (North Field Operations, Central Field Operations, and South Field Operations) that include158 state and local county tax collector offices that issue driver licenses and identification cards. The tax collector offices function as licensing agents of the Department of Highway Safety and Motor Vehicles. Staff administers knowledge, skill, and visual examinations to determine driver qualification, process forms that show proof a person has obtained motor vehicle insurance, and provide a process for designating on the license application contribution to five charitable organizations (Election Campaign, Organ donor, Prevent Blindness Florida, and Florida Council on Blindness).
- The Bureau of Customer Service. The bureau assists customers in the interpretation of motor vehicle laws and requirements. It provides telephone access for all citizens, and it analyzes and resolves all inquiries regarding driving activities.
- The Bureau of Records. This bureau provides documentation of all driver license activities which include issuance, suspension, revocation, cancellation, reinstatement, renewal,

replacement, and processing all traffic citations. It controls all information recorded on individual driver history records and ensures public access to these records.

- The Bureau of Financial Responsibility. The bureau suspends driving privileges for non-compliance with appropriate laws, verifies insurance coverage through review of documents submitted by drivers, reinstates suspended driving privileges upon compliance, and updates driving history records.
- The Bureau of Driver Improvement. This bureau is divided into two sections, the Driver Services Section and Medical Section. The bureau suspends, revokes, and cancels licenses for violation of motor vehicle laws, fraudulent activity, medical reasons, and inadequate vision.
- The Bureau of Administrative Review. This bureau has 33 field offices located throughout the state. Hearing officers schedule and conduct driver license administrative hearings involving hardship license reinstatements, records review, post-suspension formal and informal reviews, medical competency and financial responsibility reviews, and special driver examinations.
- The Bureau of Driver Education and DUI Programs. The bureau's activities cover licensing commercial drivers, motorcycle safety, and driver improvement schools; approving instructor credentials; approving and evaluating curriculum; inspecting and approving DUI and motorcycle rider schools; and conducting research on improving current and developing future education methods.

DHSMV issues driver licenses through local driver license examination offices. Four different classes of driver licenses are issued:

- Class A, B, and C licenses are for drivers of commercial motor vehicles such as large trucks and buses. A commercial vehicle is defined as a motor vehicle weighing 26,001 pounds or more, designed to transport 16 or more persons, or carry hazardous materials.
- Class E licenses are for drivers of non-commercial vehicles and those who are exempt by law from obtaining a commercial driver license.

Driver License Services – County Tax Collectors

Section 322.135, F.S., allows DHSMV upon application, to authorize the tax collectors in the state to serve as its agent for the provision of specified driver's license services. These services include new licenses, renewals, duplicates, learner's permits, and identification cards. Each tax collector who is authorized by the department to provide driver's license services is to bear all costs associated with providing those services. A fee of $5.25 is charged, in addition to any other fees, for any driver's license issued or renewed by a tax collector. Currently, 28 county tax collectors are providing driver license services at 59 locations.

Driver License Services – Current Outsourcing Contracts

Additionally, DHSMV outsources commercial driver skills testing, contracting with approximately 450 third party testers to conduct commercial driver license (CDL) skills tests. The DHSMV also contracts with private organizations and community and technical colleges to provide motorcycle safety courses and skills tests. Furthermore, the DHSMV contracts with schools to conduct driver education and testing for the Driver Education Licensing Assistance Program; contracts with a private vendor to provide driver license equipment, software and human resources to produce centrally issued driver licenses and identification cards; and is conducting a pilot project by contracting with providers of on-line courses of traffic law and substance abuse education to conduct Florida Class E (operator) driver license knowledge tests.

Proposed Changes

This bill requires DHSMV to study the outsourcing of driver's licensing services and present recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2007. The bill defines the term "outsourcing" to mean the process of

contracting with an external service provider or other governmental agency to provide a service, in whole or in part, while the department retains the responsibility and accountability for the service.

This CS provides requirements for DHSMV with respect to issues to be included in the study. Specifically, as part of the study, DHSMV must provide a description of the services to be outsourced and must consider, but need not be limited to, the following issues:

- A detailed description of services to be outsourced;
- A cost benefit analysis of direct and indirect costs or savings with a detailed plan and timeline for implementation of actions to ensure the desired benefits are achieved;
- A statement of potential effect on federal, state and local revenues and expenditures and the possible direct or indirect impact on federal funding and cost allocations;
- A plan to ensure compliance with public-records law; and
- A plan for the transition and implementation which addresses the changes in the number of the department's personnel and related transition issues and business processes, including the department's plan to resume the operation of the service should the contractor fail to perform within performance standards and provisions of the contract and identifying the full-time equivalent positions and resources subject to outsourcing.

This bill also amends s. 322.135, F.S., to allow DHSMV to use county constitutional officers, other than tax collectors, as driver license service agents in those counties where the tax collector is not elected or where the tax collector does not provide the services. These other constitutional officers would have the same powers and duties as tax collectors (including collection of the $5.25 service charge) when acting as DHSMV's driver license agents. This change will increase the department's options for providing driver licensing services in certain counties. According to DHSMV, currently there are two counties (Broward and Calhoun) in which there are discussions regarding using constitutional officers other than tax collectors as driver's license agents.

The tax collector is an elected constitutional officer in 64 counties. In the following counties, the tax collector is appointed by the county commission: Miami-Dade, Broward and Volusia.

C. SECTION DIRECTORY:

Section 1. Directs DHSMV to study outsourcing its driver licensing services; requires DHSMV to submit a report to the Governor, the President of the Senate and the Speaker of the House of Representatives by January 1, 2007; provides issues to be studied; and requires a cost-benefit analysis and a transition and implementation plan.

Section 2. Amends subsection (2) of s. 318.15, F.S., providing for certain elected county officials used by DHSMV as driver licensing agents to collect a drivers license suspension clearance service charge.

Section 3. Amends subsection (1) of s. 322.02, F.S., providing legislative intent for certain elected county officials to be used by DHSMV as driver licensing agents.

Section 4. Amends subsection (10) of s. 322.135, F.S., providing for certain elected county officials to be used by DHSMV as driver licensing agents.

Section 5. Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DHSMV has indicated that the study and report required by this bill can be performed with existing department resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a significant direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Driver License Program (Division of Driver Licenses) is funded from driver license fees that the Driver License Program collects and from general revenue. In fiscal year 2005-06, the Driver License Program has a budget of $83.6 million with 1,317 authorized positions. In fiscal year 2004-05 the Driver Licenses Program collected about $186 million from driver license fees and from other driver license related revenues. The Division currently operates 100 field offices distributed throughout the state. Almost 1,000 of the Division's positions are assigned to field operations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Federal Motor Carrier Safety Administration rules and regulations prohibit States from allowing third parties to administer CDL knowledge exams and, therefore, this area could not be contracted out by DHSMV.

According to DHSMV, certain types of privatized driver license testing, such as commercial vehicles skills tests that require special equipment, may save enough public expense to justify the investment of rigorous oversight needed to offset the risk of fraud. However, DHSMV has detected several major cases and numerous lesser instances of fraud in the course of monitoring privatized driver license testing. In instances of fraudulent CDL activity, DHSMV has decertified contracts with third party testers and recalled the drivers to state facilities for retesting.

DHSMV stated that a three-year pilot project for outsourcing of the Class D and E driver license testing began in the spring of 2000. The project involved seven third party administrators (TPAs) throughout the State. The department's final evaluation of this project revealed tendencies toward less rigorous

testing, with a need for strong oversight. Many issues were found involving record keeping and road test performance. The monitors experienced difficulty accessing customer files and viewing the performance of testers. A review showed that in all cases, the conviction, crash and insurance suspension rates were significantly higher for customers who went to a TPA than for those individuals who tested at a driver license office.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On December 6, 2005 the Committee on Transportation amended HB 267 to provide for DHSMV to use county constitutional officers, other than tax collectors, as driver license service agents in those counties where the tax collector is not elected or where the tax collector does not provide the services. The committee then voted 11-1 to report the bill favorably with committee substitute.

CHAMBER ACTION

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1 The Transportation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to driver license services; directing the
7 Department of Highway Safety and Motor Vehicles to study
8 outsourcing its driver license services; providing a
9 definition; requiring that the department submit a report
10 to the Governor and Legislature by a specified date;
11 providing requirements for the department with respect to
12 issues to be included in the study; requiring a cost-
13 benefit analysis and a transition and implementation plan;
14 amending s. 318.15, F.S.; providing for the collection of
15 certain service charges by authorized driver's license
16 agents; amending s. 322.02, F.S.; revising legislative
17 intent provisions to include references to county
18 constitutional officers providing driver license services;
19 amending s. 322.135, F.S.; authorizing the department to
20 contract with any county constitutional officer for driver
21 license services in certain counties; providing an
22 effective date.
23

24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. (1) The Department of Highway Safety and Motor
27 Vehicles shall study the outsourcing of its driver license
28 services and shall make recommendations to the Governor, the
29 President of the Senate, and the Speaker of the House of
30 Representatives by January 1, 2007. As used in this section, the
31 term "outsourcing" means the process of contracting with an
32 external service provider or other governmental agency to
33 provide a service, in whole or in part, while the department
34 retains the responsibility and accountability for the service.
35 (2) As part of its study, the department shall provide a
36 description of the services to be outsourced. Types of issues
37 for the department to consider must include, but need not be
38 limited to:
39 (a) A detailed description of the service to be outsourced
40 and a description and analysis of the department's current
41 performance of the service.
42 (b) A cost-benefit analysis describing the estimated
43 specific direct and indirect costs or savings; performance
44 improvements, including reducing wait times at driver license
45 offices; risks; and qualitative and quantitative benefits
46 involved in or resulting from outsourcing the service. The cost-
47 benefit analysis must include a detailed plan and timeline
48 identifying all actions that must be implemented to realize the
49 expected benefits.
50 (c) A statement of the potential effect on applicable
51 federal, state, and local revenues and expenditures. The

52 statement must specifically describe the effect on general
53 revenue, trust funds, general revenue service charges, and
54 interest on trust funds, together with the potential direct or
55 indirect effect on federal funding and cost allocations.
56 (d) A plan to ensure compliance with public records law.
57 (e) A transition and implementation plan for addressing
58 changes in the number of department personnel, affected business
59 processes, and employee-transition issues. Such a plan must also
60 specify the mechanism for continuing the operation of the
61 service if the contractor fails to perform or comply with the
62 performance standards and provisions of the contract. Within
63 this plan, the department shall identify all resources,
64 including full-time equivalent positions, which are subject to
65 outsourcing.
66 Section 2. Subsection (2) of section 318.15, Florida
67 Statutes, is amended to read:
68 318.15 Failure to comply with civil penalty or to appear;
69 penalty.--
70 (2) After suspension of the driver's license and privilege
71 to drive of a person under subsection (1), the license and
72 privilege may not be reinstated until the person complies with
73 all obligations and penalties imposed on him or her under s.
74 318.18 and presents to a driver license office a certificate of
75 compliance issued by the court, together with a nonrefundable
76 service charge of up to $47.50 imposed under s. 322.29, or
77 presents a certificate of compliance and pays the aforementioned
78 service charge of up to $47.50 to the clerk of the court or a
79 driver licensing agent authorized in s. 322.135, ~~tax collector~~

