Transportation & Economic Development Appropriations Committee

Monday, April 17, 2006
3:00 p.m. – 4:00 p.m.
Reed Hall (102)

Revised

Allan G. Bense
Speaker

Don Davis
Chair

Florida House of Representatives

Fiscal Council
Committee on Transportation & Economic Development Appropriations

Allan G. Bense
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Don Davis
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AGENDA
Transportation & Economic Development Appropriations
Monday, April 17, 2006
3:00 p.m. – 4:00 p.m. Reed Hall (102 EL)

I. Meeting Call to Order

II. Opening remarks by Chairman Davis

III. Consideration of the following bill(s):
HB 959 CS Motor Vehicle Safety Pilot Program by Roberson
HB 1115 CS South Florida Regional Transportation Authority by Greenstein
HB 1359 CS Hazard Mitigation for Coastal Redevelopment by Benson
HB 1467 CS Capital Formation by Grant
HB 7055 CS Enterprise Zones by Economic Development, Trade & Banking Committee
HB 7167 Growth Management by Growth Management Committee

IV. Closing Remarks & Adjournment

221 Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-6204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 CS Motor Vehicle Safety
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1022 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	7 Y, 0 N	DiVagno	Hamby
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

Public and private research on guard rails, cable barriers, clay berms, and other types of structural highway barriers indicates that, if properly placed and maintained, these systems improve the safety of public roads. The Federal Highway Administration, with assistance from the American Association of State Highway and Transportation Officials (AASHTO), other engineering associations, and state transportation agencies, continues to research and modify existing requirements for barrier systems.

The need for well-engineered guardrail and other highway barrier structures varies from state-to-state, as well as by the road's type, speed limit, and surrounding topographical features. One such feature common to Florida roadways is the location of natural water bodies, canals, or drainage ditches adjacent to highways.

National and statewide statistics for traffic fatalities caused by, or related to, the absence or failure of highway barrier systems and involving water are not readily available. However, the Florida Department of Transportation (FDOT) was able to collect specific data on traffic fatalities on the State Highway System involving vehicles submerged in water. In 2004, 28 fatal crashes occurred where the vehicles ran off the road and into an adjacent body of water in which 36 people died, including 20 whose deaths may have been caused by being submerged in water.

HB 959 CS requires that guardrails, retention cables, or other types of roadway barriers be installed, as part of a pilot project, along limited-access facilities in Miami-Dade County that are adjacent to canals or other water bodies. FDOT considers limited-access facilities to be part of the Florida Intrastate Highway System, which includes interstate highways and the Florida Turnpike. Roadways in existence on July 1, 2006, which are adjacent to water bodies, must have a barrier system installed by December 31, 2008. The barrier system must be installed and maintained by the appropriate governmental entity in compliance with FDOT standards established in rule. These standards must be designed to limit the loss of life by safely preventing an out-of-control motor vehicle from entering a canal or water body, based on a number of criteria. FDOT is directed to adopt rules to implement the provisions of this bill.

This bill would take effect July 1, 2006, and be repealed on December 31, 2011, unless reenacted by the Legislature.

HB 959 CS has an estimated $5.3 million fiscal impact on the State Transportation Trust Fund, according to FDOT, and already is included in the agency's Five-Year Work Program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 959 CS does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Highway Administration research reports dating back to 1987 indicate the value of guardrail and other barrier systems in preventing traffic accidents and fatalities. These barrier systems can take many forms including metal guardrails, thick metal cables, concrete barricades, and earthen berms. To be effective barrier systems must be engineered to address a highway's particular features and the type of traffic that comprises the majority of use. The American Association of State Highway and Transportation Officials (AASHTO) has developed a number of nationally accepted standards for barrier systems for federal and state transportation agencies. These standards are continually being tested and updated.

The Florida Department of Transportation (FDOT) has an active highway-barrier installation program, installing more than 2,645.5 miles of guardrails along state highways and the Florida Turnpike and 552 miles of barrier walls. The Turnpike has committed that by 2007, guardrails will run the Turnpike's entire length, from Wildwood to Homestead. Typically the guardrails or cable systems are installed as part of a construction or maintenance project.

Florida has more highway accidents involving out-of-control vehicles veering off a highway into an adjacent canal, drainage ditch, or natural water body than any other state. National and statewide statistics for traffic fatalities caused by, or related to, the absence or failure of highway barrier systems and involving water are not readily available. However, FDOT was able to compile statistics on 2003 and 2004 traffic accident data involving vehicles running off state roads and into water bodies. FDOT staff verified the data by pulling the written reports and reading the narrative description of the accident. FDOT's review indicated that:

- In 2004, there were 28 fatal crashes on the State Highway System where the vehicles ran off the road and into an adjacent body of water. These crashes resulted in 36 fatalities, of which 20 were possibly caused or influenced by the vehicle being submerged.
- In 2003, there were 34 crashes where the vehicles ran off the road and into an adjacent body of water. These crashes resulted in 49 fatalities, 28 of which were possibly caused or influenced by the vehicle being submerged.

According to the accident reports, some of these accidents were caused by drunken, medicated, speeding, or careless drivers. The reports also show that in some accidents the vehicle went over, under, or through guardrails or fences before going into the water.

Effect of Proposed Changes

HB 959 CS requires, as a pilot project, each limited-access facility in Miami-Dade County that is adjacent to a canal or other water body to have a system of guard rails, barrier cables, or other barrier installed between the highway and the water body. The guardrail or barrier system must be installed and maintained pursuant to FDOT standards, which must be designed to protect against loss of life from out-of-control vehicles running off highways and into water. The standards should take into account such factors as the width, depth, or proximity of the water body to the highway. Limited-access facilities in existence on July 1, 2006, which are adjacent to water bodies, must have a barrier system installed by December 31, 2008, according to the bill.

Section 334.03(13), F.S., defines a "limited access facility" as:

"a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be facilities from which trucks, buses, and other commercial vehicles are excluded; or they may be facilities open to use by all customary forms of street and highway traffic."

FDOT considers limited-access facilities to be part of the Florida Intrastate Highway System, which includes interstate highways and the Florida Turnpike. With this bill affecting only limited-access facilities, no county or municipal roads in Miami-Dade County would be subject to the pilot project's requirements.

FDOT is directed to adopt rules to implement the provisions of HB 959 CS, although it appears to have sufficient existing standards on guardrails and barrier systems based in part on national engineering standards.

HB 959 CS provides an effective date of July 1, 2006. The pilot project is repealed December 31, 2011, unless the Legislature reenacts it.

According to FDOT staff, the cost of implementing HB 959 CS is an estimated $5.3 million, which already is included in the FY 2006-2011 Five-Year Work Program.

C. SECTION DIRECTORY:

Section 1: Creates pilot project to install guardrail and other barriers on certain limited-access facilities in Miami-Dade County. Specifies requirements that must be met. Specifies deadline for completing installation. Provides for rule-making. Provides for future repeal.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   HB 959 CS has an estimated $5.3 million fiscal impact on the State Transportation Trust Fund, according to FDOT, and is already incorporated in the current Five-Year Work Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None, according to FDOT.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   HB 959 CS does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

HB 959 CS directs FDOT to adopt rules to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 27, 2006, meeting, the Transportation Committee adopted without objection a strike-all amendment from the bill's sponsor that limited the barrier-system requirement to limited-access highways (or certain state highways) adjacent to water bodies located only in Miami-Dade County as a pilot project.

This amendment eliminated the local unfunded mandate issues raised by the bill as originally filed, and reduced its fiscal impact on FDOT from $268 million to $5.3 million – which FDOT representatives said is already budgeted in the work program.

After adopting the main amendment, the committee voted 15-0 to report the bill as favorable with a committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to a motor vehicle safety pilot program; requiring certain limited access facilities that are adjacent to a canal or other water body to have a system of guardrails, retention cables, or other barriers between the highway and the canal or water body; providing for the Department of Transportation to establish certain standards governing the installation and maintenance of the barriers; requiring that barriers be installed for existing highways by a specified date; providing for future review and repeal; providing an effective date.

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

Section 1. Barrier required between a highway and a canal or a water body.--

(1) Each limited access facility in Miami-Dade County that is adjacent to a canal or other water body must have a system of guardrails, retention cables, or other barriers between the

24 highway and the canal or water body which are installed and
25 maintained in conformance with standards established by the
26 Florida Department of Transportation. The standards should
27 consider loss of life by safely preventing out-of-control motor
28 vehicles from entering the canal or water body, as well as the
29 width or depth of the canal or water body or its proximity to
30 the traveled way of the highway.
31 (2) For a limited access facility in existence on July 1,
32 2006, the barriers required under this section must be installed
33 on or before December 31, 2009.
34 (3) This pilot program shall stand repealed December 31,
35 2011, unless reviewed and saved from repeal through enactment by
36 the Legislature.
37 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 CS South Florida Regional Transportation Authority
SPONSOR(S): Greenstein
TIED BILLS: HB 1117 **IDEN./SIM. BILLS:** SB 2078 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	7 Y, 0 N	Camechis	Hamby
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

The South Florida Regional Transportation Authority (Authority) was created in 2003 to broaden the scope of the old Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning for Miami-Dade, Broward, and Palm Beach Counties. This bill makes a number of significant changes to the South Florida Regional Transportation Authority Act. Specifically, the bill:

- Provides that the state will not limit or alter the rights vested in the Authority to sell revenue bonds until all the bonds issued by the Authority are paid off and discharged.
- Clarifies the requirement that each of the three counties dedicate and transfer $2.67 million annually to the Authority for capital funding, as well as $4.2 million annually from each county for operating costs, by specifying that the funds must be dedicated prior to October 31 of each fiscal year.
- Deletes the provision allowing the three counties to collect a $2 fee on initial and renewal vehicle registrations within their boundaries upon approval by referendum.
- Specifies that at least $45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade and Palm Beach counties must be directed to the Authority to fund capital, operating, and maintenance expenses. This funding may only be dedicated to the Authority if all three counties impose the local-option funding source.
- Eliminates the operating and capital funding contributions from the three counties when the proposed $45 million becomes available; however, those local contributions resume if the new funding ceases.
- Extends from December 31, 2009, to December 31, 2015, the date on which the local capital funding for the Authority ceases if no federal matching funds have been received.
- Deletes references to "commuter rail" to reflect the authority's broader transit mission.
- Provides the Authority an additional $7.9 million each year, in total, from Broward, Miami-Dade, and Palm Beach counties to pay operating expenses.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: The bill eliminates the $2 fee on initial and renewal registrations of vehicles, which has not been implemented, in Broward, Miami-Dade, and Palm Beach Counties.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

In an attempt to ease the disruptions created for commuters while six-laning I-95 in the mid-1980s, the Florida Department of Transportation (FDOT) purchased an 81-mile rail corridor from CSX Transportation, Inc., (CSXT) for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all trains using the tracks. In 1989, the Legislature passed the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature enacted SB 686[1], which amended ch. 343, F.S., to reconfigure the Tri-Rail Commuter Rail Authority as the South Florida Regional Transportation Authority (the Authority). Supporters of the legislation said that a transportation authority, rather than a commuter rail system, would have a better opportunity to draw down federal matching dollars for public transit projects.

The Authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous statutory powers and responsibilities, including the power to acquire, sell, and lease property; to exercise the power of eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The Authority is governed by a nine-member board comprised of:

- A county commissioner from each of the three counties, selected by his or her peers;
- A citizen selected by each county commission who must live within the county he or she is representing, be a registered voter, and, insofar as practicable, represent civic and business interests of the community.
- One of the Florida Department of Transportation (FDOT) district secretaries who is responsible for one or more of the counties within the Authority's boundaries. That could be either the District 4 secretary (whose region includes Broward and Palm Beach counties) or the District 6 secretary (whose region includes Miami-Dade). At this time, the FDOT District 6 secretary serves on the Authority.
- Two citizens appointed by the governor who live in different counties within the Authority's jurisdiction but not the same county as the FDOT district secretary. They also must be registered voters.

The 2003 legislation also required each of the three counties served by the Authority to dedicate funding of $2.67 million annually, no later than August 1, 2003. The potential sources of this dedicated funding include:

- Local-option fuel taxes;

[1] ch. 2003-159, L.O.F.

- Each county's share of the local ninth-cent fuel tax;
- Proceeds of a $2 annual fee for registration or renewal of registration of each vehicle licensed in this state and registered in one of the three counties, if approved by a county referendum; or
- Other non-federal funds.

In addition, each county must provide annual funding of at least $1.565 million for operations. These local funding requirements are repealed if the Authority does not obtain federal matching funds by December 31, 2009. A fiscal analysis of the 2003 legislation indicated the $2 fee new and renewal registration fee would generate an estimated $8 annually for the Authority; however, the fees have not been imposed.

Meanwhile, the Authority is continuing to improve the existing commuter rail system with its 18 stations. Since 1995, the major project has been the $451-million "Double Track Corridor Improvement Program," which makes improvements to the existing 72-mile route and builds a second mainline track parallel to the existing track. About $334 million of the project cost has been funded by the Federal Highway Administration through direct grants; FDOT paid the rest. All but two miles of the double-tracking has been completed, and the Authority recently added additional trains and introduced new schedules that have trains leaving the stations every 20 minutes during morning and evening rush hours.

Last year, the commuter train system was averaging about 8,000 riders a day, but the near-completion of the double-tracking, plus better on-time reliability and more scheduled runs, has boosted daily ridership averages in 2006 to nearly 10,000, according to this bill's supporters.

The Authority continues to seek a significant dedicated funding source to complete the commuter train system and to implement its long-range transit plans. Dedicated funding is necessary for the Authority to issue revenue bonds in order to obtain federal transit grants that typically require a 50-50 match. Under the state's participation in the federal "New Starts" transit program, a local match of 25 percent is required, while the state provides the 25 percent and the federal government 50 percent.

EFFECT OF PROPOSED CHANGES

The bill makes a number of significant changes to the South Florida Regional Transportation Authority Act in ch. 343, F.S. These changes are briefly described as follows:

- Clarifies that the three counties must dedicate and transfer not less than $2.67million annually to the Authority for capital expenditures prior to October 31 of each fiscal year.
- Raises from $1.565 million annually to $4.2 million annually the amount of money each of the three counties must contribute to the Authority to pay its operating expenses, generating an additional $7.9 million annually for the Authority in operating funds.
- Deletes the $2 fee on initial and renewal vehicle registrations within the three-county area. The fee, which must be approved by voter referendum, has not been approved in any of the counties.
- Specifies that at least $45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade, and Palm Beach Counties must be directed to the Authority to fund capital, operating, and maintenance expenses. This funding may only be dedicated to the Authority if all three counties impose it. A potential source of funding is the local-option rental-car surcharge which is the subject of other currently filed bills (HB 301 CS and SB 2632).
- Eliminates the operating and capital funding contributions from the three counties when the proposed $45 million becomes available, but those local contributions would resume if the new funding ceases.
- Specifies that the state will not limit or alter the rights vested in the Authority to sell revenue bonds until all the bonds issued by the Authority are paid off and discharged

- Extends by six years, to December 31, 2015, the date on which the local capital funding for the Authority ceases if no federal matching funds have been received. Section 343.58(1) , F.S., which specifies the local capital funding sources, is repealed under that circumstance.
- Deletes obsolete phrases and makes clarifying changes. Key among them is deleting references to "commuter rail," so that the Authority's broader area of responsibility is to plan, develop, operate, and fund a transit system. This reflects the Authority's plans to operate an integrated system of public transportation options.

C. SECTION DIRECTORY:

Section 1: Amends s. 343.54, F.S., to revise obsolete language.

Section 2: Amends s. 343.55, F.S., to provide that that state will not limit or alter this section related to Authority revenue bonds until all the bonds issued under this section are paid off and discharged.

Section 3: Amends s. 343.58, F.S., to modify timing of county contributions to the authority; deletes $2 initial and renewal registration fee for vehicles registered in the three counties; lays groundwork for Authority to receive certain, new local-option funding from the three counties; raises the counties' contributions to the Authority's operating expenses; provides for cessation and resumption of county contributions; extends repeal date to December 31, 2015 for county capital contributions.

Section 4: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   As a state entity, the Authority could receive an additional $7.9 million in operating funds each year because of the proposed increase in the current operating contributions made by the three counties, from $1.565 million annually to $4.2 million. In subsequent years, if HB 301 CS or SB 2632 creating a local-option rental-car surcharge becomes law, and Broward, Miami-Dade, and Palm Beach counties impose it, the Authority could receive at least $45 million a year for all of its expenses. If that occurs, the existing dedicated sources of funding the three counties contribute to the Authority would be repealed.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill increases from $1.565 million annually to $4.2 million annually the amount of money Broward, Miami-Dade, and Palm Beach Counties each must contribute to the Authority to pay its operating expenses. If HB 301 CS or SB 2632, which create a state-authorized local-option recurring funding source, becomes law and is implemented by the three counties, the existing dedicated sources of funding the three counties contribute to the Authority is repealed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the Authority is successful in improving and promoting public transit in the three-county region, motorists and commercial carriers may benefit due to trips being diverted from the highways, and residents who do not drive may have access to more-affordable and dependable transportation.

D. FISCAL COMMENTS:

Section 3 of this bill includes a provision specifying, "At least $45 million of a state authorized, local-option recurring funding source available to Broward, Miami-Dade, and Palm Beach counties shall be directed to the authority to fund its capital, operating, and maintenance expenses. The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach counties each impose the local-option funding source." The bill's supporters say their intent is to tap into revenues from a proposed local-option rental-car surcharge fee that is the subject of different legislation (HB 301 CS and SB 2632). They estimate that the $2-a-day surcharge on most car rentals would generate at least $48 million each year if imposed by the three counties.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill increases the amount of funding Miami-Dade, Broward and Palm Beach Counties must each contribute to the Authority by $2.635 million. The bill needs to include a statement of important state interest and have a two-thirds vote of the membership of each house.

3. Other:

None.

B. RULE-MAKING AUTHORITY:

The Authority is subject to ch. 120, F.S., but none of the provisions in the bill as currently drafted appear to require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 4, 2006, meeting, the Transportation Committee adopted without objection one amendment that replaced the original $50 million in annual recurring state funds directed to the Authority with the provision for a minimum $45 million, state-authorized, local-option, recurring funding source for the Authority if imposed by Broward, Miami-Dade, and Palm Beach counties. The committee then voted 15-0 in favor of the bill and reported it as a CS.

CHAMBER ACTION

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 the South Florida Regional
7 Transportation Authority; amending s. 343.54, F.S.;
8 revising language relating to powers and duties of the
9 authority; deleting the term "commuter rail"; amending s.
10 343.55, F.S.; providing pledge to bondholders that the
11 state will not alter certain rights vested in the
12 authority that affect the rights of bondholders while
13 bonds are outstanding; amending s. 343.58, F.S.; revising
14 provisions for funding of the authority; requiring
15 counties served by the authority to annually transfer
16 certain funds before a certain date; removing provisions
17 for sources of that funding; removing authorization for a
18 vehicle registration tax; providing for a certain funding
19 source for capital, operating, and maintenance expenses;
20 revising county funding amounts to fund operations;
21 providing for cessation of specified county funding
22 contributions and providing for certain refunding of the
23 contributions under certain circumstances; revising

24 timeframe for repeal of specified funding provisions under
25 certain circumstances; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Paragraph (b) of subsection (1) of section
30 343.54, Florida Statutes, is amended to read:
31 343.54 Powers and duties.--
32 (1)
33 (b) It is the express intention of this part that the
34 authority be authorized to plan, develop, own, purchase, lease,
35 or otherwise acquire, demolish, construct, improve, relocate,
36 equip, repair, maintain, operate, and manage a transit system
37 and transit facilities; to establish and determine the policies
38 necessary for the best interest of the operation and promotion
39 of a transit system; and to adopt rules necessary to govern the
40 operation of a transit ~~commuter rail~~ system and transit ~~commuter~~
41 ~~rail~~ facilities. It is the intent of the Legislature that the
42 South Florida Regional Transportation Authority shall have
43 overall authority to coordinate, develop, and operate a regional
44 transportation system within the area served.
45 Section 2. Subsection (4) is added to section 343.55,
46 Florida Statutes, to read:
47 343.55 Issuance of revenue bonds.--
48 (4) The state pledges to and agrees with any person, firm,
49 corporation, or federal or state agency subscribing to or
50 acquiring the bonds to be issued by the authority for the
51 purposes of the South Florida Regional Transportation Authority

52 Act that the state will not limit or alter the rights vested in
53 the authority under this section until all bonds at any time
54 issued and secured by revenues remitted to the authority
55 pursuant to s. 343.58, together with the interest thereon, are
56 fully paid and discharged, insofar as the same affects the
57 rights of the holders of bonds issued under this section.
58 Section 3. Section 343.58, Florida Statutes, is amended to
59 read:
60 343.58 County funding for the South Florida Regional
61 Transportation Authority.--
62 (1) Each county served by the South Florida Regional
63 Transportation Authority must dedicate and transfer not less
64 than $2.67 million to the authority annually. The recurring
65 annual $2.67 million must be dedicated by the governing body of
66 each county prior to October 31 of each fiscal year ~~by August 1,~~
67 ~~2003~~. ~~Notwithstanding ss. 206.41 and 206.87, such dedicated~~
68 ~~funding may come from each county's share of the ninth cent fuel~~
69 ~~tax, the local option fuel tax, or any other source of local gas~~
70 ~~taxes or other nonfederal funds available to the counties. In~~
71 ~~addition, the Legislature authorizes the levy of an annual~~
72 ~~license tax in the amount of $2 for the registration or renewal~~
73 ~~of registration of each vehicle taxed under s. 320.08 and~~
74 ~~registered in the area served by the South Florida Regional~~
75 ~~Transportation Authority. The annual license tax shall take~~
76 ~~effect in any county served by the authority upon approval by~~
77 ~~the residents in a county served by the authority. The annual~~
78 ~~license tax shall be levied and the Department of Highway Safety~~

79 ~~and Motor Vehicles shall remit the proceeds each month from the~~
80 ~~tax to the South Florida Regional Transportation Authority.~~
81 (2) At least $45 million of a state-authorized, local-
82 option recurring funding source available to Broward, Miami-
83 Dade, and Palm Beach Counties shall be directed to the authority
84 to fund its capital, operating, and maintenance expenses. The
85 funding source shall be dedicated to the authority only if
86 Broward, Miami-Dade, and Palm Beach Counties each impose the
87 local-option funding source.
88 (3) ~~(2)~~ In addition, each county shall continue to annually
89 fund the operations of the South Florida Regional Transportation
90 Authority in an amount not less than $4.2 ~~$1.565~~ million.
91 Revenue raised ~~Such funds~~ pursuant to this subsection shall also
92 be considered a dedicated funding source.
93 (4) The current funding obligations under subsections (1)
94 and (3) shall cease upon commencement of the collection of
95 funding from the funding source under subsection (2). Should the
96 funding under subsection (2) be discontinued for any reason, the
97 funding obligations under subsections (1) and (3) shall resume
98 when collection from the funding source under subsection (2)
99 ceases. Payment by the counties will be on a pro rata basis the
100 first year following cessation of the funding under subsection
101 (2). The authority shall refund a pro rata share of the payments
102 for the current fiscal year made pursuant to the current funding
103 obligations under subsections (1) and (3) as soon as reasonably
104 practicable after it begins to receive funds under subsection
105 (2).

106 (5) If, by December 31, 2015 ~~2009~~, the South Florida
107 Regional Transportation Authority has not received federal
108 matching funds based upon the dedication of funds under
109 subsection (1), subsection (1) shall be repealed.
110 Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 CS Hazard Mitigation for Coastal Redevelopment
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	6 Y, 0 N, w/CS	Kliner	Kliner
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The bill provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available. Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include the payment of money, and contribution of land and construction of hurricane shelters and transportation facilities. For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area. Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies buy July 1, 2008. The bill requires for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.

The bill prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.

The bill will not have a significant impact on state government or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill directs local governments to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies buy July 1, 2008.

The bill authorizes the Department of Health to contact the DEP prior to permitting work that may be performed on on-site sewage systems seaward of the Coastal Construction Control Line.

Safeguard individual liberty. The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dune Armoring

Along with regulating construction along Florida's coastline, the DEP manages beach restoration projects to restore eroded shoreline in coordination with the federal and local governments. Subsequent maintenance of restored shorelines, referred to as nourishment, is also administered by the DEP.

Local governments are key players in beach management. All beach front communities are responsible for assuring compliance with zoning and building codes. Some play active roles in obtaining and maintaining beach access points, trash pickup and cleanup programs, dune vegetation regulation or maintenance, and water safety. Almost all counties, a number of cities, and several special districts now are involved in planning, implementing or maintaining a beach management activity such as inlet sand by-passing, beach restoration or dune restoration. The local government sponsor is responsible for planning the project, submitting information necessary to determine the priority of the proposal, obtaining necessary permits, bidding and contracting the work, and conducting subsequent monitoring.[1]

Federal agencies are involved in the regulation of beach activities through United States Army Corps of Engineers permits required for activities conducted seaward of mean high water, and through consultation required under the National Environmental Policy Act, the Endangered Species Act, the Marine Mammals Protection Act, and others. Typically, close coordination will take place with the National Marine Fisheries Service, the United States Fish and Wildlife Service, and the Environmental Protection Agency. Primary issues include provisions to protect sea turtles and shore birds, beach mice in those areas where they are still located, and Essential Fish Habitat.[2]

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[1] Department of Environmental Protection Report for the Governor's Coastal High Hazard Study Committee on Chapter 161, Florida Statutes -- December, 2005, page 3.
[2] Ibid.

The purpose of the Coastal Construction Control Line Program (CCCL) is to protect Florida's beaches and dunes while assuring reasonable use of private property. The Legislature initiated the CCCL Program to protect the coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Once destabilized, the valuable natural resources are lost, as are its important values for recreation, upland property protection, and environmental habitat. Adoption of a coastal construction control line establishes an area of jurisdiction in which special site and design criteria are applied for construction and related activities. These standards may be more stringent than those already applied in the rest of the coastal building zone because of the greater forces expected to occur in the more seaward zone of the beach during a storm event.