80 clearing such suspension. Of the charge collected by the clerk
81 of the court or a driver licensing agent ~~the tax collector~~, $10
82 shall be remitted to the Department of Revenue to be deposited
83 into the Highway Safety Operating Trust Fund. Such person shall
84 also be in compliance with requirements of chapter 322 prior to
85 reinstatement.
86 Section 3. Subsection (1) of section 322.02, Florida
87 Statutes, is amended to read:
88 322.02 Legislative intent; administration.--
89 (1) The Legislature finds that over the past several years
90 the department and individual county tax collectors have entered
91 into contracts for the delivery of full and limited driver
92 license services where such contractual relationships best
93 served the public interest through state administration and
94 enforcement and local government implementation. It is the
95 intent of the Legislature that future interests and processes
96 for developing and expanding the department's relationship with
97 tax collectors and other county constitutional officers through
98 contractual relationships for the delivery of driver license
99 services be achieved through the provisions of this chapter,
100 thereby serving best the public interest considering
101 accountability, cost-effectiveness, efficiency, responsiveness,
102 and high-quality service to the drivers in Florida.
103 Section 4. Subsection (10) is added to section 322.135,
104 Florida Statutes, to read:
105 322.135 Driver's license agents.--
106 (10) The department may contract with any county
107 constitutional officer to provide driver license services in the

108 same manner as provided in this section in a county in which the
109 tax collector is not elected or elects not to provide driver
110 license services.
111 Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 343 Services for Seniors
SPONSOR(S): Sobel and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	4 Y, 2 N	DePalma	Walsh
2) Local Government Council		Smith T.L.S.	Hamby TLC
3) Finance & Tax Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 343 permits each county, by ordinance, to create an independent special district to fund services for seniors throughout the county (the district). The boundaries of the district must be the same as the boundaries of the county.

The county must obtain approval, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes that may not exceed 0.5 mills of assessed valuation of all properties within the county which are subject to ad valorem county taxes. The referendum required to approve the ad valorem tax levy must be held at the first general election immediately following adoption of the ordinance creating the independent special district.

The bill provides for the districts to be governed by a senior council consisting of 11 members: the executive director of the area agency on aging; the county director of human services; one member of the board of county commissioners for a 2-year term; two nonvoting members of the legislative delegation for the county appointed by the delegation chair for a 2-year term; two representatives of the Florida League of Cities for a 2-year term; and four members appointed by the Governor for a 4-year term, initially staggered, with reappointment for one additional term permitted, and who meet certain additional qualifications.

The bill sets forth permissive powers, duties, and the financing and budgeting requirements of these districts.

The bill allows for cooperative agreements between districts.

The bill provides for dissolution of these districts.

The bill provides that these districts must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports.

The Revenue Estimating Conference determined that a similar bill filed in the 2005 Legislative session had an indeterminate fiscal impact on local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill provides for an additional general law which permits the creation of an independent special district other than by the Legislature. The bill permits each county, by ordinance, to create such a district to provide funding for services for seniors throughout the county.

Ensure lower taxes -- The bill provides that a county, upon creation by ordinance of the independent special district, must obtain approval at the next general election, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes that may not exceed 0.5 mills of assessed valuation of all properties within the county which are subject to ad valorem county taxes.

Empower families -- The bill permits the district senior councils to provide and maintain in the county preventive, developmental, treatment, rehabilitative and any other services deemed necessary for the general welfare of the county's seniors. In addition, the senior councils may consult and coordinate with other agencies serving seniors to prevent an overlap of services.

B. EFFECT OF PROPOSED CHANGES:

Background

Defining Special Districts

A special district is a local unit of *special purpose government* whose special purpose or purposes are implemented by specialized functions and related prescribed powers within a limited boundary.[1] An independent special district is one which does not have any of the following:

- membership of its governing body that is identical to that of the governing body of a single county or a single municipality;
- all members of its governing body that are appointed by the governing body of a single county or a single municipality;
- members of its governing body that are subject to removal at will by the governing body of a single county or a single municipality during their unexpired terms; or
- a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.[2]

An independent special district must comply with the creation, dissolution, and reporting requirements set forth in ch. 189, F.S.[3] An independent special district, except for a community development district, is also required to have a charter that meets certain minimum requirements.[4]

Restrictions on Creation of Independent Special Districts

Only the Legislature may create *independent* special districts, except as otherwise authorized by general law.[5] The exceptions currently authorized by general law include:

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[1] Section 189.403(1), F.S. (also exempting from the definition of special district: school districts, community college districts, special improvement districts, municipal service taxing or benefit units, or boards which provide electrical service and which are a political subdivision of a municipality or are part of a municipality.
[2] Section 189.403(3), F.S.
[3] Section 189.4031(1), F.S.
[4] Sections 189.4031(2) and 189.404(3), F.S.
[5] Section 189.404(4), F.S.

- Municipalities, counties, or the Governor and Cabinet may create community development districts as provided by law.[6]
- Counties may create independent special districts for children's services,[7] county health and mental health care[8], or hospitals[9] by adopting the required charter.
- Any combination of two or more counties, municipalities, or the Governor and Cabinet may create a regional water supply authority.[10]
- Any combination of two or more counties may create a regional special district to provide for regional jails.[11]
- Any combination of two or more counties, municipalities, or other political subdivisions may create a regional special district to act as a regional transportation authority.[12]

Effect of Proposed Changes

Creation of Independent Special District by County Ordinance

HB 343 provides for an additional general law which permits the creation of an independent special district other than by the Legislature. The bill creates s. 125.903, F.S., to permit each county, by ordinance, to create an independent special district to provide funding for services for seniors. Seniors are defined as a "person who is at least 60 years of age."[13] The boundaries of such a district must be coterminous with the boundaries of the county.

The county must obtain approval, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes that may not exceed 0.5 mills of assessed valuation of all properties within the county which are subject to ad valorem county taxes. The referendum required to approve the ad valorem tax levy must be held at the next general election, i.e., the general election immediately subsequent to the adoption of the ordinance creating the independent special district.

The bill provides the legislative intent that funds collected through the creation of a district are used to support improvements in services for seniors, and that such funds are not used as a substitute for existing resources, or for resources that would otherwise be available for those services.

District Governing Board

The governing board of each district is a senior council, which must consist of 11 members:

- the executive director of the area agency on aging, or his or her designee who is a director of senior programs, as a permanent position;
- the county director of human services or his or her designee who is a director of elderly services, as a permanent position;
- one member of the board of county commissioners for a 2-year term;
- two nonvoting members of the legislative delegation for the county appointed by the delegation chair for a 2-year term;
- two representatives of the Florida League of Cities for a 2-year term; and
- four members appointed by the Governor for 4-year terms, initially staggered, with reappointment for one additional term permitted, and meeting these additional qualifications -
    - these members must, to the greatest extent possible, represent the cultural diversity of the county's population;

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[6] Section 190.005, F.S.
[7] Section 125.901, F.S. *et seq.*.
[8] Section 154.331, F.S.
[9] *See* ch. 155, F.S.
[10] Section 373.1962, F.S.
[11] Section 950.001, F.S.
[12] Section 163.567, F.S.
[13] ""Senior" means a person who is at least 60 years of age. HB 343 at lines 83-84.

- one of these members must be 60 years of age or older and a caretaker for an elderly person;
- these members must have been residents of the county for the previous 24-month period; and
- the county must recommend three names for each vacancy, determined by category, and the Governor must make a selection within a 45-day period or request a new list of candidates.

The Governor may remove a member for cause or upon the written petition of the county governing body. If any of the members of the senior council required to be appointed by the Governor resign, die, or are removed from office, the vacancy is filled by appointment by the Governor, using the same method as the original appointment, and such appointment to fill a vacancy shall be for the unexpired term of the person who resigns, dies, or is removed from office.

Members of the senior council shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses consistent with s. 112.061, F.S.

District Permissive Powers

The district senior council is given a number of permissive powers:

1. to provide and maintain in the county such preventive, treatment, and rehabilitative services for seniors as the senior council determines are needed for their general welfare;
2. to provide any other services as the senior council determines are needed for the general welfare of the county's seniors;
3. to allocate and provide funds for other agencies in the county which are operated for the benefit of seniors;
4. to collect information and statistical data and conduct research that will be helpful to the senior council and the county in deciding the needs of the county's seniors;
5. to consult and coordinate with other agencies serving seniors to prevent an overlap of services;
6. to lease or buy real estate, equipment, and personal property and construct buildings as needed to execute district powers and functions. Such purchases must be paid for with cash on hand or secured by funds deposited in financial institutions; no authority to issue bonds is granted; and
7. to employ, pay, and provide benefits for required district personnel.

District Duties

The district senior council is also charged with a number of duties, including:

1. election of a chair and a vice chair from among its members, and election of other officers as deemed necessary by the senior council;
2. identification and assessment of the needs of the county's seniors and submission to the county governing body of a written report describing:
   - the activities, services, and opportunities that will be provided to seniors;
   - the anticipated schedule for providing those activities, services, and opportunities;
   - the manner in which seniors will be served, including a description of arrangements and agreements which will be made with community organizations, state and local educational agencies, federal agencies, public assistance agencies, the court system, guardianship groups, and other applicable public and private agencies and organizations;
   - the special outreach efforts that will be undertaken to provide services to at-risk, abused, or neglected and ailing seniors;
   - the manner in which the senior council will seek and provide funding for unmet needs; and
   - the strategy that will be used for interagency coordination to maximize existing human and fiscal resources;

3. providing training and orientation to all new senior council members;
4. creation and adoption of bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the senior council's operation; and
5. providing an annual written report, due January 1 of each year, to the county's governing body, which includes:
    - information on the effectiveness of activities, services, and programs offered by the senior council, including cost-effectiveness;
    - a detailed anticipated continuation budget and a list of all sources of requested funding, both public and private;
    - procedures used for early identification of at-risk seniors who need additional or continued services and methods for ensuring receipt of those services;
    - a description of the degree to which the senior council's objectives and activities are consistent with the goals of this section;
    - detailed information on the various programs, services, and activities available to, and the degree to which they have been successfully used by, seniors; and
    - information on those programs, services, and activities that should be eliminated, those which should be continued, and those that should be added to the basic format of the senior council.