Under emergency conditions, local governments may authorize temporary armoring to immediately protect public and private infrastructure like homes, utilities and roads if those structures are threatened. In order to consider the armoring permanent, the property owner must submit a complete (CCCL) permit application to the DEP within 60 days of installing the armoring. Otherwise, the property owner must remove the temporary armoring structure.

The DEP permits the installation of "dune stabilization or restoration structures" and "beach stabilization or regeneration structures" only in limited circumstances and as temporary systems in order to evaluate (1) the structure's effectiveness, (2) the structure's effect on adjacent properties, and (3) the structure's environmental impact on the beach and dune system. If erosion occurs as a result of a storm event which threatens private structures or public infrastructure, the DEP, a municipality, or another political subdivision may install or have installed rigid coastal armoring structures so long as the following measures are considered with the emergency armoring:

- Protection of the beach-dune system.
- Siting and design criteria for the protective structure
- Impacts on adjacent structures
- Preservation of public beach access
- Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

Onsite Sewage Treatment and Disposal Systems

According to the Florida Department of Health, 31 percent of the population is served by estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment. [3]

Onsite sewage treatment and disposal systems are facilities constructed on individual sites used to provide wastewater disposal. Such systems usually consist of a septic tank and a subsurface infiltration system. Within the septic tank, sedimentation and some anaerobic digestion of solids occur. Septic tanks contain bacteria that grow best in oxygen-poor conditions. These bacteria carry out a portion of the treatment process by converting most solids into liquids and gases. Bacteria that require oxygen thrive in the drainfield and complete the treatment process begun in the septic tank. If the septic tank is working well, the remaining partially treated wastewater, referred to as septic tank effluent, which flows out of the tank may be relatively clear, although it still has an odor and may carry disease organisms. [4]

Section 381.0065, F.S., states it is the intent of the Legislature that where a publicly owned or Investor owned sewerage system is not available, the Department of Health (DOH) shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems. The section requires that a person may not perform any of these actions without first obtaining a permit from the department. In issuing onsite system (septic tank) permits, the DOH has no statute or rule that specifically addresses designated coastal high hazard areas or DEP-established coastal construction control lines (CCCL), both of which are established to protect Florida's coastal

[3] http://www.doh.state.fl.us/environment/ostds/intro.htm
[4] http://www.doh.state.fl.us/environment/OSTDS/pdfiles/forms/brochure.pdf

system and coastal infrastructure and private property. Section 381.0065(4), F.S., states that DOH "shall not make the issuance of such [septic tank] permits contingent upon prior approval" by DEP. Because DOH has no authority to enforce DEP's statutes or rules about location of facilities in the coastal zone and has no authority of its own in this regard, onsite systems are often permitted seaward of structures, where they are most vulnerable to damage from storm surges.

Coastal High Hazard Study Committee

On September 7, 2005, the Governor issued Executive Order 05-178, appointing members to the Coastal High Hazard Study Committee, which was charged with studying and formulating recommendations for managing growth in Coastal High Hazard Areas, defined as the Category 1 hurricane evacuation zones. The Committee was appointed to evaluate and make recommendations to resolve problems exposed by the extraordinary hurricane seasons in 2004 and 2005.

Regional Hurricane Evacuation Studies

Section 252.35, F.S., assigns responsibility to the Division of Emergency Management (DEM) to maintain a comprehensive statewide program of emergency management. The division is required to prepare a comprehensive emergency management plan that is operations oriented. The plan must include specific regional and interregional planning provisions and promote intergovernmental coordination of evacuation activities. The division has the capability to conduct regional hurricane evacuation studies. Such studies include a computerized model run by the National Hurricane Center to estimate storm surge depths and winds resulting from historical, hypothetical, or predicted hurricanes taking into account:

- Pressure
- Size
- Forward speed
- Track
- Winds

This model is known as SLOSH (Sea, Lake, and Overland Surges from Hurricanes). Calculations are applied to a specific locale's shoreline, incorporating the unique bay and river configurations, water depths, bridges, roads, and other physical features to estimate storm surge.[5]

Another model utilized by the Division is The Arbiter of Storms model or TAOS. The TAOS model is an integrated hazards model that provides data at a higher resolution than the SLOSH model does for surge. According to DEM, the TAOS model enhances the local government's ability to do effective hazard mitigation planning. Currently, SLOSH model storm surge calculations are not available at the same resolution statewide, or in a standard Geographical Information System (GIS) format. The TAOS model can perform calculations of storm hazard risk for the entire state at one time, and the results are available for addition to the GIS data base.

The SLOSH model calculates storm surge for an area of coastline called a basin. In order to provide complete coverage for the state's coastline, 11 separate SLOSH basins and models must be created and run. Unlike the SLOSH model which only calculates for storm surge, the TAOS model will also calculate an estimate of storm surge, wave height, maximum winds, inland flooding, debris and structural damage for the entire state at once. Furthermore, the model resolution for TAOS with respect to underwater and on-land data is much finer than for the SLOSH model. No computer model is perfectly accurate and calculations of storm surge from both TAOS and SLOSH contain some degree of uncertainty.[6]

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[5] http://www.nhc.noaa.gov/HAW2/english/surge/slosh_printer.shtml and http://www.floridadisaster.org/hurricane_aware/english/surge/x_slosh.htm

[6] http://www.floridadisaster.org/brm/lms/faq_taosslosh.htm

Periodic hurricane evacuation studies are required because of changing population dynamics. Populations and the existing transportation network define the speed with which an evacuation may be conducted. Regional hurricane evacuation studies are able to determine recommended timing intervals used to control a sequenced evacuation by locality.

Effects of Proposed Changes

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The bill provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include:

- Payment of money
- Contribution of land and construction of hurricane shelters and transportation facilities

For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service may be no greater than 16 hours

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies buy July 1, 2008.

The bill requires for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.

The bill prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.

C. SECTION DIRECTORY:

Section 1. Amends subsection (3) of s. 161.085, F.S., providing that unless authority has been revoked by the DEP, an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of a rigid coastal armoring structure. The DEP may revoke such

authority if the DEP determines that the structure harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings.

Sections 2 and 3. Amends paragraphs (d) and (h) of subsection (2) of section 163.3178, F.S. and adds subsection (9) to that section, to:

- Define Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

- Provide a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

- Limit mitigation so that such may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development. Mitigation must include:

    - Payment of money
    - Contribution of land and construction of hurricane shelters and transportation facilities

- Provide that for those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

- Place a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

- Require local governments to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

- Direct the Division of Emergency Management to manage the update of regional hurricane evacuation studies. Such studies must be done in a consistent manner and using the methodology for modeling storm surge that is used by the National Hurricane Center.

Section 4. Amends subsection (4) of section 381.0065, F.S., to require the Department of Health to be in receipt of a coastal construction control line permit issued by the Department of Environmental Protection before issuing a permit for work on an onsite sewage treatment and disposal system seaward of the coastal construction control line.

Section 5. The bill provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Dune armoring: According to the DEP, the fiscal impact is indeterminate yet probably neutral overall. The legislation would save DEP staff resources and money expended on fixing the damage caused by improperly installed emergency armoring. Such armoring increases beach erosion and damages the beach and dune system, increasing the cost of restoration and recovery projects. The cost savings is impossible to estimate with any accuracy as the costs of beach recovery and restoration projects vary greatly depending on site-specific circumstances.

   The DOH reports no fiscal impact to the agency.

   Hurricane studies: The Division of Emergency Management currently conducts the type of studies required by this bill. Such studies are usually funded through federal sources and recurring state funding is not usually provided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   According to the DEP, there would be no fiscal impact on local governments that properly use their authority to install or authorize emergency armoring.

   Certain local governments may spend an indeterminate amount of time and resources to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008. According to the Association of Counties, the expense is not considered to be substantial.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Improved assurance of proper coastal armoring will save private property by preventing coastal erosion, likely saving insurance as well as property repair and replacement costs. These savings could be substantial but are indeterminate.

Indeterminate savings could accrue to homeowners whose onsite sewage systems are not washed away during storms because better consideration is given to proper siting.

If an amendment to a local government comprehensive plan raises the population density within a coastal high hazard area, developers will need to provide mitigation options for on-site sheltering or transportation out of harms way.

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

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 cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Committee on Environmental Regulation approved a strike all amendment offered by the bill sponsor. The strike all differs from the bill as originally filed as follows.

The amendment defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The amendment requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The amendment provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include:

- Payment of money
- Contribution of land and construction of hurricane shelters and transportation facilities

For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

The amendment places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

The amendment removes the provision in the original bill that required a real estate agent to disclosure that the property considered for purchase lies within a hurricane evacuation zone.

CHAMBER ACTION

1 The Environmental Regulation 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 hazard mitigation for coastal
7 redevelopment; amending s. 161.085, F.S.; specifying
8 entities that are authorized to install or authorize
9 installation of rigid coastal armoring structures;
10 authorizing the Department of Environmental Protection to
11 revoke certain authority; amending s. 163.3178, F.S.;
12 defining the term "coastal high-hazard areas"; providing
13 criteria for mitigation for certain comprehensive plan
14 amendments; authorizing local governments to amend
15 comprehensive plans to increase residential densities for
16 certain properties; providing standards for certain
17 comprehensive plan compliance; requiring local governments
18 to adopt a certain level of service for out-of-county
19 hurricane evacuation under certain circumstances;
20 prohibiting new development of certain facilities in
21 certain areas; providing a deadline for local governments
22 to amend future land use maps; amending s. 163.3178, F.S.;
23 requiring the Division of Emergency Management to manage

24 certain hurricane evacuation studies; requiring that such
25 studies be performed in a specified manner; amending s.
26 381.0065, F.S.; requiring the issuance of certain permits
27 by the Department of Health to be contingent upon the
28 receipt of certain permits issued by the Department of
29 Environmental Protection; providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Subsection (3) of section 161.085, Florida
34 Statutes, is amended, and subsection (8) is added to that
35 section, to read:
36 161.085 Rigid coastal armoring structures.--
37 (3) If erosion occurs as a result of a storm event which
38 threatens private structures or public infrastructure and a
39 permit has not been issued pursuant to subsection (2), unless
40 the authority has been revoked by order of the department
41 pursuant to subsection (8), an ~~the~~ agency, political
42 subdivision, or municipality having jurisdiction over the
43 impacted area may install or authorize installation of rigid
44 coastal armoring structures for the protection of private
45 structures or public infrastructure, or take other measures to
46 relieve the threat to private structures or public
47 infrastructure as long as the following items are considered and
48 incorporated into such emergency measures:
49 (a) Protection of the beach-dune system.
50 (b) Siting and design criteria for the protective
51 structure.

52 (c) Impacts on adjacent properties.
53 (d) Preservation of public beach access.
54 (e) Protection of native coastal vegetation and nesting
55 marine turtles and their hatchlings.
56 (8) If an agency, political subdivision, or municipality
57 installs or authorizes installation of a rigid coastal armoring
58 structure that does not comply with subsection (3), and if the
59 department determines that the action harms or interferes with
60 the protection of the beach-dune system, adversely impacts
61 adjacent properties, interferes with public beach access, or
62 harms native coastal vegetation or nesting marine turtles or
63 their hatchlings, the department may revoke by order the
64 authority of the agency, political subdivision, or municipality
65 under subsection (3) to install or authorize the installation of
66 rigid coastal armoring structures.
67 Section 2. Paragraph (h) of subsection (2) of section
68 163.3178, Florida Statutes, is amended, and subsection (9) is
69 added to that section, to read:
70 163.3178 Coastal management.--
71 (2) Each coastal management element required by s.
72 163.3177(6)(g) shall be based on studies, surveys, and data; be
73 consistent with coastal resource plans prepared and adopted
74 pursuant to general or special law; and contain:
75 (h) Designation of coastal high-hazard ~~coastal~~ areas and
76 the criteria for mitigation for a comprehensive plan amendment
77 in a coastal high-hazard area~~, which for uniformity and planning~~
78 ~~purposes herein, are defined as category 1 evacuation zones~~. The
79 coastal high-hazard area is the area below the elevation of the

80 Category 1 storm surge line as established by a Sea, Lake and
81 Overland Surges from Hurricanes (SLOSH) computerized storm surge
82 model. The application for development ~~However, application of~~
83 ~~mitigation~~ and redevelopment policies, pursuant to s. 380.27(2),
84 and any rules adopted thereunder, shall be at the discretion of
85 local government.
86 (9)(a) A proposed comprehensive plan amendment shall be
87 found in compliance with state coastal high-hazard standards
88 pursuant to rules 9J-5.012(3)(b)(6) and 9J-5.012(3)(b)(7),
89 Florida Administrative Code, if:
90 1. The adopted level of service for out-of-county
91 hurricane evacuation is maintained; or
92 2. A 12-hour evacuation time to shelter is maintained and
93 shelter space reasonably expected to accommodate the residents
94 of the development contemplated by a proposed comprehensive plan
95 amendment is available; or
96 3. Appropriate mitigation to satisfy the provisions of
97 subparagraph 1. or subparagraph 2. is provided. Appropriate
98 mitigation shall include, but not be limited to, payment of
99 money, contribution of land, and construction of hurricane
100 shelters and transportation facilities. Required mitigation
101 shall not exceed the amount required for a developer to
102 accommodate impacts reasonably attributable to its development.
103 (b) For those local governments that have not established
104 a level of service for out-of-county hurricane evacuation by
105 July 1, 2008, the level of service shall be no greater than 16
106 hours.