Additionally, the senior council must also maintain minutes of each meeting, including a record of all votes cast, and make them available to any interested person.

District Financing and Budgeting

The bill also provides a number of financial and budgeting parameters for the districts:

- The fiscal year of the district is the same as that of the county.
- The senior council must prepare a tentative annual written budget of the district's expected income and expenditures, including a contingency fund.
- The senior council must also compute a proposed millage rate sufficient to fund the tentative budget and comply with the provisions of s. 200.065, F.S., relating to the method of fixing millage, and fix the final millage rate by resolution of the senior council prior to adopting a final budget.
- The adopted budget and final millage rate are then certified and delivered to the governing body of the county as soon as possible following adoption The millage rate necessary to be applied to raise the funds budgeted for district operations and expenditures, once adopted by resolution of the senior council, must be included in each certified budget.
- The millage rate may not exceed 0.5 mills of assessed valuation of all properties subject to ad valorem county taxes within the county.
- After the district budget is certified and delivered to the county's governing body, it may not be changed or modified by the county's governing body or any other authority.
- All taxes collected under this section shall be paid directly to the senior council by the county tax collector or clerk of the circuit court, as appropriate.
- All moneys received by the senior council must be deposited in qualified public depositories, as defined in section 280.02, F.S., with separate and distinguishable accounts established specifically for the senior council. These funds may only be withdrawn by checks signed by the council chair and countersigned by one other member of the senior council or by a chief executive officer authorized by the senior council.
- The chair and the other member of the senior council or chief executive officer who signs its checks must each give a surety bond in the sum of at least $1,000 for each $1 million or portion thereof of the senior council's annual budget, which bond shall be conditioned on each faithfully discharging the duties of his or her office. The premium on such bond may be paid by the district as part of the expense of the senior council. No other senior council members have to give bond or other security.

- District funds may only be expended by check, except expenditures from a petty cash account not exceeding $100. Such petty cash expenditures must be recorded. Council funds other than petty cash may not be spent unless first budgeted for and approved by the senior council.
- The district must timely prepare and file a quarterly financial report which includes: for the quarter -- total council expenditures and receipts; a statement of the funds on hand, invested, or deposited; and total council administrative costs.
- After or during the first year of operation of the senior council, the governing body of the county, at its option, may fund in whole or in part the council budget from its own funds.

Dependent Special Districts

This bill does not prevent a county from creating a dependent special district within the boundaries of the county for the purpose of providing preventive, developmental, treatment, and rehabilitative services for seniors. This dependent district may seek grants from state, federal, and local agencies and accept donations from public and private sources if the district has the same type duties as a seniors' services district and has a budget that requires approval through an affirmative vote of the governing body of the county or may be vetoed by the governing body of the county.

Exercise of County Powers

The bill does not prohibit a county from exercising its powers authorized by general or special law to provide services for seniors.

Cooperative Agreements among Senior Councils

The bill provides that two or more senior councils may enter into two types of cooperative agreements:

1. a cooperative agreement to share administrative costs, including, but not limited to, staff and office space, if a more efficient or effective operation will result. Such a cooperative agreement must include provisions on apportioning costs between the senior councils, keeping separate and distinct financial records for each senior council, and resolving any conflicts that might arise under the cooperative agreement.
2. a cooperative agreement to seek grants, to accept donations, or to jointly fund programs serving multi-county areas. Such a cooperative agreement must include provisions for the adequate accounting of separate and joint funds.

District Dissolution

Any district created by the provisions of this bill may be dissolved by (1) a special act of the Legislature, (2) an ordinance of the county governing body, subject to the approval of the electorate, or (3) the procedures set forth in s. 189.4042, F.S.

Prior to being dissolved, the county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body for all county and municipal purposes as provided for under section 9, Article VII of the State Constitution.

District Compliance with Other Statutory Requirements

The bill requires that any district created pursuant to this section must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports required under part III of ch. 218, F.S., or any other report or documentation required by law, including the reporting requirements of ss. 189.415, 189.417, and 189.418, F.S.

Redesignation of Part V of Chapter 125, F.S.

The bill changes the title of Part V of ch. 125, F.S., from "Children's Services" to "Human Services" to include within the Part the purposes of the newly-created section.

C. SECTION DIRECTORY:

Section 1: Creates s. 125.903, F.S.; provides for the creation, governing body, powers, duties, and functions of an independent special district to provide funding for services for seniors throughout a county.

Section 2: Redesignates Part V of ch. 125, F.S.

Section 3: Amends s. 189.404(4), F.S.; adds a reference to newly-created s. 125.903, F.S.

Section 4: Provides that the act shall take effect upon becoming a law.

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 permits the establishment of an independent special district to provide funding for services for seniors throughout a county through the annual levy of an ad valorem tax as approved by the electors of the county. The Revenue Estimating Conference determined a similar bill filed in the 2005 Legislative session had an indeterminate fiscal impact on local government revenues. If all counties created a district and imposed the maximum 0.5 millage in ad valorem taxes, the Conference estimated the impact of that bill to have been $621.8 to $668.6 million in FY 2005-06.[14]

2. Expenditures:

   This bill may have a fiscal impact on local government expenditures in that it permits the establishment of an independent special district which may expend funds for services for seniors throughout a county. The bill, however, provides the intent of the Legislature that the expenditure of funds by the district are not to be used as a substitute for existing resources or for resources that would otherwise be available for services for seniors.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The collection of ad valorem taxes, as well as the operation of these districts, may have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

Should the districts determine to do so, the revenue raised by the independent special districts created by this bill may, under certain circumstances, be eligible for use as Medicaid matching funds.

[14] The Revenue Estimating Conference at an Impact Conference held on February 22, 2005. Data current through December 20, 2005.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The municipal/county mandates provision in section 18 of article VII of the Florida Constitution does not appear to be applicable since the bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill requires the district senior councils to make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the senior council's guidance, operation, governance, and maintenance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

Subsection (7)(a) permits counties to create dependent special districts for the purpose of providing preventive, developmental, treatment, and rehabilitative services for seniors, a power which counties seem to currently possess. Thus, it is not clear if this provision is intended to restrict the power of counties to create this type of special district in such a way that a county could only create a special district to provide preventive, developmental, treatment, and rehabilitative services for seniors if it has the duties required of senior services districts in this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to services for seniors; creating s.
3 125.903, F.S.; authorizing each county to create an
4 independent special district to provide funding for
5 services for seniors; requiring a district charter;
6 requiring approval by a majority vote of electors to
7 annually levy ad valorem taxes not to exceed a certain
8 maximum; requiring a referendum; creating a governing body
9 for the special district; specifying criteria for
10 membership to the governing body; providing terms of
11 office; clarifying that a county may provide services for
12 seniors or create a special district to provide such
13 services by general or special law; specifying the powers
14 and functions of a senior council on services for seniors;
15 requiring each senior council to appoint a chair and a
16 vice chair and elect officers, to identify and assess the
17 needs of the seniors in the county served by the senior
18 council, to provide training and orientation to new
19 members of the senior council, to make and adopt bylaws
20 and rules for the senior council's operation and
21 governance, and to provide an annual written report to the
22 governing body of the county; requiring the senior council
23 to maintain minutes of each meeting and to serve without
24 compensation; requiring the senior council to prepare a
25 tentative annual budget and to compute a millage rate to
26 fund the tentative budget; requiring that all tax moneys
27 collected be paid directly to the senior council by the
28 tax collector of the county and deposited in qualified

29 public depositories; specifying expenditures of funds;
30 requiring the senior council to prepare and file a
31 financial report with the governing body of the county;
32 providing that a district may be dissolved by a special
33 act of the Legislature or by ordinance by the governing
34 body of the county; specifying obligations of the county
35 if a district is dissolved; authorizing the governing body
36 of a county to fund the budget of the senior council from
37 its own funds after or during the senior council's first
38 year of operation; requiring a special district to comply
39 with statutory requirements related to the filing of a
40 financial or compliance report; authorizing a county to
41 create a dependent special district to provide certain
42 services for seniors; authorizing the district to seek
43 grants and accept donations from public and private
44 sources; providing legislative intent with respect to the
45 use of funds collected by a senior council; providing that
46 two or more senior councils may enter into a cooperative
47 agreement to share administrative costs, staff, and office
48 space and seek grants, accept donations, or jointly fund
49 programs serving multicounty areas; prohibiting senior
50 councils or districts from requiring matching funds from
51 certain service providers as a condition to provision of
52 services by the senior council or district; renaming part
53 V of chapter 125, F.S.; amending s. 189.404, F.S.;
54 revising county authority to create an independent special
55 district to include a reference to s. 125.903, F.S.;
56 providing an effective date.

57
58 Be It Enacted by the Legislature of the State of Florida:
59
60 Section 1. Section 125.903, Florida Statutes, is created
61 to read:
62 125.903 Services for seniors; independent special
63 district; senior council; powers, duties, and functions.--
64 (1) Each county may by ordinance create an independent
65 special district, as defined in ss. 189.403(3) and
66 200.001(8)(e), to provide funding for services for seniors
67 throughout the county in accordance with this section. Such
68 ordinance shall create a district charter that addresses and
69 contains the minimum requirements required by s. 189.404(3). The
70 boundaries of such district must be coterminous with the
71 boundaries of the county. The county governing body shall obtain
72 approval, by a majority vote of those electors voting on the
73 question, to annually levy ad valorem taxes that may not exceed
74 the maximum millage rate authorized by this section. Such
75 approval shall be obtained by submitting the question to a
76 referendum of the qualified electors in the county. The
77 referendum shall be held in conjunction with the next regularly
78 scheduled general election, in accordance with ss. 100.342 and
79 100.351. A district created under this subsection shall levy and
80 fix millage as provided in s. 200.065. Once the millage is
81 approved by the electorate, the district is not required to seek
82 approval of the electorate in future years to levy the
83 previously approved millage. For purposes of this section, the
84 term "senior" means a person who is at least 60 years of age.

85 (a) The governing body of the district shall be a senior
86 council. The senior council shall consist of 11 members,
87 consisting of the executive director of the area agency on aging
88 or his or her designee who is a director of senior programs; the
89 county director of human services or his or her designee who is
90 a director of elderly services; one member of the board of
91 county commissioners; two nonvoting members of the legislative
92 delegation for the county appointed by the delegation chair; two
93 representatives of the Florida League of Cities, and four
94 members appointed by the Governor. The executive director of the
95 area agency on aging and his or her designee and the county
96 director of human services and his or her designee are permanent
97 positions. The members appointed from the county commission, the
98 legislative delegation, and the Florida League of Cities shall
99 be appointed to 2-year terms each. The four members appointed by
100 the Governor shall represent, to the greatest extent possible,
101 the cultural diversity of the county's population. At least one
102 of the gubernatorial designees must be an individual who is a
103 caretaker for an elderly person and is 60 years of age or older.
104 Recommendations for these memberships shall be provided by the
105 county governing body. Three names shall be submitted for each
106 vacancy, determined by category. The gubernatorial appointees
107 shall be appointed to 4-year terms and may be reappointed for
108 one additional term of office. The Governor shall make a
109 selection within a 45-day period or request a new list of
110 candidates. All members appointed by the Governor must have been
111 residents of the county for the previous 24-month period. The
112 length of the terms of the initial appointees shall be adjusted

113 to stagger the terms. The Governor may remove a member for cause
114 or upon the written petition of the county governing body. If
115 any of the members of the senior council required to be
116 appointed by the Governor resigns, dies, or is removed from
117 office, the vacancy shall be filled by appointment by the
118 Governor, using the same method as the original appointment, and
119 such appointment to fill a vacancy shall be for the unexpired
120 term of the member who resigns, dies, or is removed from office.
121 (b) This subsection does not prohibit a county from
122 exercising the power authorized by general or special law to
123 provide services for seniors or to create a special district to
124 provide those services.
125 (2)(a) Each senior council may:
126 1. Provide and maintain in the county the preventive,
127 treatment, and rehabilitative services for seniors which the
128 senior council determines are needed for the general welfare of
129 seniors in the county.
130 2. Provide any other services which the senior council
131 determines are needed for the general welfare of seniors in the
132 county.
133 3. Allocate and provide funds for other agencies in the
134 county which are operated for the benefit of seniors.
135 4. Collect information and statistical data and conduct
136 research and assessments that will be helpful to the senior
137 council and the county in deciding the needs of seniors in the
138 county.
139 5. Consult and coordinate with other agencies dedicated to
140 the welfare of seniors to the end that the overlapping of

141 services will be prevented.
142 6. Lease or buy real estate, equipment, and personal
143 property and construct buildings as needed to execute the
144 foregoing powers and functions, except that such purchases may
145 not be made or building done unless paid for with cash on hand
146 or secured by funds deposited in financial institutions. This
147 subparagraph does not authorize a district to issue bonds of any
148 nature, and a district does not have the power to require the
149 imposition of any bond by the governing body of the county.
150 7. Employ, pay, and provide benefits for any part-time or
151 full-time personnel needed to execute the foregoing powers and
152 functions.
153 (b) Each senior council shall:
154 1. Immediately after the members are appointed, elect a
155 chair and a vice chair from among its members and elect other
156 officers as deemed necessary by the senior council.
157 2. Immediately after the members are appointed and
158 officers are elected, identify and assess the needs of seniors
159 in the county served by the senior council and submit to the
160 governing body of each county a written description of:
161 a. The activities, services, and opportunities that will
162 be provided to seniors.
163 b. The anticipated schedule for providing those
164 activities, services, and opportunities.
165 c. The manner in which seniors will be served, including a
166 description of arrangements and agreements that will be made
167 with community organizations, state and local educational
168 agencies, federal agencies, public assistance agencies, the

169 court system, guardianship groups, and other applicable public
170 and private agencies and organizations.
171 d. The special outreach efforts that will be undertaken to
172 provide services to seniors who are at-risk, abused, or
173 neglected and ailing.
174 e. The manner in which the senior council will seek and
175 provide funding for unmet needs.
176 f. The strategy that will be used for interagency
177 coordination to maximize existing human and fiscal resources.
178 3. Provide training and orientation to all new members
179 sufficient to allow them to perform their duties.
180 4. Make and adopt bylaws and rules for the senior
181 council's guidance, operation, governance, and maintenance, if
182 such rules are not inconsistent with federal or state laws or
183 county ordinances.
184 5. Provide an annual written report, to be presented no
185 later than January 1, to the governing body of the county. The
186 annual report must contain, but need not be limited to:
187 a. Information on the effectiveness of activities,
188 services, and programs offered by the senior council, including
189 cost-effectiveness.
190 b. A detailed anticipated budget for continuation of
191 activities, services, and programs offered by the senior council
192 and a list of all sources of requested funding, both public and
193 private.
194 c. Procedures used for early identification of at-risk
195 seniors who need additional or continued services and methods
196 for ensuring that the additional or continued services are

197 received.
198 d. A description of the degree to which the senior
199 council's objectives and activities are consistent with the
200 goals of this section.
201 e. Detailed information on the various programs, services,
202 and activities available to seniors and the degree to which the
203 programs, services, and activities have been successfully used
204 by seniors.
205 f. Information on programs, services, and activities that
206 should be eliminated; programs, services, and activities that
207 should be continued; and programs, services, and activities that
208 should be added to the basic format of the senior council.
209 (c) The senior council shall maintain minutes of each
210 meeting, including a record of all votes cast, and shall make
211 such minutes available to any interested person.
212 (d) Members of the senior council shall serve without
213 compensation but are entitled to receive reimbursement for per
214 diem and travel expenses consistent with s. 112.061.
215 (3)(a) The district shall maintain the same fiscal year as
216 that of the county.
217 (b) On or before July 1 of each year, the senior council
218 shall prepare a tentative annual written budget of the
219 district's expected income and expenditures, including a
220 contingency fund. The senior council shall, in addition, compute
221 a proposed millage rate within the voter-approved cap necessary
222 to fund the tentative budget and, prior to adopting a final
223 budget, comply with s. 200.065, relating to the method of fixing
224 millage, and fix the final millage rate by resolution of the

225 council. The adopted budget and final millage rate must be
226 certified and delivered to the governing body of the county as
227 soon as possible following the senior council's adoption of the
228 final budget and millage rate under chapter 200. Included in
229 each certified budget shall be the millage rate, adopted by
230 resolution of the senior council, necessary to be applied to
231 raise the funds budgeted for district operations and
232 expenditures. District millage may not exceed 0.5 mills of
233 assessed valuation of all properties within the county that are
234 subject to ad valorem county taxes.
235 (c) After the budget of the district is certified and
236 delivered to the governing body of the county, the budget may
237 not be changed or modified by the governing body of the county
238 or any other authority.
239 (d) All taxes collected under this section, as soon after
240 collection as is reasonably practicable, shall be paid directly
241 to the senior council by the tax collector of the county or the
242 clerk of the circuit court, if the clerk collects delinquent
243 taxes.
244 (e)1. All moneys received by the senior council shall be
245 deposited in qualified public depositories, as defined in s.
246 280.02, with separate and distinguishable accounts established
247 specifically for the senior council and may be withdrawn only by
248 checks signed by the chair of the senior council and
249 countersigned by one other member of the senior council or by a
250 chief executive officer authorized by the senior council.
251 2. Upon entering the duties of office, the chair and the
252 other member of the senior council or chief executive officer

253 who signs its checks shall each give a surety bond in the sum of
254 at least $1,000 for each $1 million or fraction thereof of the
255 senior council's annual budget, which bond shall be conditioned
256 upon the faithful discharge of the duties of his or her office.
257 The premium on such bond may be paid by the district as part of
258 the expense of the senior council. Other members of the senior
259 council may not be required to give bond or other security.
260 3. Funds of the district may only be expended by check,
261 except expenditures from a petty cash account, which account may
262 not at any time exceed $100. All expenditures from petty cash
263 must be recorded on the books and records of the senior council.
264 Funds of the senior council, except expenditures from petty
265 cash, may not be expended without prior approval of the senior
266 council, in addition to the budgeting thereof.
267 (f) Within 10 days, exclusive of weekends and legal
268 holidays, after the expiration of each quarter-annual period,
269 the senior council shall prepare and file with the governing
270 body of the county a financial report that includes:
271 1. The total expenditures of the senior council for the
272 quarter-annual period.
273 2. The total receipts of the senior council during the
274 quarter-annual period.
275 3. A statement of the funds the senior council has on
276 hand, has invested, or has deposited with qualified public
277 depositories at the end of the quarter-annual period.
278 4. The total administrative costs of the senior council
279 for the quarter-annual period.
280 (4) Any district created under this section may be

281 dissolved by a special act of the Legislature, or the county
282 governing body may by ordinance dissolve the district subject to
283 the approval of the electorate. If any district is dissolved
284 under this subsection, each county shall first obligate itself
285 to assume the debts, liabilities, contracts, and outstanding
286 obligations of the district within the total millage available
287 to the county governing body for all county and municipal
288 purposes as provided for under section 9, Article VII of the
289 State Constitution. Any district may also be dissolved under s.
290 189.4042.
291 (5) After or during the first year of operation of the
292 senior council, the governing body of the county, at its option,
293 may fund in whole or in part the budget of the senior council
294 from its own funds.
295 (6) Any district created under this section shall comply
296 with all other statutory requirements of general application
297 that relate to the filing of any financial reports or compliance
298 reports required under part III of chapter 218, or any other
299 report or documentation required by law, including the
300 requirements of ss. 189.415, 189.417, and 189.418.
301 (7)(a) Each county may by ordinance create a dependent
302 special district within the boundaries of the county for the
303 purpose of providing preventive, developmental, treatment, and
304 rehabilitative services for seniors. The district may seek
305 grants from state, federal, and local agencies and accept
306 donations from public and private sources if the district
307 complies with paragraphs (1)(a) and (2)(b) and has a budget that
308 requires approval through an affirmative vote of the governing

309 body of the county or that may be vetoed by the governing body
310 of the county.
311 (b) If the provisions of a county charter relating to the
312 membership of the governing board of a dependent special
313 district conflict with paragraph (1)(a), a county may by
314 ordinance create a dependent special district within the
315 boundaries of the county for the purpose of providing
316 preventive, developmental, treatment, and rehabilitative
317 services for seniors, and the district may seek grants from
318 state, federal, and local agencies and accept donations from
319 public and private sources if the district complies with
320 paragraph (2)(b) and has a budget that requires approval through
321 an affirmative vote of the governing body of the county or that
322 may be vetoed by the governing body of the county.
323 (8) It is the intent of the Legislature that the funds
324 collected under this section be used to support improvements in
325 services for seniors and that such funds not be used as a
326 substitute for existing resources or for resources that would
327 otherwise be available for services for seniors.
328 (9) Two or more senior councils may enter into a
329 cooperative agreement to share administrative costs, including,
330 but not limited to, staff and office space, if a more efficient
331 or effective operation will result. The cooperative agreement
332 must include provisions on apportioning costs between the senior
333 councils, keeping separate and distinct financial records for
334 each senior council, and resolving any conflicts that might
335 arise under the cooperative agreement.
336 (10) Two or more senior councils may enter into a