107 (c) No new adult congregate living facilities, community
108 residential homes, group homes, homes for the aged, hospitals,
109 or nursing homes shall be located within the coastal high-hazard
110 area.
111 (d) This subsection shall become effective immediately and
112 shall apply to all local governments. No later than July 1,
113 2008, local governments shall amend their future land use map
114 and coastal management element to include the new definition of
115 coastal high-hazard area, the coastal high-hazard map, and the
116 appropriate mitigation strategies.
117 Section 3. Paragraph (d) of subsection (2) of section
118 163.3178, Florida Statutes, is amended to read:
119 163.3178 Coastal management.--
120 (2) Each coastal management element required by s.
121 163.3177(6)(g) shall be based on studies, surveys, and data; be
122 consistent with coastal resource plans prepared and adopted
123 pursuant to general or special law; and contain:
124 (d) A component which outlines principles for hazard
125 mitigation and protection of human life against the effects of
126 natural disaster, including population evacuation, which take
127 into consideration the capability to safely evacuate the density
128 of coastal population proposed in the future land use plan
129 element in the event of an impending natural disaster. The
130 Division of Emergency Management shall manage the update of the
131 regional hurricane evacuation studies, ensure such studies are
132 done in a consistent manner, and ensure that the methodology
133 used for modeling storm surge is that used by the National
134 Hurricane Center.

135 Section 4. Subsection (4) of section 381.0065, Florida
136 Statutes, is amended to read:
137 381.0065 Onsite sewage treatment and disposal systems;
138 regulation.--
139 (4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may
140 not construct, repair, modify, abandon, or operate an onsite
141 sewage treatment and disposal system without first obtaining a
142 permit approved by the department. The department may issue
143 permits to carry out this section, but shall not make the
144 issuance of such permits contingent upon prior approval by the
145 Department of Environmental Protection, except that the issuance
146 of a permit for work seaward of the coastal construction control
147 line established under s. 161.053 shall be contingent upon
148 receipt of any required coastal construction control line permit
149 from the Department of Environmental Protection. A construction
150 permit is valid for 18 months from the issuance date and may be
151 extended by the department for one 90-day period under rules
152 adopted by the department. A repair permit is valid for 90 days
153 from the date of issuance. An operating permit must be obtained
154 prior to the use of any aerobic treatment unit or if the
155 establishment generates commercial waste. Buildings or
156 establishments that use an aerobic treatment unit or generate
157 commercial waste shall be inspected by the department at least
158 annually to assure compliance with the terms of the operating
159 permit. The operating permit for a commercial wastewater system
160 is valid for 1 year from the date of issuance and must be
161 renewed annually. The operating permit for an aerobic treatment
162 unit is valid for 2 years from the date of issuance and must be

163 renewed every 2 years. If all information pertaining to the
164 siting, location, and installation conditions or repair of an
165 onsite sewage treatment and disposal system remains the same, a
166 construction or repair permit for the onsite sewage treatment
167 and disposal system may be transferred to another person, if the
168 transferee files, within 60 days after the transfer of
169 ownership, an amended application providing all corrected
170 information and proof of ownership of the property. There is no
171 fee associated with the processing of this supplemental
172 information. A person may not contract to construct, modify,
173 alter, repair, service, abandon, or maintain any portion of an
174 onsite sewage treatment and disposal system without being
175 registered under part III of chapter 489. A property owner who
176 personally performs construction, maintenance, or repairs to a
177 system serving his or her own owner-occupied single-family
178 residence is exempt from registration requirements for
179 performing such construction, maintenance, or repairs on that
180 residence, but is subject to all permitting requirements. A
181 municipality or political subdivision of the state may not issue
182 a building or plumbing permit for any building that requires the
183 use of an onsite sewage treatment and disposal system unless the
184 owner or builder has received a construction permit for such
185 system from the department. A building or structure may not be
186 occupied and a municipality, political subdivision, or any state
187 or federal agency may not authorize occupancy until the
188 department approves the final installation of the onsite sewage
189 treatment and disposal system. A municipality or political
190 subdivision of the state may not approve any change in occupancy

191 or tenancy of a building that uses an onsite sewage treatment
192 and disposal system until the department has reviewed the use of
193 the system with the proposed change, approved the change, and
194 amended the operating permit.
195 (a) Subdivisions and lots in which each lot has a minimum
196 area of at least one-half acre and either a minimum dimension of
197 100 feet or a mean of at least 100 feet of the side bordering
198 the street and the distance formed by a line parallel to the
199 side bordering the street drawn between the two most distant
200 points of the remainder of the lot may be developed with a water
201 system regulated under s. 381.0062 and onsite sewage treatment
202 and disposal systems, provided the projected daily sewage flow
203 does not exceed an average of 1,500 gallons per acre per day,
204 and provided satisfactory drinking water can be obtained and all
205 distance and setback, soil condition, water table elevation, and
206 other related requirements of this section and rules adopted
207 under this section can be met.
208 (b) Subdivisions and lots using a public water system as
209 defined in s. 403.852 may use onsite sewage treatment and
210 disposal systems, provided there are no more than four lots per
211 acre, provided the projected daily sewage flow does not exceed
212 an average of 2,500 gallons per acre per day, and provided that
213 all distance and setback, soil condition, water table elevation,
214 and other related requirements that are generally applicable to
215 the use of onsite sewage treatment and disposal systems are met.
216 (c) Notwithstanding the provisions of paragraphs (a) and
217 (b), for subdivisions platted of record on or before October 1,
218 1991, when a developer or other appropriate entity has

219 previously made or makes provisions, including financial
220 assurances or other commitments, acceptable to the Department of
221 Health, that a central water system will be installed by a
222 regulated public utility based on a density formula, private
223 potable wells may be used with onsite sewage treatment and
224 disposal systems until the agreed-upon densities are reached.
225 The department may consider assurances filed with the Department
226 of Business and Professional Regulation under chapter 498 in
227 determining the adequacy of the financial assurance required by
228 this paragraph. In a subdivision regulated by this paragraph,
229 the average daily sewage flow may not exceed 2,500 gallons per
230 acre per day. This section does not affect the validity of
231 existing prior agreements. After October 1, 1991, the exception
232 provided under this paragraph is not available to a developer or
233 other appropriate entity.
234 (d) Paragraphs (a) and (b) do not apply to any proposed
235 residential subdivision with more than 50 lots or to any
236 proposed commercial subdivision with more than 5 lots where a
237 publicly owned or investor-owned sewerage system is available.
238 It is the intent of this paragraph not to allow development of
239 additional proposed subdivisions in order to evade the
240 requirements of this paragraph.
241 (e) Onsite sewage treatment and disposal systems must not
242 be placed closer than:
243 1. Seventy-five feet from a private potable well.
244 2. Two hundred feet from a public potable well serving a
245 residential or nonresidential establishment having a total
246 sewage flow of greater than 2,000 gallons per day.

247 3. One hundred feet from a public potable well serving a
248 residential or nonresidential establishment having a total
249 sewage flow of less than or equal to 2,000 gallons per day.
250 4. Fifty feet from any nonpotable well.
251 5. Ten feet from any storm sewer pipe, to the maximum
252 extent possible, but in no instance shall the setback be less
253 than 5 feet.
254 6. Seventy-five feet from the mean high-water line of a
255 tidally influenced surface water body.
256 7. Seventy-five feet from the mean annual flood line of a
257 permanent nontidal surface water body.
258 8. Fifteen feet from the design high-water line of
259 retention areas, detention areas, or swales designed to contain
260 standing or flowing water for less than 72 hours after a
261 rainfall or the design high-water level of normally dry drainage
262 ditches or normally dry individual lot stormwater retention
263 areas.
264 (f) Except as provided under paragraphs (e) and (t), no
265 limitations shall be imposed by rule, relating to the distance
266 between an onsite disposal system and any area that either
267 permanently or temporarily has visible surface water.
268 (g) All provisions of this section and rules adopted under
269 this section relating to soil condition, water table elevation,
270 distance, and other setback requirements must be equally applied
271 to all lots, with the following exceptions:
272 1. Any residential lot that was platted and recorded on or
273 after January 1, 1972, or that is part of a residential
274 subdivision that was approved by the appropriate permitting

275 agency on or after January 1, 1972, and that was eligible for an
276 onsite sewage treatment and disposal system construction permit
277 on the date of such platting and recording or approval shall be
278 eligible for an onsite sewage treatment and disposal system
279 construction permit, regardless of when the application for a
280 permit is made. If rules in effect at the time the permit
281 application is filed cannot be met, residential lots platted and
282 recorded or approved on or after January 1, 1972, shall, to the
283 maximum extent possible, comply with the rules in effect at the
284 time the permit application is filed. At a minimum, however,
285 those residential lots platted and recorded or approved on or
286 after January 1, 1972, but before January 1, 1983, shall comply
287 with those rules in effect on January 1, 1983, and those
288 residential lots platted and recorded or approved on or after
289 January 1, 1983, shall comply with those rules in effect at the
290 time of such platting and recording or approval. In determining
291 the maximum extent of compliance with current rules that is
292 possible, the department shall allow structures and
293 appurtenances thereto which were authorized at the time such
294 lots were platted and recorded or approved.
295 2. Lots platted before 1972 are subject to a 50-foot
296 minimum surface water setback and are not subject to lot size
297 requirements. The projected daily flow for onsite sewage
298 treatment and disposal systems for lots platted before 1972 may
299 not exceed:
300 a. Two thousand five hundred gallons per acre per day for
301 lots served by public water systems as defined in s. 403.852.

302 b. One thousand five hundred gallons per acre per day for
303 lots served by water systems regulated under s. 381.0062.
304 (h)1. The department may grant variances in hardship cases
305 which may be less restrictive than the provisions specified in
306 this section. If a variance is granted and the onsite sewage
307 treatment and disposal system construction permit has been
308 issued, the variance may be transferred with the system
309 construction permit, if the transferee files, within 60 days
310 after the transfer of ownership, an amended construction permit
311 application providing all corrected information and proof of
312 ownership of the property and if the same variance would have
313 been required for the new owner of the property as was
314 originally granted to the original applicant for the variance.
315 There is no fee associated with the processing of this
316 supplemental information. A variance may not be granted under
317 this section until the department is satisfied that:
318 a. The hardship was not caused intentionally by the action
319 of the applicant;
320 b. No reasonable alternative, taking into consideration
321 factors such as cost, exists for the treatment of the sewage;
322 and
323 c. The discharge from the onsite sewage treatment and
324 disposal system will not adversely affect the health of the
325 applicant or the public or significantly degrade the groundwater
326 or surface waters.
327
328 Where soil conditions, water table elevation, and setback
329 provisions are determined by the department to be satisfactory,

330 special consideration must be given to those lots platted before
331 1972.
332 2. The department shall appoint and staff a variance
333 review and advisory committee, which shall meet monthly to
334 recommend agency action on variance requests. The committee
335 shall make its recommendations on variance requests at the
336 meeting in which the application is scheduled for consideration,
337 except for an extraordinary change in circumstances, the receipt
338 of new information that raises new issues, or when the applicant
339 requests an extension. The committee shall consider the criteria
340 in subparagraph 1. in its recommended agency action on variance
341 requests and shall also strive to allow property owners the full
342 use of their land where possible. The committee consists of the
343 following:
344 a. The Division Director for Environmental Health of the
345 department or his or her designee.
346 b. A representative from the county health departments.
347 c. A representative from the home building industry
348 recommended by the Florida Home Builders Association.
349 d. A representative from the septic tank industry
350 recommended by the Florida Onsite Wastewater Association.
351 e. A representative from the Department of Environmental
352 Protection.
353 f. A representative from the real estate industry who is
354 also a developer in this state who develops lots using onsite
355 sewage treatment and disposal systems, recommended by the
356 Florida Association of Realtors.

357 g. A representative from the engineering profession
358 recommended by the Florida Engineering Society.
359
360 Members shall be appointed for a term of 3 years, with such
361 appointments being staggered so that the terms of no more than
362 two members expire in any one year. Members shall serve without
363 remuneration, but if requested, shall be reimbursed for per diem
364 and travel expenses as provided in s. 112.061.
365 (i) A construction permit may not be issued for an onsite
366 sewage treatment and disposal system in any area zoned or used
367 for industrial or manufacturing purposes, or its equivalent,
368 where a publicly owned or investor-owned sewage treatment system
369 is available, or where a likelihood exists that the system will
370 receive toxic, hazardous, or industrial waste. An existing
371 onsite sewage treatment and disposal system may be repaired if a
372 publicly owned or investor-owned sewerage system is not
373 available within 500 feet of the building sewer stub-out and if
374 system construction and operation standards can be met. This
375 paragraph does not require publicly owned or investor-owned
376 sewerage treatment systems to accept anything other than
377 domestic wastewater.
378 1. A building located in an area zoned or used for
379 industrial or manufacturing purposes, or its equivalent, when
380 such building is served by an onsite sewage treatment and
381 disposal system, must not be occupied until the owner or tenant
382 has obtained written approval from the department. The
383 department shall not grant approval when the proposed use of the

384 system is to dispose of toxic, hazardous, or industrial
385 wastewater or toxic or hazardous chemicals.
386 2. Each person who owns or operates a business or facility
387 in an area zoned or used for industrial or manufacturing
388 purposes, or its equivalent, or who owns or operates a business
389 that has the potential to generate toxic, hazardous, or
390 industrial wastewater or toxic or hazardous chemicals, and uses
391 an onsite sewage treatment and disposal system that is installed
392 on or after July 5, 1989, must obtain an annual system operating
393 permit from the department. A person who owns or operates a
394 business that uses an onsite sewage treatment and disposal
395 system that was installed and approved before July 5, 1989, need
396 not obtain a system operating permit. However, upon change of
397 ownership or tenancy, the new owner or operator must notify the
398 department of the change, and the new owner or operator must
399 obtain an annual system operating permit, regardless of the date
400 that the system was installed or approved.
401 3. The department shall periodically review and evaluate
402 the continued use of onsite sewage treatment and disposal
403 systems in areas zoned or used for industrial or manufacturing
404 purposes, or its equivalent, and may require the collection and
405 analyses of samples from within and around such systems. If the
406 department finds that toxic or hazardous chemicals or toxic,
407 hazardous, or industrial wastewater have been or are being
408 disposed of through an onsite sewage treatment and disposal
409 system, the department shall initiate enforcement actions
410 against the owner or tenant to ensure adequate cleanup,
411 treatment, and disposal.

412 (j) An onsite sewage treatment and disposal system for a
413 single-family residence that is designed by a professional
414 engineer registered in the state and certified by such engineer
415 as complying with performance criteria adopted by the department
416 must be approved by the department subject to the following:
417 1. The performance criteria applicable to engineer-
418 designed systems must be limited to those necessary to ensure
419 that such systems do not adversely affect the public health or
420 significantly degrade the groundwater or surface water. Such
421 performance criteria shall include consideration of the quality
422 of system effluent, the proposed total sewage flow per acre,
423 wastewater treatment capabilities of the natural or replaced
424 soil, water quality classification of the potential surface-
425 water-receiving body, and the structural and maintenance
426 viability of the system for the treatment of domestic
427 wastewater. However, performance criteria shall address only the
428 performance of a system and not a system's design.
429 2. The technical review and advisory panel shall assist
430 the department in the development of performance criteria
431 applicable to engineer-designed systems.
432 3. A person electing to utilize an engineer-designed
433 system shall, upon completion of the system design, submit such
434 design, certified by a registered professional engineer, to the
435 county health department. The county health department may
436 utilize an outside consultant to review the engineer-designed
437 system, with the actual cost of such review to be borne by the
438 applicant. Within 5 working days after receiving an engineer-
439 designed system permit application, the county health department

440 shall request additional information if the application is not
441 complete. Within 15 working days after receiving a complete
442 application for an engineer-designed system, the county health
443 department either shall issue the permit or, if it determines
444 that the system does not comply with the performance criteria,
445 shall notify the applicant of that determination and refer the
446 application to the department for a determination as to whether
447 the system should be approved, disapproved, or approved with
448 modification. The department engineer's determination shall
449 prevail over the action of the county health department. The
450 applicant shall be notified in writing of the department's
451 determination and of the applicant's rights to pursue a variance
452 or seek review under the provisions of chapter 120.
453 4. The owner of an engineer-designed performance-based
454 system must maintain a current maintenance service agreement
455 with a maintenance entity permitted by the department. The
456 maintenance entity shall obtain a biennial system operating
457 permit from the department for each system under service
458 contract. The department shall inspect the system at least
459 annually, or on such periodic basis as the fee collected
460 permits, and may collect system-effluent samples if appropriate
461 to determine compliance with the performance criteria. The fee
462 for the biennial operating permit shall be collected beginning
463 with the second year of system operation. The maintenance entity
464 shall inspect each system at least twice each year and shall
465 report quarterly to the department on the number of systems
466 inspected and serviced.

467 5. If an engineer-designed system fails to properly
468 function or fails to meet performance standards, the system
469 shall be re-engineered, if necessary, to bring the system into
470 compliance with the provisions of this section.
471 (k) An innovative system may be approved in conjunction
472 with an engineer-designed site-specific system which is
473 certified by the engineer to meet the performance-based criteria
474 adopted by the department.
475 (l) For the Florida Keys, the department shall adopt a
476 special rule for the construction, installation, modification,
477 operation, repair, maintenance, and performance of onsite sewage
478 treatment and disposal systems which considers the unique soil
479 conditions and which considers water table elevations,
480 densities, and setback requirements. On lots where a setback
481 distance of 75 feet from surface waters, saltmarsh, and
482 buttonwood association habitat areas cannot be met, an injection
483 well, approved and permitted by the department, may be used for
484 disposal of effluent from onsite sewage treatment and disposal
485 systems.
486 (m) No product sold in the state for use in onsite sewage
487 treatment and disposal systems may contain any substance in
488 concentrations or amounts that would interfere with or prevent
489 the successful operation of such system, or that would cause
490 discharges from such systems to violate applicable water quality
491 standards. The department shall publish criteria for products
492 known or expected to meet the conditions of this paragraph. In
493 the event a product does not meet such criteria, such product

494 may be sold if the manufacturer satisfactorily demonstrates to
495 the department that the conditions of this paragraph are met.
496 (n) Evaluations for determining the seasonal high-water
497 table elevations or the suitability of soils for the use of a
498 new onsite sewage treatment and disposal system shall be
499 performed by department personnel, professional engineers
500 registered in the state, or such other persons with expertise,
501 as defined by rule, in making such evaluations. Evaluations for
502 determining mean annual flood lines shall be performed by those
503 persons identified in paragraph (2)(i). The department shall
504 accept evaluations submitted by professional engineers and such
505 other persons as meet the expertise established by this section
506 or by rule unless the department has a reasonable scientific
507 basis for questioning the accuracy or completeness of the
508 evaluation.
509 (o) The department shall appoint a research review and
510 advisory committee, which shall meet at least semiannually. The
511 committee shall advise the department on directions for new
512 research, review and rank proposals for research contracts, and
513 review draft research reports and make comments. The committee
514 is comprised of:
515 1. A representative of the Division of Environmental
516 Health of the Department of Health.
517 2. A representative from the septic tank industry.
518 3. A representative from the home building industry.
519 4. A representative from an environmental interest group.

520 5. A representative from the State University System, from
521 a department knowledgeable about onsite sewage treatment and
522 disposal systems.
523 6. A professional engineer registered in this state who
524 has work experience in onsite sewage treatment and disposal
525 systems.
526 7. A representative from the real estate profession.
527 8. A representative from the restaurant industry.
528 9. A consumer.
529
530 Members shall be appointed for a term of 3 years, with the
531 appointments being staggered so that the terms of no more than
532 four members expire in any one year. Members shall serve without
533 remuneration, but are entitled to reimbursement for per diem and
534 travel expenses as provided in s. 112.061.
535 (p) An application for an onsite sewage treatment and
536 disposal system permit shall be completed in full, signed by the
537 owner or the owner's authorized representative, or by a
538 contractor licensed under chapter 489, and shall be accompanied
539 by all required exhibits and fees. No specific documentation of
540 property ownership shall be required as a prerequisite to the
541 review of an application or the issuance of a permit. The
542 issuance of a permit does not constitute determination by the
543 department of property ownership.
544 (q) The department may not require any form of subdivision
545 analysis of property by an owner, developer, or subdivider prior
546 to submission of an application for an onsite sewage treatment
547 and disposal system.

548 (r) Nothing in this section limits the power of a
549 municipality or county to enforce other laws for the protection
550 of the public health and safety.
551 (s) In the siting of onsite sewage treatment and disposal
552 systems, including drainfields, shoulders, and slopes, guttering
553 shall not be required on single-family residential dwelling
554 units for systems located greater than 5 feet from the roof drip
555 line of the house. If guttering is used on residential dwelling
556 units, the downspouts shall be directed away from the
557 drainfield.
558 (t) Notwithstanding the provisions of subparagraph (g)1.,
559 onsite sewage treatment and disposal systems located in
560 floodways of the Suwannee and Aucilla Rivers must adhere to the
561 following requirements:
562 1. The absorption surface of the drainfield shall not be
563 subject to flooding based on 10-year flood elevations. Provided,
564 however, for lots or parcels created by the subdivision of land
565 in accordance with applicable local government regulations prior
566 to January 17, 1990, if an applicant cannot construct a
567 drainfield system with the absorption surface of the drainfield
568 at an elevation equal to or above 10-year flood elevation, the
569 department shall issue a permit for an onsite sewage treatment
570 and disposal system within the 10-year floodplain of rivers,
571 streams, and other bodies of flowing water if all of the
572 following criteria are met:
573 a. The lot is at least one-half acre in size;
574 b. The bottom of the drainfield is at least 36 inches
575 above the 2-year flood elevation; and

576 c. The applicant installs either: a waterless,
577 incinerating, or organic waste composting toilet and a graywater
578 system and drainfield in accordance with department rules; an
579 aerobic treatment unit and drainfield in accordance with
580 department rules; a system approved by the State Health Office
581 that is capable of reducing effluent nitrate by at least 50
582 percent; or a system approved by the county health department
583 pursuant to department rule other than a system using
584 alternative drainfield materials. The United States Department
585 of Agriculture Soil Conservation Service soil maps, State of
586 Florida Water Management District data, and Federal Emergency
587 Management Agency Flood Insurance maps are resources that shall
588 be used to identify flood-prone areas.
589 2. The use of fill or mounding to elevate a drainfield
590 system out of the 10-year floodplain of rivers, streams, or
591 other bodies of flowing water shall not be permitted if such a
592 system lies within a regulatory floodway of the Suwannee and
593 Aucilla Rivers. In cases where the 10-year flood elevation does
594 not coincide with the boundaries of the regulatory floodway, the
595 regulatory floodway will be considered for the purposes of this
596 subsection to extend at a minimum to the 10-year flood
597 elevation.
598 (u) The owner of an aerobic treatment unit system shall
599 maintain a current maintenance service agreement with an aerobic
600 treatment unit maintenance entity permitted by the department.
601 The maintenance entity shall obtain a system operating permit
602 from the department for each aerobic treatment unit under
603 service contract. The maintenance entity shall inspect each

604 aerobic treatment unit system at least twice each year and shall
605 report quarterly to the department on the number of aerobic
606 treatment unit systems inspected and serviced. The owner shall
607 allow the department to inspect during reasonable hours each
608 aerobic treatment unit system at least annually, and such
609 inspection may include collection and analysis of system-
610 effluent samples for performance criteria established by rule of
611 the department.
612 (v) The department may require the submission of detailed
613 system construction plans that are prepared by a professional
614 engineer registered in this state. The department shall
615 establish by rule criteria for determining when such a
616 submission is required.
617 Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1467 CS Capital Formation
SPONSOR(S): Grant and others
TIED BILLS: HB 1469 **IDEN./SIM. BILLS:** SB 2668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Olmedillo	Carlson
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates the Florida Capital Formation Act (Act), which is designed to increase the amount of venture capital investment in Florida by attracting early stage venture capital for emerging companies. The bill creates the following:

- **Florida Capital Investment Trust**, a state beneficiary public trust to hold contingent tax credits as a guarantee for investments made under the Act. Tax credits may only reduce tax liabilities for sales and use tax, corporate income tax, insurance premium tax and tax on wet marine and transportation insurance.
- **The Florida Opportunity Fund Management Corporation**, a non-profit corporation, which will organize the Florida Opportunity Fund, select an early stage venture capital investment fund allocation manager and manage the business affairs of the Florida Opportunity Fund.
- **The Florida Opportunity Fund,** which shall invest on a funds-of-funds basis emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida.

The bill appropriates $750,000, for fiscal year 2006-2007 from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities. The bill also reserves $75 million in tax credits as a guarantee of investments made under the Act.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government -- The bill creates the Florida Capital Investment Trust, the Florida Opportunity Fund Management Corporation, and the Florida Opportunity Fund. The bill provides the Department of Revenue (DOR) rule making authority to implement provisions of this Act.

The bill appropriates $750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

THE VENTURE CAPITAL INDUSTRY– AN OVERVIEW

Venture capital is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Venture capital is an important source of equity for startup companies.[1]

Venture capitalists generally:

- finance new and rapidly growing companies;
- purchase equity securities;
- assist in the development of new products or services;
- add value to the company through active participation;
- take higher risks with the expectation of higher rewards; and
- have a long-term orientation.[2]

Venture capitalists actively work with the company's management by contributing their experience and business savvy gained from helping other companies with similar growth challenges.