337 cooperative agreement to seek grants, accept donations, or
338 jointly fund programs serving multicounty areas. The cooperative
339 agreement must include provisions for the adequate accounting of
340 separate and joint funds.
341 (11) Senior councils or districts shall not require any
342 public or private service provider to provide additional
343 matching funds as a condition of the senior council's or
344 district's providing services or programs to seniors.
345 Section 2. Part V of chapter 125, Florida Statutes,
346 consisting of sections 125.901, 125.902, and 125.903, Florida
347 Statutes, and entitled "Children's Services," is renamed as
348 "Human Services."
349 Section 3. Paragraph (b) of subsection (4) of section
350 189.404, Florida Statutes, is amended to read:
351 189.404 Legislative intent for the creation of independent
352 special districts; special act prohibitions; model elements and
353 other requirements; general-purpose local government/Governor
354 and Cabinet creation authorizations.--
355 (4) LOCAL GOVERNMENT/GOVERNOR AND CABINET CREATION
356 AUTHORIZATIONS.--Except as otherwise authorized by general law,
357 only the Legislature may create independent special districts.
358 (b) A county may create an independent special district
359 which shall be adopted by a charter in accordance with s.
360 125.901, s. 125.903, or s. 154.331 or chapter 155, or which
361 shall be established by ordinance in accordance with s. 190.005,
362 or as otherwise authorized by general law.
363 Section 4. This act shall take effect upon becoming a law.

HJR 443

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 443 Property Tax Exemptions
SPONSOR(S): Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SJR 1344

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

SUMMARY ANALYSIS

If adopted by the voters, the amendment to the Florida Constitution proposed by this joint resolution will authorize the Legislature to enact, by general law, tax exemptions for any property owned by a county, municipality, or special district and used by it or leased and operated for governmental-governmental or governmental-proprietary purposes. The effect of the proposed amendment on the tax status of county, municipal, or special district property may be summarized as follows:

Counties: Currently, county property is immune from ad valorem taxation. If property owned by a county is leased to a private entity, the property is immune from ad valorem taxation regardless of the purpose for which the property is used. If the proposed amendment is viewed by the courts as an express waiver of county immunity, all county property may be subject to taxation unless exempt by general law. If the amendment is not viewed as a waiver, county property will remain immune from taxation.

Municipalities: The proposed amendment does not appear to effect the current mandatory constitutional tax exemption for municipal property owned and used exclusively by a municipality for an essential public purpose. The proposed amendment authorizes the Legislature to enact a general law exemption for municipal property used for non-essential public purposes. However, municipal property that is leased to a private entity and used for a governmental purpose may be subject to taxation unless the Legislature enacts a general law exempting the property (today, a general law exemption is unnecessary). Municipal property leased to a private entity for proprietary or for-profit purposes will remain taxable unless the Legislature enacts a general law exempting the property from taxation.

Special Districts: The Florida courts have treated special district property as municipal property for purposes of determining ad valorem taxation of district-owned property. The effect of the proposed amendment on special district property used exclusively by the special district for public purposes is unclear. Special district property that is leased to a private entity and used for a governmental purpose may be subject to taxation unless the Legislature enacts a general law exempting the property (today, a general law exemption is unnecessary). Special district property leased to a private entity for proprietary purposes would remain taxable unless the Legislature enacts a general law exempting the property.

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.

The Revenue Estimating Conference has not yet provided an official estimate of the fiscal impact of the constitutional amendment proposed by the joint resolution; however, adoption of the amendment may result in an indeterminate but significant negative fiscal impact on ad valorem tax revenues of entities that levy ad valorem taxes, including counties, cities, special districts, and school boards. Any negative impact on municipal and special district revenues may be offset, however, by a reduction in the amount of taxes paid by those entities.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The proposed amendment to the State Constitution authorizes the Legislature to provide tax exemptions for municipal or special district property used for certain purposes. Adoption of the proposed amendment by the electorate may increase involvement by government in private sector enterprises.

Ensure Lower Taxes: If the amendment proposed by this joint resolution is adopted, the adoption may result in a reduction of the amount of ad valorem taxes paid by municipalities and special districts on property used for certain purposes depending upon whether the Legislature, by general law, provides tax exemptions for such properties. The impact of the proposed amendment on the tax status of county and special district property is unclear as further discussed below.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Taxation Generally

The Florida Constitution preempts to the state all forms of taxation other than ad valorem taxes levied upon real estate and tangible personal property, except as provided by general law.[1] The Florida Constitution provides that counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes, and limits these taxes to 10 mills for all county purposes, 10 mills for all municipal purposes, and 10 mills for all school purposes.[2] Additional millage may be levied for the payment of bonds and taxes levied for a period not longer than two years when authorized by vote of the electors.

The Florida Constitution contains the overarching provision that "[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation" and sets forth the mandatory and permissive exemptions from this constitutional admonition regarding ad valorem taxation.[3]

The present Constitution further provides that where any public project financed by revenue bonds "is occupied or operated by any private corporation . . . pursuant to . . . lease . . . the property interest created by such . . . lease shall be subject to taxation to the same extent as other privately owned property."[4] Paralleling this constitutional provision, s. 196.001, F.S., makes "(a)ll leasehold interests in property . . . of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state" subject to taxation unless expressly exempted.

The Florida statutes require taxation, unless expressly exempt, of all real and personal property in this state, personal property belonging to persons residing in this state, and all leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.[5] Property is taxed either as real property, tangible personal property, or intangible personal property.[6] Real and tangible personal property is taxed by local

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[1] Art. VII, Sec.1, Fla. Const.
[2] Art. VII, Sec. 9, Fla. Const.
[3] Art. VII, Sec. 4 and Art. VII, Sec. 3(a), Fla. Const
[4] Art. VII, Sec. 10(c), Fla. Const.
[5] § 196.001(2), F.S.
[6] Section 192.001, F.S., defines these terms as follows: **"Real property"** means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably; **"Tangible personal property"** means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

governments, while intangible personal property is taxed by the state. Intangible tax revenues are deposited into the state's General Revenue Fund with the exception of intangible tax revenues collected on governmental leaseholds that are allocated to the school board of the county in which taxed leasehold property is located.

Governmental entities may lease public property to private entities. Leasehold interests in property owned by a governmental entity and leased to a private entity may not be subject to any tax, may be subject to the intangibles tax levied by the state, or may be subject to ad valorem taxes levied by local governmental entities; however, the determination of whether a leasehold interest is taxable requires a fact-specific analysis of each particular lease situation. The tax treatment of leasehold interests, and the separate underlying fee interest in the governmentally-owned real property, depends upon whether the property is used by the private entity in the performance of a governmental function, the terms of lease agreements (rental payments and length of lease term), the status of the governmental owner as either immune or exempt from taxation, and whether the project was financed using proceeds from government revenue bonds.

To the extent that any government property is exempt or immune from taxation, the tax base for all taxing authorities, including school districts, cities, counties, and special districts, is reduced. Because of its importance in local government finance, reductions in the ad valorem tax base can be significant.

Immunity or Exemption from Taxation

Generally, all property is subject to ad valorem taxation unless immune or exempt. "Immunity and exemption differ in that immunity connotes an absence of the power to tax while exemption presupposes the existence of that power, but the power is foreclosed by a constitutional or statutory provision."[7] According to the Florida Supreme Court, the Florida Constitution does not empower the Legislature to grant immunity from taxation to a governmental entity.[8]

The state and its political subdivisions have an "inherent sovereign immunity" from taxation, which "is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government."[9] Only the state and those entities which are expressly recognized in the Florida Constitution as performing a function of the state comprise "the state" for purposes of immunity; what comprises "the state" is thus limited to counties, entities providing a public system of education, and agencies, departments, or branches of state government that perform administration of the state government.[10] If an entity is 'immune' from taxation, any waiver of immunity must be expressly stated in either the Constitution or a statute.[11]

According to the Florida Supreme Court, the Florida Constitution does not empower the Legislature to grant an exemption from taxation where the exemption has no constitutional basis,[12] and each exemption is strictly construed against the party claiming the exemption.[13] In addition, the Legislature is not authorized to tax an entity, such as a municipality, if the constitution exempts the entity from

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"Construction work in progress" consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition; **"Intangible personal property"** means money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

[7] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1234 n. 7 (Fla.1996); *See* Orange State Oil Co. v. Amos, 130 So. 707 (Fla. 1930);

[8] Canaveral Port Authority v. Dep't of Revenue, 690 So.2d 1226 (Fla. 1996); Sebring Airport Authority v. McIntyre, 783 So.2d 238 (Fla. 2001).

[9] State ex rel. Charlotte County v. Alford, 107 So.2d 27, 29 (Fla.1958); Dickinson v. City of Tallahassee, 325 So.2d 1, 3 (Fla.1975).

[10] Canaveral Port Authority v. Department of Revenue, 690 So. 2d 1226 (Fla. 1996), reh'g denied, (Mar. 27, 1997).

[11] Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975).

[12] Canaveral Port Authority v. Dep't of Revenue, 690 So.2d 1226 (Fla. 1996); Sebring Airport Authority v. McIntyre, 783 So.2d 238 (Fla. 2001).

[13] Sebring Airport Authority v. McIntyre, 642 So.2d 1072 (Fla. 1994).

taxation.[14] Generally speaking, property owned by municipalities or special districts may be exempt (but not immune) from ad valorem taxation depending upon the use of the property.

Typically, all property used by private persons in commercial enterprises is subject to taxation, either directly or indirectly through taxation of the leasehold.[15] However, the tax treatment of public property that is leased to a private entity depends upon whether the governmental owner of the property is immune, as opposed to exempt, from taxation. The tax treatment of property that is owned by an exempt entity, such as a city, and leased to private parties has been the subject of much litigation through the years and several legislative attempts to clarify the extent to which these properties are taxable.