Venture capitalists mitigate the risk of venture investing by developing a portfolio of young companies in a single venture fund. A venture capitalist may invest before there is a real product or company organized (so called "seed investing"), or may provide capital to a company in its first or second stages of development known as "early stage investing."

Some organizations may include government affiliated investment programs that help startup companies either through state, local or federal programs. One common vehicle is the Small Business Investment Company or SBIC program administered by the Small Business Administration, in which a venture capital firm may augment its own funds with federal funds and leverage its investment in qualified investee companies.

Term of Investment

Depending on the investment focus and strategy of the venture firm, it will seek to exit the investment in the portfolio company within three to five years of the initial investment. While the initial public offering may be the most glamorous and heralded type of exit for the venture capitalist and owners of the company, most successful exits of venture investments occur through a merger or acquisition of the company by either the original founders or another company.

Management Fees

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[1] Available at http://www.nvca.org/def.html, last viewed March 27, 2006.

[2] Id.

As an investment manager, the general partner will typically charge a management fee to cover the costs of managing the committed capital.

STATE VENTURE CAPITAL IN FLORIDA

Venture capital refers to the early-stage financing of new companies with high growth potential. Venture capital investments typically have several characteristics, including an investment in a start-up or expansion-oriented company that has a higher level of risk than is typically associated with traditional bank lending activities; equity participation in the business by the venture capitalist; long-term investments with a 5- to 10-year time horizon; and an established mechanism for the payout of the venture capitalist at the end of that time period.[3]

Enterprise Florida, Inc. (EFI) reports that in Florida, total venture capital spending was more than $555 million for 114 deals in 2003 and 2004.[4] The EFI website lists 27 venture capital firms that have headquarters in Florida.[5]

EFI also reports that since the late 1990's, venture capital investment in Florida has fallen sharply both in absolute dollar terms and as a share of the U.S. total. Despite being the 4th most populous state, Florida ranks 13th in the U.S. in terms of venture capital investment in 2004. In 2004 Florida accounted for only $300 million, or 1.42% of the total venture capital funding in the U.S. [6]

State Investments in Venture Capital

Over the past decade, a number of states have adopted programs targeting the formal venture capital industry.[7] These programs include:

- Government-funded and managed venture capital funds (VCFs);
- Requiring public-sector pension funds to make venture capital investments (either directly or through VCFs);
- Tax credits for private investment in VCFs; and
- Government investment or government-guaranteed investment in private VCFs.[8]

Effects of Proposed Changes:

This bill creates the Florida Capital Formation Act (Act), and provides legislative findings and intent relating to the Act.

Definitions

The bill provides the following definitions:

- "Board" means the board of trustees of the Florida Capital Investment Trust.
- "Certificate" means a contract between the trust and a designated investor evidencing the terms of a guarantee or incentive granted to a designated investor.
- "Corporation" means the Florida Opportunity Fund Management Corporation created under the bill.
- "Designated investor" means a person, other than the board, who purchases an equity interest in the Florida Opportunity Fund or is a party to a certificate or who is a lender to the Florida Opportunity Fund and is a party to a certificate.

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[3] OPPAGA Report on the Cypress Equity Fund, Report No. 98-33. For more information, see the National Venture Capital Association (NVCA) website at http://www.nvca.org/def.html. The NVCA is a trade association that represents the U.S. venture capital industry. It is a member-based organization, which consists of venture capital firms that manage pools of risk equity capital designated to be invested in high growth companies.

[4] http://www.eflorida.com/businessadvantages/1/venturecapital.asp?level1=29&level2=159

[5] Id.

[6] Enterprise Florida, Inc.

[7] EFI reports that 39 states have adopted programs to deliver or facilitate the formation of local seed and venture capital resources. Id. at 3.

[8] See Daniel Sandler, *State Venture Capital Programs*, and *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

- "Florida Capital Investment Trust" or "trust" means a state beneficiary public trust created under the bill.
- "Florida Opportunity Fund" or "fund" means the private, for-profit limited partnership or limited liability company in which a designated investor purchases an equity interest or to which a designated investor extends credit.
- "Tax credit" means a contingent tax credit issued to offset tax liabilities imposed by this state, provided the proceeds of such tax are payable to the General Revenue Fund. A tax credit is not eligible to offset tax liabilities imposed by a political subdivision within this state.

Florida Capital Investment Trust
This bill creates the Florida Capital Investment Trust (Trust) as a state beneficiary public trust.

The bill creates a board of trustees (Board of Trustees) as follows:
- Five voting trustees and two nonvoting ex-officio trustees.
  - Three voting trustees appointed by the Governor.
  - One voting trustee appointed by the President of the Senate.
  - One voting trustee appointed by the Speaker of the House of Representatives.
  - One nonvoting ex officio trustee shall be the designee of Enterprise Florida, Inc., and serve at its pleasure.
  - One nonvoting ex officio trustee shall be the designee of the Florida Research Consortium and serve at its pleasure.

The bill establishes that the exercise of the powers of the Board of Trustees is deemed to be the performance of essential public purposes.

The Governor shall appoint one trustee to a term ending April 30, 2007 and two trustees ending April 30, 2009. The Senate and the House shall each appoint trustees to terms ending April 30, 2008. Thereafter, each voting trustee shall be appointed for a 3-year term. Ex-officio trustees serve annual terms and may be reappointed. A trustee's term ends on April 30 of his or her term expiration year. Trustees whose terms have expired may continue to serve until their replacements have been duly appointed and vacancies shall be filled in the same manner as original appointments.

Trustees must be selected based upon expertise and competence in the supervision of early stage investment managers, the fiduciary management of funds, the administration and management of a publicly listed company, or experience and competence in public accounting, auditing, and fiduciary responsibilities. The trustees will serve without compensation in the form of fees, per diem, or salary. Trustees may receive compensation or reimbursement for direct expenses, mileage, and other travel expenses related to the performance of their duties, pursuant to s. 112.061, F.S. Trustees may not have an interest in any entity to which a certificate is issued.

Powers and Limitations
The bill grants the Board of Trustees broad powers to carry out its purpose under the Act, including engaging consultants, expending funds, investing funds, contracting, bonding or insuring against loss, providing guarantees or other incentives, holding transferable tax credits, selling tax credits, or entering into any financial or other transaction.

In the event the Board of Trustees elects to hire employees, the bill requires such employees to be selected based on their knowledge and leadership in the field for which the person performs services for the Board of Trustees.

The bill requires the Board of Trustees, in conjunction with Department of Revenue (DOR) to develop a system for registration of tax credits received and transferred by the Trust. In addition, the Board of Trustees shall develop a documentation system to verify that claimed tax credits are valid.

The bill authorizes the Board of Trustees to charge fees for its guarantees to designated investors or for other services such that its operations may be conducted without subsequent legislative appropriation.

Issuance of Credits
The bill authorizes the issuance and transfer of credits to the Trust in the amount of $75 million. However, the bill limits the transfer of tax credits to $20 million for use in any single state fiscal year.

The Board of Trustees may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the Board of Trustees and such tax credits may only be transferred in increments of $100,000. Once the Board of Trustees transfers any tax credit, it shall immediately notify, in writing, the Governor, the President of the Senate, the Speaker of the House of Representatives and DOR. The Board of Trustees shall also be notified immediately of any transfers of tax credits by persons or businesses other than the Board of Trustees and shall notify DOR, in writing, of such transfers.

Tax credits may only serve to reduce tax liabilities imposed by chapter 212 (Sales and Use Tax), chapter 220 (Corporate Income Tax), s. 624.509 (insurance premiums taxes), or s. 624.510 (Tax on wet marine and transportation insurance). The bill specifies that an insurance company claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit.

Any original sale of tax credits by the board shall be by competitive biding unless the sale is for the full face value of the credits. The use of transferred tax credits may not occur prior to July 1, 2011 or after July 1, 2036.

The bill grants DOR, in conjunction with the Board of Trustees, rule making authority to set the manner and form of documentation required to claim tax credits granted or transferred under this Act, and the requisites to prove an affirmative showing of qualification for such tax credits.

Florida Opportunity Fund Management Corporation
At the request of the Board of Trustees, Enterprise Florida, Inc. shall facilitate the creation of the Florida Opportunity Fund Management Corporation (Fund Corporation), as a private not-for-profit corporation. Enterprise Florida, Inc. shall be the Fund Corporation's sole member. The bill provides that the Fund Corporation is not a public corporation or an instrumentality of the state. The Fund Corporation shall have all powers granted under its organizational documents and shall indemnify directors to the broadest extent permissible under the laws of Florida.

Board of Directors
Enterprise Florida, Inc.'s vice chair shall select from its board of directors a five person-appointment committee (Committee). The Committee shall select five initial members to the board of directors (Board of Directors) for the Fund Corporation.

The initial members of the Board of Directors shall include persons who have expertise in the areas of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as deemed appropriate by the Committee. Members of the Board of Directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the Fund Corporation pursuant to this Act or in any investment made by the Florida Opportunity Fund.

The Board of Directors shall be compensated for direct expenses and mileage pursuant to s. 112.061 but shall not receive a fee or salary for service as directors. The Fund Corporation serves as a general partner or manager of the Fund and may charge a management fee on assets under management in the Fund, only to pay for reasonable and necessary costs.

Purpose
The purposes of the Fund Corporation shall be to organize and manage the Florida Opportunity Fund.

The Fund Corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Fund Corporation. Proposals shall address the following in relation to the applicant:

- level of experience;
- quality of management;
- investment philosophy and process;
- probability of success in fundraising;
- prior investment fund results; and
- a plan for achieving the purposes of the bill.

The Fund Corporation shall only select a manager with expertise in the management and fund allocation of investment in venture capital funds.

The Florida Opportunity Fund
The bill directs the Fund Corporation to create the Florida Opportunity Fund (Fund), upon request by the Board of Trustees, to be organized and incorporated as a for-profit limited liability partnership or limited liability corporation under the laws of Florida. The Board of Trustees, the Fund Corporation or the Fund may contract with Enterprise Florida, Inc. for provision of services necessary for continuing operations.

The Fund shall invest on a funds-of-funds basis and emphasize investment in seed capital and early stage venture capital funds focusing on opportunities in Florida. While not precluded from investing in funds with a wider geographic spread of portfolio investment, the Fund shall require an investment fund to have a record of investment in Florida, be based in Florida, or have an office in Florida staffed with a full-time, professional venture investment executive to be eligible for investment.

The investments by the Fund shall be on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Fund shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of early stage venture capital funds. The Fund may invest in newly created early stage venture capital funds as long as the manager or management teams of the funds have experience, expertise, and a successful history in the investment of venture capital funds. The Fund may not invest in a fund unless that fund has raised capital from other sources in an amount greater than the investment of the Fund such that the amount invested in a Florida entity by the receiving venture capital fund is at least twice the amount invested by the corporation. The Fund Corporation and its partners or shareholders may negotiate any and all terms and conditions for its investments, including draw back of management fees and other provisions that maximize investment in seed and early stage companies based in Florida.

Investments by designated investors in the Fund shall be deemed permissible investments for state-chartered banks and for domestic insurance companies under applicable state law.

If the fund is liquidated or has returned all capital to designated investors in accordance with contractual agreements, or the guarantee capacity of the trust, at the sole discretion of the board, is sufficient for additional certificates, new funding of the Florida Opportunity Fund may be implemented for subsequent venture capital fund-of-funds investments. If the board takes exception to an additional funding, such additional funding may only be implemented without the benefit of certificates from the board.

Fees
The bill authorizes the Board of Trustees to charge fees for its guarantees to designated investors or for other services such that its operations may be conducted without subsequent legislative appropriation. The bill also authorizes the Fund Corporation to charge a management fee on assets under management in the Fund. In addition, managers may charge a management fee to the Fund.

Annual Report
The bill requires that the Board of Trustees provide an annual report on the activities conducted by the Fund to the Governor, the President of the Senate and the Speaker of the House of Representatives. The report shall include the following:

- a copy of the independent audit of the Fund;
- a valuation of the assets of the Fund;
- a review of the progress of the Manager in implementing the fund's investment plan;
- the benefits to the state resulting from this program;
- the number of businesses created and their associated industry;
- the number of jobs created; and
- a description of any sale of tax certificates and any sale of tax certificates that is reasonably anticipated by the Board of Trustees to meet its certificate obligations.

The bill provides that DOR may share information relative to tax credits claimed under this Act to the Board of Trustee of the Trust in the conduct of the Trust's official business.

The bill includes tax credits transferred or sold within the priority list of applied credits against certain taxes and within the order or taking credits or deductions against the insurance premium tax.

Appropriations
The bill appropriates $750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

C. SECTION DIRECTORY:

Section 1. Creates Part X of chapter 288, including ss. 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626, 288.9627 and 288.9628, F.S., relating to the Capital Formation Act.

Section 2. Amends s. 213.053, F.S., to authorize the Department of Revenue to provide tax credit information to the Board of Trustees of the Florida Capital Investment Trust.

Section 3. Amends s. 220.02, F.S., to include tax credits in a list of credits and in a priority order.

Section 4. Amends s. 624.509, F.S., to include tax credits in a priority order of credits and deductions against premium tax.