CURRENT SITUATION

Current Tax Treatment of County Property

Although the Florida Constitution does not expressly grant counties immunity from taxation, the Florida courts have long held that counties are subdivisions of the state and immune from taxation.[16] If an entity is 'immune' from taxation, any waiver of immunity must be expressly stated in either the Constitution or a statute.[17] The current tax treatment of county property may be summarized as follows:

a. Property owned and directly used by a county

Regardless of the manner in which a county uses county-owned property, or the purpose for which the county uses the property, the property is not subject to taxation because each county is immune from taxation as a subdivision of the state.[18]

b. Property owned by a county and leased to a private entity

Regardless of the manner in which a private entity uses leased county-owned property, the property is not taxable because each county is immune from taxation as a subdivision of the state. County-owned property remains immune from ad valorem taxation even if leased to a private party for non-governmental purposes.[19]

Current Tax Treatment of Municipal Property

Unlike state, county, and school districts, cities are not subdivisions of the state or immune from taxation. Rather, the Florida Constitution provides a self-executing mandatory exemption from taxation for "[a]ll property owned by a municipality and used exclusively by it for municipal or public purposes."[20] However, if the city chooses to lease city-owned property and permits the property to be used by a private entity, the mandatory ad valorem tax exemption ceases.[21] At that point, "[i]t is the utilization of leased property ... that determines whether [the property] is taxable under the Constitution."[22]

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[14] Dep't of Revenue v. City of Gainesville, 859 So.2d 595 (Fla. 1st DCA 2003).
[15] Williams v. Jones, 326 So.2d 425 (Fla. 1975).
[16] Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975); Alford v. State, 107 So.2d 27 (Fla. 1958); Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1958); Orlando Utilities Comm'n. v. Milligan, 229 So.2d 262 (Fla. 4th DCA 1969), cert. denied 237 So.2d 539 (Fla. 1970).
[17] Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975); Manatee County v. Town of Longboat Key, 365 So.2d 143 (Fla. 1978); Markham v. Broward County, 825 So.2d 472, 473 (Fla. 4th DCA 2002).
[18] Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1958); Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1228 (Fla.1996).
[19] Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957); Markham v. Broward County, 825 So.2d 472,473 (Fla. 4th DCA 2002).
[20] Art. VII, Sec. 3(a), Fla. Const.
[21] Sebring Airport Authority v. McIntyre, 718 So.2d 296 (Fla. 2nd. DCA 1998).
[22] Page, 714 So.2d at 1074, citing Straughn v. Camp, 293 So.2d 689, 695 (Fla.1974).

In addition, city property "used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation".[23] If city-owned property is leased to a private entity, the property may still be exempt from taxation if the property is used predominantly for literary, scientific, religious, or charitable purposes as provided by general law.[24]

The Florida courts have long held that the State Constitution does not permit the Legislature to exempt from taxation any class of real or personal property unless there is a constitutional basis for the exemption.[25] Conversely, the Legislature is not authorized to tax property owned by a governmental entity, such as a city, if the constitution exempts the entity from taxation. The current tax treatment of municipal property may be summarized as follows:

a. Property owned and exclusively used by a municipality for municipal or public purposes

Property owned and used by a municipality is exempt from taxation under the mandatory exemption provided by the Florida Constitution as long as the property is used exclusively by the municipality for a municipal or public purpose that "encompass[es] activities that are essential to the health, morals, safety, and general welfare of the people within the municipality". The governmental-governmental and governmental-proprietary tests for private interests in municipal property do not apply to property both owned and used exclusively by a municipality for a municipal or public purpose.[26]

b. Property owned by a municipality and leased to a private entity that performs a governmental-governmental function

Property owned by a municipality and leased to a private entity that uses the property in the performance of a governmental-governmental function is exempt from taxation only if the use by the private entity "could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."[27] A governmental function has been defined as one having to do with the administration of some phase of government, that is, exercising or dispensing some element of sovereignty, and a proprietary function has been defined as a function designed to promote the comfort, convenience, safety and happiness of the citizens.[28]

c. Property owned by a municipality and leased to a private entity for governmental-proprietary activities, including activities that generate profits benefiting the private entity or its shareholders

Property owned by a municipality and leased to a private entity for use in the course of governmental-proprietary functions is not exempt from ad valorem taxation. A governmental-proprietary function occurs when a nongovernmental lessee uses governmental property for proprietary and for-profit aims. Proprietary functions "promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government.[29]

The Florida Supreme Court has rejected the proposition that "a governmental lease to a [for profit] nongovernmental lessee [and so the underlying realty] is exempt from ad valorem taxation if the lessee [merely] serves a public purpose."[30] The court reasoned that, to avoid giving one private enterprise an

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[23] Art. VII, Sec. 3(a), Fla. Const.
[24] § 196.199(2)(c), F.S.
[25] Palethorpe v Thomson, 171 So.2d 526 (Fla. 1965); Sebring Airport Authority v. McIntyre, 783 So.2d 238 (Fla. 2001).
[26] Dep't of Revenue v. City of Gainesville, 2005 WL 3310297 (Fla. 2005).
[27] Dep't of Revenue v. City of Gainesville, 2005 WL 3310297 (Fla. 2005); Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001); Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., 341 So.2d 498 (Fla. 1976).
[28] Sebring Airport Authority v. McIntyre, 718 So.2d 296 (Fla. 2nd. DCA 1998); *See* McPhee v. Dade County, 362 So.2d 74 (Fla. 3d DCA 1978).
[29] Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001).
[30] Page v. City of Fernandina Beach, 714 So.2d 1070 (Fla. 1st DCA 1998), review denied 728 So.2d 201 (Fla. 1998); citing McIntyre, 642 So.2d at 1073.

advantage over another by virtue of its landlord's identity, the constitution strictly limits exemption from ad valorem taxation. Property leased to profit-making nongovernmental entities is exempt only when such entities use the property to carry out some sovereign function on the municipality's behalf (thereby presumably reducing the municipality's cost of providing governmental-governmental services).[31]

Current Tax Treatment of Special District Property

The Florida Supreme Court has concluded that, even if designated as such by the Legislature, certain special districts are not subdivisions of the state and immune from taxation.[32] Since special districts are not necessarily immune from taxation, special district property may be subject to ad valorem taxation unless otherwise exempt. The Florida Constitution does not contain an explicit ad valorem tax exemption for property owned by special districts; however, s. 189.403(1), F.S., defines "special district" as:

> a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. *For the purpose of s. 196.199(1), special districts shall be treated as municipalities.* [Emphasis added.][33]

While a special district is not a "municipality", the Florida courts have treated special district property as municipal property for purposes of determining ad valorem taxation of district-owned property.[34] In 1996, the Florida Supreme Court reviewed the tax status of property owned by an independent special district and leased to private entities engaged in nongovernmental activities.[35] Although the court did not explicitly address the tax status of all special district property, the court treated the special district property before it as if it were municipal property. In his dissenting opinion, Justice Overton stated that under the majority's opinion, counties and school districts are immune from taxation, municipalities are constitutionally exempt, and special districts fall into a third category judicially created by the court with no basis in the Florida Constitution.[36]

Based upon the courts' treatment of special district property as well as s. 189.403(1), F.S., the analysis provided above regarding taxation of municipal property appears to apply to special districts as well.

EFFECT OF PROPOSED CHANGES

The joint resolution proposes the following amendment to Article VII, section 3 of the Florida Constitution:

> (a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. Any property owned by a county, municipality, or special district and used by it or leased and operated for governmental-governmental or governmental-proprietary purposes may be exempted from taxation as provided by general law. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such

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[31] Page, 714 So.2d at 1074.

[32] Port of Palm Beach v. Dep't of Revenue, 684 So.2d 188 (Fla. 1996); Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1228 (Fla.1996). However, water control districts may be considered "political subdivisions" of the state and is thus immune from tax liability. Andrews v. Pal-Mar Water Control Dist. Dept. of Revenue, 388 So. 2d 4 (Fla. Dist. Ct. App. 4th Dist. 1980), rev. denied, 392 So. 2d 1371 (Fla. 1980) rev. denied, 392 So. 2d 1373 (Fla. 1980).

[33] Section 196.199(1), F.S., provides a tax exemption for governmental property, including municipal property, and sets forth conditions under which the exemption applies.

[34] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226 (Fla.1996); Sun 'N Lake of Sebring Imp. Dist. v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001), review denied 821 So.2d 298 (Fla. 2002) and 821 So.2d 302 (Fla. 2002).

[35] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226 (Fla.1996).

[36] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1232 (Fla.1996).

portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

The proposed amendment does not alter the current constitutional exemption for property used predominately for educational, literary, scientific, religious, or charitable purposes as authorized by general law.

Effect on Taxation of County Property

If the amendment proposed by the joint resolution is adopted, its effect on the tax treatment of county property depends upon whether the courts view the amendment as an express waiver of county immunity from taxation.[37]

a. Property owned and directly used by a county

Currently, regardless of the manner in which a county uses county-owned property or the purpose for which the property is used, county-owned property is not subject to taxation since each county is immune from taxation as a subdivision of the state. If the proposed amendment is adopted and the courts determine that the amendment is not an express waiver of county immunity, tax treatment of county property will remain unchanged, i.e., county-owned property will not be subject to taxation.

On the other hand, if the proposed amendment is adopted and is interpreted as a "waiver" of county immunity from taxation, all property owned and used by a county would be subject to taxation unless exempt by general law. In addition, adoption of the proposed amendment will place counties at a disadvantage from a tax perspective because the existing constitutional mandatory tax exemption for property owned and used exclusively by municipalities continues to apply, while counties will be dependent upon legislative enactment of tax exemptions for property owned and used exclusively by county governments.

b. Property owned by a county and leased to a private entity

Currently, regardless of the manner in which a private entity uses property leased from a county, the property is not taxable because each county is immune from taxation as a subdivision of the state. County-owned property remains immune from taxation even when leased to a private party for non-governmental purposes.[38] If the proposed amendment is adopted and the courts determine that the amendment is not an express waiver of county immunity, tax treatment of county property that is leased to private entities will remain unchanged, i.e., county-owned property will not be subject to taxation.

On the other hand, if the proposed amendment is adopted and is interpreted as a "waiver" of county immunity from taxation, property owned by a county and leased to a private entity for governmental-governmental or governmental-proprietary purposes would be subject to taxation unless exempt by general law.

Effect on Taxation of Municipal Property

a. Property owned and exclusively used by a municipality

If the amendment proposed by the joint resolution is adopted, property owned and used by a municipality remains exempt from taxation under the current mandatory exemption provided by the Florida Constitution as long as the property is used exclusively by the municipality for a municipal or public purpose that "encompass[es] activities that are essential to the health, morals, safety, and general welfare of the people within the municipality".

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[37] If an entity is 'immune' from taxation, any waiver of that immunity must be expressly stated in either the Constitution or a statute. Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975).

[38] Markham v. Broward County, 825 So.2d 472,473 (Fla. 4th DCA 2002); Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957).