Section 5. Provides an appropriation.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill authorizes the transfer of up to $20 million per year of contingent tax credits as a guarantee for investments made under the Act. The total value of credits that may be claimed is $75 million. This may result in a reduction of state revenues of up to $20 million per year if transferees claim such credits.

2. Expenditures:

The bill appropriates $750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds, does not reduce the county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants DOR, in conjunction with the Board of Trustees, rule making authority to set the manner and form of documentation required to claim tax credits granted or transferred under this Act, and the requisites to prove an affirmative showing of qualification for such tax credits.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (2) of new s. 288.9625, F.S. provides that the board may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the "board". This language may conflict with the power of the Fund Corporation, not the Board of Trustees, to enter into certificate obligations. As a result, it appears that, although the Fund Corporation may enter into contracts for certificate obligations with Managers, it does not have the power to grant tax credits to that Manager.

Also, this subsection states that the Board of Trustees shall be notified immediately of any transfers of tax credits by persons or businesses other than the Board of Trustees and shall notify DOR, in writing, or such transfers. The transfer of tax credits appears to be only under the authority of the Trust, hence, this language conflicts with such authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted two amendments that remove the public records exemption and clarifies that the intent of the bill is to invest in Florida entities.

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to capital formation; creating a new pt. X
8 of ch. 288, F.S.; providing a short title; providing
9 legislative findings and intent; providing definitions;
10 creating the Florida Capital Investment Trust as a state
11 beneficiary public trust; providing for administration by
12 a board of trustees; providing for appointment of board
13 members; providing for terms; providing for serving
14 without compensation; providing for travel and other
15 direct expenses; providing criteria for trustees;
16 providing for powers and duties of trustees; providing for
17 hiring employees; providing for meetings of the board;
18 authorizing the trust to receive, hold, use, transfer, and
19 sell certain tax credits for certain purposes; providing
20 requirements and limitations; authorizing the Department
21 of Revenue to adopt rules for certain purposes; requiring
22 Enterprise Florida, Inc., to facilitate establishment of
23 the Florida Opportunity Fund Management Corporation;

24 specifying criteria of the corporation; providing for
25 appointment of a board of directors selection committee;
26 providing for selection of a board of directors of the
27 corporation by Enterprise Florida, Inc.; specifying
28 criteria; providing for terms and requirements of
29 directors; providing purposes of the corporation;
30 providing duties and responsibilities of the corporation;
31 authorizing the corporation to charge a management fee for
32 certain purposes; providing for travel and other direct
33 expenses; providing for powers of the corporation;
34 creating the Florida Opportunity Fund as a for-profit,
35 limited partnership or a limited liability corporation to
36 be organized and incorporated by the Florida Opportunity
37 Fund Management Corporation; authorizing certain entities
38 to contract with Enterprise Florida, Inc., for certain
39 purposes; providing investment requirements for the fund;
40 requiring the board of trustees to issue annual reports on
41 activities of the fund; providing report requirements;
42 amending s. 213.053, F.S.; authorizing the Department of
43 Revenue to provide certain tax credit information to the
44 board of trustees; amending s. 220.02, F.S.; including tax
45 credits transferred or sold by the board of trustees
46 within the priority list of applied credits against
47 certain taxes; amending s. 624.509, F.S.; including tax
48 credits transferred or sold by the board of trustees
49 within the order of taking credits or deductions against
50 the insurance premium tax; providing an appropriation;
51 providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:
54
55 Section 1. Parts X and XI of chapter 288, Florida
56 Statutes, are redesignated as parts XI and XII, respectively,
57 and a new part X of that chapter, consisting of sections
58 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626,
59 288.9627, and 288.9628, is created to read:
60 288.9621 Short title.--This part may be cited as the
61 "Florida Capital Formation Act."
62 288.9622 Findings and intent.--
63 (1) The Legislature finds and declares that there is need
64 to increase the availability of seed capital and early stage
65 venture equity capital for emerging companies in the state,
66 including, without limitation, enterprises in life sciences,
67 information technology, advanced manufacturing processes,
68 aviation and aerospace, and homeland security and defense, as
69 well as other strategic technologies.
70 (2) It is the intent of the Legislature that this part
71 serve to mobilize private investment in a broad variety of
72 venture capital partnerships in diversified industries and
73 geographies; retain private-sector investment criteria focused
74 on rate of return; use the services of highly qualified managers
75 in the venture capital industry regardless of location;
76 facilitate the organization of the Florida Opportunity Fund as a
77 fund-of-funds investor in seed and early stage venture capital
78 and angel funds; and precipitate capital investment and
79 extensions of credit to and in the Florida Opportunity Fund.

80 (3) It is the intent of the Legislature to mobilize
81 venture equity capital for investment in such a manner as to
82 result in a significant potential to create new businesses and
83 jobs in this state that are based on high growth potential
84 technologies, products, or services and that will further
85 diversify the economy of this state.
86 288.9623 Definitions.--As used in this part:
87 (1) "Board" means the board of trustees of the Florida
88 Capital Investment Trust.
89 (2) "Certificate" means a contract between the trust and a
90 designated investor evidencing the terms of a guarantee or
91 incentive granted to a designated investor.
92 (3) "Corporation" means the Florida Opportunity Fund
93 Management Corporation created under this part.
94 (4) "Designated investor" means a person, other than the
95 board, who purchases an equity interest in the Florida
96 Opportunity Fund or is a party to a certificate or who is a
97 lender to the Florida Opportunity Fund and is a party to a
98 certificate.
99 (5) "Florida Capital Investment Trust" or "trust" means a
100 state beneficiary public trust created under this part.
101 (6) "Florida Opportunity Fund" or "fund" means the
102 private, for-profit limited partnership or limited liability
103 company in which a designated investor purchases an equity
104 interest or to which a designated investor extends credit.
105 (7) "Tax credit" means a contingent tax credit issued
106 under this part or subsequent legislative action that is
107 available to offset tax liabilities imposed by this state,

108 provided the proceeds of such tax are payable to the General
109 Revenue Fund. A tax credit is not eligible to offset tax
110 liabilities imposed by a political subdivision within this
111 state.
112 288.9624 Florida Capital Investment Trust.--
113 (1) The Florida Capital Investment Trust is created as a
114 state beneficiary public trust to be administered by the board.
115 The exercise by the board of powers conferred by this part is
116 deemed and held to be the performance of essential public
117 purposes.
118 (2)(a) The board shall consist of five voting trustees and
119 two nonvoting ex officio trustees. A majority of voting trustees
120 shall constitute a quorum.
121 (b) Three voting trustees shall be appointed by the
122 Governor; one voting trustee shall be appointed by the President
123 of the Senate; and one voting trustee shall be appointed by the
124 Speaker of the House of Representatives. The Governor shall
125 appoint one trustee to a term ending April 30, 2007, and two
126 trustees to terms ending April 30, 2009. The President of the
127 Senate and the Speaker of the House of Representatives shall
128 each appoint trustees to terms ending April 30, 2008.
129 Thereafter, each voting trustee shall be appointed for a 3-year
130 term.
131 (c) One nonvoting ex officio trustee shall be the designee
132 of Enterprise Florida, Inc., and one nonvoting ex officio
133 trustee shall be the designee of the Florida Research
134 Consortium. Ex officio trustees serve annual terms at the
135 pleasure of their appointing organizations and may be

136 reappointed. A trustee's term shall end on April 30 of his or
137 her term expiration year. Trustees whose terms have expired may
138 continue to serve until their replacements have been duly
139 appointed.
140 (d) Vacancies shall be filled in the same manner as the
141 appointment of the original trustee to whom a successor is
142 sought.
143 (3) Trustees shall serve on the board without compensation
144 in the form of fees, per diem, or salary. Trustees may receive
145 compensation or reimbursement for direct expenses, mileage, and
146 other travel expenses related to the performance of their duties
147 pursuant to s. 112.061. Trustees shall be selected based upon
148 demonstrated expertise and competence in the supervision of
149 early stage investment managers, the fiduciary management of
150 funds, the administration and management of a publicly listed
151 company, or experience and competence in public accounting,
152 auditing, and fiduciary responsibilities. Trustees may not have
153 an interest in any entity to which a certificate is issued.
154 (4) The board may engage consultants, expend funds, invest
155 funds, contract, bond or insure against loss, provide guarantees
156 or other incentives, hold transferable tax credits, sell tax
157 credits, or enter into any financial or other transaction or
158 perform any other act necessary to carry out its purpose under
159 this part. The board, in conjunction with the Department of
160 Revenue, shall develop a system for registration of any tax
161 credits received by the trust and transferred under this part.
162 The board shall also create a system of documentation that
163 permits verification that any tax credit claimed upon a tax

164 return is validly held by the person claiming such tax credit
165 and properly taken in the year of claim and that any transfers
166 of the tax credit are made in accordance with the requirements
167 of this part.
168 (5) If the board elects to hire employees, such persons
169 shall be selected by the board based upon knowledge and
170 leadership in the field for which the person performs services
171 for the board. The board shall charge fees for its guarantees to
172 designated investors or for other services such that the board's
173 operations may be conducted without subsequent legislative
174 appropriation.
175 288.9625 Issuance of tax credits.--
176 (1) The trust shall receive and hold for the purposes of
177 this part tax credits under this part that may be used to reduce
178 any tax liability imposed by the state under chapter 212,
179 chapter 220, s. 624.509, or s. 624.510. The total amount of tax
180 credits issued and transferred to the trust is $75 million. The
181 tax credits shall be transferable by the board as provided in
182 this part, provided no such transferred tax credit shall be
183 exercisable before July 1, 2011, or after July 1, 2036.
184 (2) The board may transfer and sell tax credits solely for
185 the purpose of fulfilling, in whole or in part, any certificate
186 obligation issued by the board. The board shall immediately
187 notify the Governor, the President of the Senate, the Speaker of
188 the House of Representatives, and the Department of Revenue, in
189 writing, if any tax credit is transferred. The board shall be
190 notified immediately of any transfers of tax credits by persons

191 or businesses other than the board and shall notify the
192 Department of Revenue, in writing, of such transfers.
193 (3) The board shall ensure that no more than $20 million
194 in tax credits is transferred that may be claimed and used to
195 reduce taxes payable to the General Revenue Fund for any single
196 state fiscal year. The board shall clearly indicate upon the
197 face of the document transferring the tax credit the principal
198 amount of the tax credit and the state fiscal year or years
199 during which the credit may be claimed. Tax credits may be
200 transferred in increments of no less than $100,000. A copy of
201 the document transferring the tax credit shall be transmitted to
202 the executive director of the Department of Revenue, who shall
203 allow the credit to be claimed against tax liabilities of the
204 person or business consistent with the terms appearing in the
205 transfer document.
206 (4) If the tax liabilities of the taxpayer are
207 insufficient to exhaust the tax credit for which the taxpayer is
208 eligible, the balance of the tax credit may be refunded by the
209 state. If a tax credit granted under this section is not claimed
210 in the year designated for claiming the credit on the transfer
211 document, any return for the year in which the credit was
212 eligible to be claimed may be amended to claim the credit within
213 the time specified by ss. 95.091 and 215.26
214 (5) Persons or businesses to which tax credits under this
215 section are transferred shall retain documentation supporting
216 eligibility to claim the tax credits and evidence of the
217 transfer of the tax credits, if applicable, until the time

218 period provided to audit the tax returns on which the tax
219 credits were claimed has passed.
220 (6) The Department of Revenue, in conjunction with the
221 board, may adopt rules governing the manner and form of
222 documentation required to claim tax credits granted or
223 transferred under this section and may establish guidelines as
224 to the requisites for an affirmative showing of qualification
225 for tax credits granted or transferred under this section.
226 (7) An insurance company claiming a credit against premium
227 tax liability under this section shall not be required to pay
228 any additional retaliatory tax levied pursuant to s. 624.5091 as
229 a result of claiming such credit. Because credits under this
230 section are available to an insurance company, s. 624.5091 does
231 not limit such credit in any manner.
232 (8) Any original sale of tax credits by the board shall be
233 by competitive bidding unless the sale is for the full face
234 value of the credits.
235 288.9626 Florida Opportunity Fund Management
236 Corporation.--
237 (1) At the request of the board, Enterprise Florida, Inc.,
238 shall facilitate the creation of the Florida Opportunity Fund
239 Management Corporation as a private, not-for-profit corporation.
240 Enterprise Florida, Inc., shall be the corporation's sole
241 member. The corporation is not a public corporation or
242 instrumentality of the state.
243 (2) The vice chair of Enterprise Florida, Inc., shall
244 select from among its sitting board of directors a five-person
245 appointment committee. The appointment committee shall select