If adopted, the proposed amendment authorizes the Legislature to exempt, by general law, municipal property used for non-essential public purposes.

b. Property owned by a municipality and leased to a private entity that performs a governmental-governmental function

Under current case law, municipal property that is leased to a private entity and used for governmental-governmental purposes appears to be exempt from ad valorem taxation under the mandatory, self-executing constitutional exemption for municipal property. If the amendment proposed by the joint resolution is adopted, such property may be subject to taxation unless the Legislature enacts a tax exemption by general law. Governmental-governmental functions are performed if the function performed by the private entity "could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."[39] A governmental function has been defined as one having to do with the administration of some phase of government, that is, exercising or dispensing some element of sovereignty, and a proprietary function has been defined as a function designed to promote the comfort, convenience, safety and happiness of the citizens.[40]

c. Property owned by a municipality and leased to a private entity for governmental-proprietary activities, including generating profits benefiting the private entity or its shareholders

Under current Florida case law, property owned by a municipality and leased to a private entity for governmental-proprietary activities is subject to ad valorem taxation. If the amendment proposed by the joint resolution is adopted, the Legislature will be authorized to enact, by general law, tax exemptions for property owned by a municipality and leased to a private entity that uses the property in the performance of governmental-proprietary functions. A governmental-proprietary function occurs when a nongovernmental lessee uses governmental property for proprietary and for-profit aims. Proprietary functions "promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government.[41]

Effect on Taxation of Special District Property

While a special district is not a "municipality", the Florida courts have treated special district property as municipal property for purposes of determining ad valorem taxation of district-owned property.

a. Property owned and exclusively used by a special district

Under current Florida case law, it appears that property owned by a special district and used by the special district for an essential public purpose is exempt from taxation. If the amendment proposed by this joint resolution is adopted, its effect on the tax status of property owned and directly used by a special district is unclear. If the amendment is adopted, it may be arguable that the automatic exemption no longer applies and that all special district property is taxable, including property used directly by the special district for public purposes, unless the Legislature enacts tax exemptions in general law. Special district property used directly by the special district for non-essential public purposes will be subject to taxation unless the Legislature exempts such property from taxation by general law.

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[39] Dep't of Revenue v. City of Gainesville, 2005 WL 3310297 (Fla. 2005); Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001); Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., 341 So.2d 498 (Fla. 1976).

[40] Sebring Airport Authority v. McIntyre, 718 So.2d 296 (Fla. 2nd. DCA 1998); *See* McPhee v. Dade County, 362 So.2d 74 (Fla. 3d DCA 1978).

[41] Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001).

b. Property owned by a special district and leased to a private entity that performs a governmental-governmental function

Under current Florida case law, it appears that special district property is exempt from taxation if the property is leased to a private entity that uses the property in the performance of a governmental-governmental function. If the amendment proposed by the joint resolution is adopted, property owned by a special district and used by it or leased and operated for governmental-governmental purposes may be subject to taxation unless the Legislature enacts tax exemptions for such property by general law.

c. Property owned by a special district and leased to a private entity for governmental-proprietary activities, including generating profits benefiting the private entity or its shareholders

Under current Florida case law, property owned by a special district and leased to a private entity for governmental-proprietary activities is subject to ad valorem taxation. If the amendment proposed by the joint resolution is adopted, the Legislature will be authorized to enact, by general law, tax exemptions for property owned by a special district and leased to a private entity that uses the property in the performance of governmental-proprietary functions.

C. SECTION DIRECTORY:

Please see Effect of Proposed Changes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The impact, if any, on state intangible tax revenues is indeterminate.

2. Expenditures: Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections estimates that the cost of compliance would be approximately $50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference has not yet provided an official estimate of the fiscal impact of the constitutional amendment proposed by the joint resolution; however, adoption of the amendment may result in an indeterminate but significant negative fiscal impact on ad valorem tax revenues of entities that levy ad valorem taxes, including counties, cities, special districts, and school boards. Any negative impact on municipalities and special district revenues may be offset, however, by a reduction in the amount of taxes paid by those entities.

   Section 196.012(6), F.S., provides that a "[g]overnmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, special district, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds." If the amendment proposed by the joint resolution is adopted, it is possible that this existing statutory provision, in conjunction with other statutory provisions, may result in an immediate negative fiscal impact on governmental entities that levy ad valorem taxes. In other words, property that may not be currently exempt may become exempt upon the amendment's adoption based upon existing

statutory exemptions, resulting in an immediate fiscal impact on taxing entities without further legislative action.

2. Expenditures: Under the proposed constitutional amendment, the Legislature is authorized to exempt from taxation certain properties owned by municipalities and special districts that are currently subject to taxation. If property that is currently taxed is exempt by general law after adoption of the amendment, tax payments by municipalities and special districts may be reduced.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: If approved by the voters the proposed constitutional amendment may reduce local governments' ad valorem tax base. Private entities leasing public property that is currently taxed will see a reduction in their obligations to pay taxes if their leasing agreements require them to pay ad valorem taxes imposed on the leased property and the Legislature enacts a general law exempting the leased property from taxation. The overall effect may be to shift the tax burden to non-exempt property through increased millage rates.

If approved by the voters, the amendment may provide a competitive advantage to private enterprises that lease tax exempt public property to the detriment of competitors that do not lease tax exempt public property.

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: The joint resolution requires placement of the following ballot statement (summary) on the election ballot:

> PROPERTY TAX EXEMPTIONS.--Proposing an amendment to the State Constitution to authorize property owned by a county, municipality, or special district and used by it or leased and operated for governmental-governmental or governmental-proprietary purposes to be exempt from taxation as provided by general law.

The ballot summary of a proposed amendment to the state constitution must accurately describe the amendment; otherwise, voter approval is a nullity.[42] In 2000, the Florida Supreme Court concluded that the accuracy requirement applies to amendments proposed by any authorized method, including amendments proposed by joint resolution of the Legislature.[43]

When a constitutional amendment is submitted to the vote of the people, the substance of the amendment must be printed in clear and unambiguous language on the ballot.[44] The ballot title and summary must advise the electorate of the true meaning and ramifications of the constitutional amendment, and must be fair and accurate[45] so that the voters will not be misled as to its purpose and are able to intelligently cast a ballot.[46] The ballot summary of a proposed state constitutional

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[42] Armstrong v. Harris, 773 So. 2d 7, 12 (Fla. 2000), reh'g denied, (Dec. 5, 2000) and cert. denied, 532 U.S. 958, 121 S. Ct. 1487, 149 L. Ed. 2d 374 (2001).
[43] Armstrong, 773 So. 2d at 12; Sancho v. Smith, 830 So. 2d 856 (Fla. 1st DCA 2002), review denied, 828 So. 2d 389 (Fla. 2002).
[44] § 101.161(1), F.S.
[45] Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000), reh'g denied, (Dec. 5, 2000) and cert. denied, 532 U.S. 958, 121 S. Ct. 1487, 149 L. Ed. 2d 374 (2001).
[46] Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998); Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563 (Fla. 1998); Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use may Cover Multiple Subjects, 699 So. 2d 1304 (Fla.

amendment may be defective if it omits material facts necessary to make the summary not misleading.[47] In evaluating a proposed constitutional amendment's chief purpose as stated in the ballot summary, a court must look to objective criteria inherent in the amendment itself, such as the amendment's main effect.

A court may not order the removal of a proposed constitutional amendment from the ballot unless the record shows that the proposal is "clearly and conclusively defective." [48]

B. RULE-MAKING AUTHORITY: This bill does not address rule-making authority.

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.[49] 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.[50] 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.[51]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1997), reh'g denied, (Oct. 6, 1997); Advisory Opinion to the Atty. Gen. re: Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972 (Fla. 1997).

[47] Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998).

[48] Askew v. Firestone, 421 So.2d 151, 154 (Fla.1982); Armstrong, 773 So.2d at 11.

[49] *See* Art. XI, Sec. 1, Fla. Const.

[50] *See* Art. XI, Sec. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

[51] *See* Art. XI, Sec. 5(c), Fla. Const.

1 House Joint Resolution
2 A joint resolution proposing an amendment to Section 3 of
3 Article VII of the State Constitution to authorize
4 property owned by a county, municipality, or special
5 district and used or leased and operated for certain
6 purposes to be exempt from taxation as provided by general
7 law.
8
9 Be It Resolved by the Legislature of the State of Florida:
10
11 That the following amendment to Section 3 of Article VII of
12 the State Constitution is agreed to and shall be submitted to
13 the electors of this state for approval or rejection at the next
14 general election or at an earlier special election specifically
15 authorized by law for that purpose:
16 ARTICLE VII
17 FINANCE AND TAXATION
18 SECTION 3. Taxes; exemptions.--
19 (a) All property owned by a municipality and used
20 exclusively by it for municipal or public purposes shall be
21 exempt from taxation. Any property owned by a county,
22 municipality, or special district and used by it or leased and
23 operated for governmental-governmental or governmental-
24 proprietary purposes may be exempted from taxation as provided
25 by general law. A municipality, owning property outside the
26 municipality, may be required by general law to make payment to
27 the taxing unit in which the property is located. Such portions
28 of property as are used predominantly for educational, literary,

29 scientific, religious or charitable purposes may be exempted by
30 general law from taxation.
31 (b) There shall be exempt from taxation, cumulatively, to
32 every head of a family residing in this state, household goods
33 and personal effects to the value fixed by general law, not less
34 than one thousand dollars, and to every widow or widower or
35 person who is blind or totally and permanently disabled,
36 property to the value fixed by general law not less than five
37 hundred dollars.
38 (c) Any county or municipality may, for the purpose of its
39 respective tax levy and subject to the provisions of this
40 subsection and general law, grant community and economic
41 development ad valorem tax exemptions to new businesses and
42 expansions of existing businesses, as defined by general law.
43 Such an exemption may be granted only by ordinance of the county
44 or municipality, and only after the electors of the county or
45 municipality voting on such question in a referendum authorize
46 the county or municipality to adopt such ordinances. An
47 exemption so granted shall apply to improvements to real
48 property made by or for the use of a new business and
49 improvements to real property related to the expansion of an
50 existing business and shall also apply to tangible personal
51 property of such new business and tangible personal property
52 related to the expansion of an existing business. The amount or
53 limits of the amount of such exemption shall be specified by
54 general law. The period of time for which such exemption may be
55 granted to a new business or expansion of an existing business
56 shall be determined by general law. The authority to grant such

57 exemption shall expire ten years from the date of approval by
58 the electors of the county or municipality, and may be renewable
59 by referendum as provided by general law.
60 (d) By general law and subject to conditions specified
61 therein, there may be granted an ad valorem tax exemption to a
62 renewable energy source device and to real property on which
63 such device is installed and operated, to the value fixed by
64 general law not to exceed the original cost of the device, and
65 for the period of time fixed by general law not to exceed ten
66 years.
67 (e) Any county or municipality may, for the purpose of its
68 respective tax levy and subject to the provisions of this
69 subsection and general law, grant historic preservation ad
70 valorem tax exemptions to owners of historic properties. This
71 exemption may be granted only by ordinance of the county or
72 municipality. The amount or limits of the amount of this
73 exemption and the requirements for eligible properties must be
74 specified by general law. The period of time for which this
75 exemption may be granted to a property owner shall be determined
76 by general law.
77 BE IT FURTHER RESOLVED that the following statement be
78 placed on the ballot:
79 CONSTITUTIONAL AMENDMENT
80 ARTICLE VII, SECTION 3
81 PROPERTY TAX EXEMPTIONS.--Proposing an amendment to the
82 State Constitution to authorize property owned by a county,
83 municipality, or special district and used by it or leased and
84 operated for governmental-governmental or governmental-

85 proprietary purposes to be exempt from taxation as provided by
86 general law.

HB 451

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 451 Affordable Housing for the Elderly
SPONSOR(S): Machek and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Elder & Long-Term Care Committee			
3) Transportation & Economic Development Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

The State Apartment Incentive Loan Program (SAIL) is administered by the Florida Housing Finance Corporation. The Elderly Housing Community Loan Program (EHCL) is a loan program within SAIL in which a portion of SAIL funds are reserved to loan to sponsors of housing for the elderly to provide for specific repairs and improvements.

HB 451 reduces the minimum match requirement that a sponsor must commit to in order to receive a loan under the EHCL Program from 15% to 5% of the loan amount. Last Session, the Legislature raised the maximum loan amount available under the EHCL Program from $200,000 to $750,000, which increased the potential match amount from $30,000 to $112,500. Reducing the minimum match rate to 5% would result in a maximum required match amount of $37,500.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility / Empowers Families - This bill reduces the matching requirement of the Elderly Housing Community Loan Program (EHCL) from 15% to 5% of the loan amount received. The EHCL Program, a component of the State Apartment Incentive Loan Program (SAIL), was amend by ch. 2005-102, L.O.F., (SB 724), to raise the maximum loan amount from $200,000 to $750,000. This amendment had the effect of increasing the amount potentially needed to match funds from $30,000 to $112,500.

B. EFFECT OF PROPOSED CHANGES:

The State Apartment Incentive Loan Program (SAIL), created in 1992, provides mortgage loans or loan guarantees to sponsors providing affordable housing to very-low income individuals.[1] SAIL is funded by the State Housing Trust Fund[2] and administered by the Florida Housing Finance Corporation.[3]

Florida Housing Finance Corporation has the authority to underwrite and make state apartment incentive loans or loan guarantees to sponsors that:

- use tax-exempt financing for the first mortgage and at least 20% of the units in the project are set aside for persons or families who have incomes which meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937;
- use taxable financing for the first mortgage and at least 20% of the units in the project are set aside for persons or families who have incomes below 50% of the state or local median income, whichever is higher, which shall be adjusted by the corporation for family size;
- use the federal low-income housing tax credit, and the project meets the tenant income eligibility requirements of s. 42 of the Internal Revenue Code of 1986; or
- the project is located in a county that includes, or has included within the previous 5 years, an area of critical state concern designated or ratified by the Legislature for which the Legislature has declared its intent to provide affordable housing, and 100% of the units in the project are set aside for person or families who have income below 120% of the state or local median income, whichever is higher.

Section (3) of s. 420.5087, F.S., requires that a percentage of SAIL funds be reserved for each of the following groups: commercial fishing workers and farmworkers; families; persons who are homeless; and elderly persons. The percentage of SAIL funds reserved for each group is determined by using the most recent statewide very-low income rental housing market study available at the time of publication of each notice of fund availability, but the reservation of funds to commercial fishing workers and farmworkers, families, and the elderly may not be less than 10% of the funds available at that time. Currently 24% of the total SAIL funds are reserved for the elderly.[4]

Section (3)(d) of 420.5087, F.S., requires that 10% of the amount reserved for the elderly be reserved to provide loans to sponsors of housing for the elderly to provide for building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. This part of the program is

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[1] s. 420.5087, F.S.

[2] The State Housing Trust Fund is funded by documentary stamp tax revenues. The documentary stamp tax is applicable to all recordable instruments requiring documentary stamps according to law, unless exempt pursuant to state or federal law. Revenue from documentary stamps is divided between the General Revenue Fund and various trust funds.

[3] s. 420 part V, F.S.

[4] Florida Housing Finance Corporation.

referred to as the Elderly Housing Community Loan Program (EHCL).[5] Under the EHCL Program, sponsors are required to match the loan amount received at a rate of 15%. Funds received from matching are used to supplement the loan amount received to pay the cost of repair or improvement for which these funds are available

According to the Florida Housing Finance Corporation, the match requirement is used to leverage state funds and make more fiscally prudent investments. Prior to the increase in the available loan amount, sponsors were awarded additional points during the loan application process for exceeding the minimum match requirement by a certain percentage. With the current increased loan amount and match rate, this process is no longer being used. However, under general operating policy, sponsors are still encouraged to match at the highest percentage possible, which can exceed the minimum percentage amount set in statute.

Prior to 2005, loans under the EHCL Program were capped at $200,000 with the requirement of a minimum match of 15% from the sponsor. Last Legislative Session, the Legislature increased the maximum loan amount from $200,000 to $750,000.[6] The increase in the maximum loan amount had the practical effect of increasing the potential match requirement from $30,000 to $112,500. Reducing the matching requirement to 5%, as provided in this bill, would result in a maximum required match amount of $37,500.

C. SECTION DIRECTORY:

Section 1. Amends s. 420.5087(3)(d), F.S., relating to the matching requirement of sponsors applying for the Elderly Housing Community Loan Program.

Section 2. Provides an effective date of upon becoming law.

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 appears to have no effect on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have an effect on local government revenue.

2. Expenditures:

   This bill does not appear to have an effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have an economic impact on a private sector apartment owner that qualifies under the EHCL Program by reducing the match amount required to qualify for a loan under the program, allowing them to take advantage of higher loan amounts.

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[5] See, Florida Housing Finance Corporation Rule 67-32, F.A.C.
[6] Ch. 2005-102, L.O.F., (SB 724).

D. FISCAL COMMENTS:

None

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 does not grant additional rulemaking authority for the Florida Housing Finance Corporation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

A representative of the Florida Association of Homes for the Aging[7] indicated that the bill will make the EHCL Program more user friendly since most of the facilities that apply for loans under the EHCL Program are financially constrained non-profits that are financed through the Department of Housing and Urban Development (HUD) and are subject to HUD's restrictions in raising rents. The Florida Association of Homes for the Aging suggests that at the higher 15% match rate, many sponsors that apply for the EHCL Program are finding it difficult to make use of the higher available loan amounts and that reducing the match rate would allow more sponsors to take advantage of the higher loan amounts now available.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[7] Mary Ellen Early, Senior Vice President of Public Policy

1 A bill to be entitled
2 An act relating to affordable housing for the elderly;
3 amending s. 420.5087, F.S.; decreasing the match for
4 certain loan amounts required by sponsors of housing for
5 the elderly; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Paragraph (d) of subsection (3) of section
10 420.5087, Florida Statutes, is amended to read:
11 420.5087 State Apartment Incentive Loan Program.--There is
12 hereby created the State Apartment Incentive Loan Program for
13 the purpose of providing first, second, or other subordinated
14 mortgage loans or loan guarantees to sponsors, including for-
15 profit, nonprofit, and public entities, to provide housing
16 affordable to very-low-income persons.
17 (3) During the first 6 months of loan or loan guarantee
18 availability, program funds shall be reserved for use by
19 sponsors who provide the housing set-aside required in
20 subsection (2) for the tenant groups designated in this
21 subsection. The reservation of funds to each of these groups
22 shall be determined using the most recent statewide very-low-
23 income rental housing market study available at the time of
24 publication of each notice of fund availability required by
25 paragraph (6)(b). The reservation of funds within each notice of
26 fund availability to the tenant groups in paragraphs (a), (b),
27 and (d) may not be less than 10 percent of the funds available
28 at that time. Any increase in funding required to reach the 10-

29 percent minimum shall be taken from the tenant group that has
30 the largest reservation. The reservation of funds within each
31 notice of fund availability to the tenant group in paragraph (c)
32 may not be less than 5 percent of the funds available at that
33 time. The tenant groups are:
34 (d) Elderly persons. Ten percent of the amount reserved
35 for the elderly shall be reserved to provide loans to sponsors
36 of housing for the elderly for the purpose of making building
37 preservation, health, or sanitation repairs or improvements
38 which are required by federal, state, or local regulation or
39 code, or lifesafety or security-related repairs or improvements
40 to such housing. Such a loan may not exceed $750,000 per housing
41 community for the elderly. In order to receive the loan, the
42 sponsor of the housing community must make a commitment to match
43 at least 5 ~~15~~ percent of the loan amount to pay the cost of such
44 repair or improvement. The corporation shall establish the rate
45 of interest on the loan, which may not exceed 3 percent, and the
46 term of the loan, which may not exceed 15 years. The term of the
47 loan shall be established on the basis of a credit analysis of
48 the applicant. The corporation shall establish, by rule, the
49 procedure and criteria for receiving, evaluating, and
50 competitively ranking all applications for loans under this
51 paragraph. A loan application must include evidence of the first
52 mortgagee's having reviewed and approved the sponsor's intent to
53 apply for a loan. A nonprofit organization or sponsor may not
54 use the proceeds of the loan to pay for administrative costs,
55 routine maintenance, or new construction.
56 Section 2. This act shall take effect upon becoming a law.

Local Government Council

Wednesday, January 25, 2006
1:00 p.m.
404 House Office Building

REVISED

Addendum A (1/25/2006 8:03 AM)

Allan G. Bense
Speaker

Ken Sorensen
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HJR 443**

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) Barreiro offered the following:
3
4 **Amendment (with ballot statement and title amendments)**
5 Remove line(s) 21 and 22 and insert:
6 exempt from taxation. Any property owned by a municipality or
7 special district and used by it or leased and
8
9 ======= B A L L O T S T A T E M E N T A M E N D M E N T ======
10 Remove line(s) 82 and 83 and insert:
11 State Constitution to authorize property owned by a municipality
12 or special district and used by it or leased and
13
14 ================ T I T L E A M E N D M E N T ================
15 Remove line(s) 4 and insert:
16 property owned by a municipality or special