246 five initial members of a board of directors for the
247 corporation. The persons elected to the initial board of
248 directors by the appointment committee shall include persons who
249 have expertise in the area of the selection and supervision of
250 early stage investment managers or in the fiduciary management
251 of investment funds and other areas of expertise as deemed
252 appropriate by the appointment committee. After election of the
253 initial board of directors, vacancies on the board of directors
254 of the corporation shall be elected by the board of directors of
255 Enterprise Florida, Inc., and shall serve terms as provided in
256 the corporation's organizational documents. Members of the board
257 of directors shall be subject to any restrictions on conflicts
258 of interest specified in the organizational documents and shall
259 have no interest in any venture capital investment fund
260 allocation manager selected by the corporation pursuant to the
261 provisions of this part or in any investments made by the
262 Florida Opportunity Fund.
263 (3) The purposes of the corporation shall be to organize
264 the Florida Opportunity Fund, select an early stage venture
265 capital investment fund allocation manager, negotiate the terms
266 of a contract with the venture capital investment fund
267 allocation manager, execute the contract with the selected
268 venture capital investment fund allocation manager on behalf of
269 the Florida Opportunity Fund, manage the business affairs of the
270 Florida Opportunity Fund such as accounting, audit, insurance,
271 and related requirements, receive investment returns from the
272 Florida Opportunity Fund, and reinvest the investment returns in
273 the Florida Opportunity Fund in order to provide additional

274 venture capital investments designed to result in a significant
275 potential to create new businesses and jobs in this state and
276 further diversify the economy of this state.
277 (4) Upon organization, the corporation shall conduct a
278 national solicitation for investment plan proposals from
279 qualified venture capital investment fund allocation managers
280 for the raising and investing of capital by the corporation. Any
281 proposed investment plan shall address the applicant's level of
282 experience, quality of management, investment philosophy and
283 process, provability of success in fundraising, prior investment
284 fund results, and plan for achieving the purposes of this part.
285 The corporation shall select only a venture capital investment
286 fund allocation manager with demonstrated expertise in the
287 management and fund allocation of investments in venture capital
288 funds.
289 (5) The corporation may charge a management fee on assets
290 under management in the Florida Opportunity Fund. The fee shall
291 be in addition to any fee charged to the Florida Opportunity
292 Fund by the venture capital investment fund allocation manager,
293 but the fee shall be charged only to pay for reasonable and
294 necessary costs of the corporation.
295 (6) Directors of the corporation shall be compensated for
296 direct expenses and mileage pursuant to s. 112.061 but shall not
297 receive a fee or salary for service as directors.
298 (7) The corporation shall have all powers granted under
299 its organizational documents and shall indemnify directors to
300 the broadest extent permissible under the laws of this state.
301 288.9627 Florida Opportunity Fund.--

302 (1) The Florida Opportunity Fund is created as a for-
303 profit limited partnership or limited liability corporation that
304 shall be organized and incorporated in this state by the Florida
305 Opportunity Fund Management Corporation upon request by the
306 board. The board, the corporation, or the fund may contract with
307 Enterprise Florida, Inc., for provision of services necessary
308 for continuing operations.
309 (2) The fund shall invest on a fund-of-funds basis and
310 emphasize investment in seed capital and early stage venture
311 capital funds focusing on opportunities in this state. While not
312 precluded from investing in funds with a wider geographic spread
313 of portfolio investment, the fund shall require an investment
314 fund to have a record of investment in this state, be based in
315 this state, or have an office in this state staffed with a full-
316 time, professional venture investment executive to be eligible
317 for investment. The investments by the fund shall be on
318 partnership interests in private venture capital funds and not
319 in direct investments in individual businesses. The fund shall
320 invest in venture capital funds with experienced managers or
321 management teams with demonstrated expertise and a successful
322 history in the investment of early stage venture capital funds.
323 The fund may invest in newly created early stage venture capital
324 funds as long as the manager or management teams of the funds
325 have experience, expertise, and a successful history in the
326 investment of venture capital funds. The Florida Opportunity
327 Fund may not invest in a fund unless that fund has raised
328 capital from other sources in an amount greater than the
329 investment of the Florida Opportunity Fund such that the amount

330 invested in an entity in this state by the receiving venture
331 capital fund is at least twice the amount invested by the
332 corporation. The corporation and its partners or shareholders
333 may negotiate any and all terms and conditions for its
334 investments, including draw back of management fees and other
335 provisions that maximize investment in seed and early stage
336 companies based in this state.
337 (3) The interest of the corporation in the fund shall be
338 to serve as general partner or manager and to be paid a
339 management fee to cover its costs.
340 (4) Investments by designated investors in the fund shall
341 be deemed permissible investments for state-chartered banks and
342 for domestic insurance companies under applicable state law.
343 (5) If the fund is liquidated or has returned all capital
344 to designated investors in accordance with contractual
345 agreements, or the guarantee capacity of the trust, at the sole
346 discretion of the board, is sufficient for additional
347 certificates, a new funding of the Florida Opportunity Fund may
348 be implemented for subsequent venture capital fund-of-funds
349 investments. If the board takes exception to an additional
350 funding, such additional funding may only be implemented without
351 the benefit of certificates from the board.
352 288.9628 Annual reporting.--The board shall issue an
353 annual report on the activities conducted by the Florida
354 Opportunity Fund and present the report to the Governor, the
355 President of the Senate, and the Speaker of the House of
356 Representatives. The annual report shall include a copy of the
357 independent audit of the fund and a valuation of the assets of

358 the fund and shall review the progress of the investment fund
359 allocation manager in implementing the fund's investment plan,
360 the benefits to the state resulting from this program, including
361 the number of businesses created and their associated industry,
362 and the number of jobs created. The annual report shall also
363 describe any sale of tax certificates and any sale of tax
364 certificates that is reasonably anticipated by the board to meet
365 its certificate obligations.
366 Section 2. Paragraph (y) is added to subsection (7) of
367 section 213.053, Florida Statutes, to read:
368 213.053 Confidentiality and information sharing.--
369 (7) Notwithstanding any other provision of this section,
370 the department may provide:
371 (y) Information relative to tax credits claimed under part
372 X of chapter 288 to the board of trustees of the Florida Capital
373 Investment Trust in the conduct of the trust's official
374 business.
375
376 Disclosure of information under this subsection shall be
377 pursuant to a written agreement between the executive director
378 and the agency. Such agencies, governmental or nongovernmental,
379 shall be bound by the same requirements of confidentiality as
380 the Department of Revenue. Breach of confidentiality is a
381 misdemeanor of the first degree, punishable as provided by s.
382 775.082 or s. 775.083.
383 Section 3. Subsection (8) of section 220.02, Florida
384 Statutes, is amended to read:
385 220.02 Legislative intent.--

386 (8) It is the intent of the Legislature that credits
387 against either the corporate income tax or the franchise tax be
388 applied in the following order: those enumerated in s. 631.828,
389 those enumerated in s. 220.191, those enumerated in s. 220.181,
390 those enumerated in s. 220.183, those enumerated in s. 220.182,
391 those enumerated in s. 220.1895, those enumerated in s. 221.02,
392 those enumerated in s. 220.184, those enumerated in s. 220.186,
393 those enumerated in s. 220.1845, those enumerated in s. 220.19,
394 those enumerated in s. 220.185, ~~and~~ those enumerated in s.
395 220.187, and those enumerated in part X of chapter 288.
396 Section 4. Subsection (7) of section 624.509, Florida
397 Statutes, is amended to read:
398 624.509 Premium tax; rate and computation.--
399 (7) Credits and deductions against the tax imposed by this
400 section shall be taken in the following order: deductions for
401 assessments made pursuant to s. 440.51; credits for taxes paid
402 under ss. 175.101 and 185.08; credits for income taxes paid
403 under chapter 220, the emergency excise tax paid under chapter
404 221 and the credit allowed under subsection (5), as these
405 credits are limited by subsection (6); credits allowed under
406 part X of chapter 288; and all other available credits and
407 deductions.
408 Section 5. For fiscal year 2006-2007, the sum of $750,000
409 is appropriated from the General Revenue Fund to the Florida
410 Capital Investment Trust to be used for startup activities
411 necessary to implement part X of chapter 288, Florida Statutes,
412 as created by this act.
413 Section 6. This act shall take effect July 1, 2006.

HB 7055 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7055 CS PCB EDTB 06-01 Enterprise Zone Act
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	8 Y, 0 N	Carlson	Carlson
1) Finance & Tax Committee	6 Y, 0 N, w/CS	Rice	Diez-Arguelles
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

In 2005, the Florida Enterprise Zone Act was amended, re-enacted, and scheduled to repeal in 2015.[1] Subsequently, staff from the Department of Revenue, the Governor's Office of Tourism, Trade and Economic Development and House Members raised concerns over the application of certain provisions of the revised act.

The bill provides corrections and remedial changes to the act as follows:

- The bill amends two obsolete expiration dates for related provisions, to make them consistent with the expiration of the Enterprise Zone Act.
- The bill also clarifies that the enterprise zone building materials sales tax refund may only be used once per parcel of real property unless there is a change in ownership, a new lessor or new lessee of the real property.
- The bill amends the definition of "new job has been created" for purposes of the enterprise zone jobs tax credit against the sales and corporate income taxes.
- This bill also provides that a local government must provide notice 90 days prior to the adoption of a resolution proposing an enterprise zone boundary change. The notice must explain that businesses and property owners subject to exclusion due to the boundary change may lose their enterprise zone eligibility.
- The bill also provides a limited two-year grandfather period for projects involving the rehabilitation of real property that were excluded from an enterprise zone because of the 2005 revision to the law.

The Revenue Estimating Conference has determined a ($3.3) million impact on state revenues and a ($0.7) million loss to local revenues.

This bill takes effect upon becoming law.

[1] See ch. 2005-287, L.O.F.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will grandfather certain businesses that would otherwise be excluded from eligibility under the act and will allow these businesses to receive enterprise zone tax incentives.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida Enterprise Zone Program

The Florida Enterprise Zone Act (act), codified in ss. 290.001-290.016, F.S., was created:

> to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.[2]

The Florida Enterprise Zone Act of 1994 was scheduled to be repealed on December 31, 2005, but was re-enacted as the Florida Enterprise Zone Act (act) by ch. 2005-287, L.O.F., for an additional ten years, and is now scheduled to be repealed December 31, 2015.

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The act established a process for the nomination and designation of a maximum of 20 enterprise zones in 1994.[3] Subsequently, the Legislature has designated additional zones. Currently, there are 55 enterprise zones in the state. When the Enterprise Zone Act was re-enacted by ch. 2005-287, L.O.F., 53 existing enterprise zones were allowed to apply for re-designation; 51 of 53 have been re-designated. Four of the 55 enterprise zones were created by ch. 2005-244, L.O.F.: City of Lakeland, Indian River County, Sumter County, and Orange County. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.

State Incentives

The program's incentives are as follows:

- Jobs credit against sales or corporate income taxes: In order to be eligible, businesses must increase the number of full time jobs. The credit amount varies based on job location and employee wage. [4]
- Property tax credit: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid.[5]
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone.

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[2] Section 290.003, F.S.
[3] Sections 290.0055 and 290.0065, F.S.
[4] Sections 212.096 and 220.181, F.S.
[5] Section 220.182, F.S.

The amount of the refund is the lesser of 97 percent of the sales taxes paid or $5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or $10,000.[6]

- Sales tax refund for business property used in an enterprise zone: A refund is available for sales taxes paid on the purchase of business property with a purchase price of $5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or $5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or $10,000.[7]

Local Incentives

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business.[8]
- Economic development ad valorem tax exemption: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions.[9]
- Occupational license tax exemption: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone.[10]
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.[11]

State Agencies

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue (DOR) reviews and approves or denies a business's application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the act.

Effect of Proposed Changes:

Building Materials Sales Tax Exemption

The bill clarifies that the sales tax refund for building materials used to rehabilitate real property in an enterprise zone may only be used once per parcel of real property, unless there is a change in ownership, a new lessor or new lessee of the real property. This section provides that this provision applies retroactively to July 1, 2005.

Until July 1, 2005, the sales tax refund for building materials could only be used once per parcel of real property. During the 2005 Regular Session, this provision was removed with the intent of allowing the exemption to be granted to subsequent owners of a parcel of property. However, the 2005 change had the unintended consequence of broadening the exemption by allowing it to be used multiple times per parcel. This bill restores the pre-2005 language, providing that the exemption may only be used once

[6] Section 212.08(5)(g), F.S.
[7] Section 212.08(5)(h), F.S.
[8] Sections 212.08(15) and 166.231(8), F.S.
[9] Section 196.1995, F.S.
[10] Section 205.054, F.S.
[11] Section 290.0057(1)(e), F.S.

per parcel, and allows subsequent owners, lessor or lessees of the parcel to be eligible for the exemption. This would allow two separate owners, lessors or lessees of the same piece of real property to apply for the tax refund in a single taxable year.

Definition of Job Creation

The bill amends the definition of "new job has been created" for purposes of the enterprise zone job tax credit against sales tax. This provides that to be eligible for the job tax credit a business located in an enterprise zone must demonstrate to DOR that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date. Currently, a business must demonstrate that the number of full time jobs has increased from the average of the previous 12 months. According to DOR, changing the provision will make it easier to calculate when a new job has been created, because it ties that calculation to a specified date.

The bill amends the definition of "new job has been created" for purposes of the enterprise zone job tax credit against the corporate income tax. This will provide that to be eligible for the job tax credit a business located in an enterprise zone must demonstrate to DOR that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date.

The bill also provides that a business is eligible for the enterprise zone job tax credit against corporate income tax, if they can demonstrate to DOR that, on the date of application, the total number of full time jobs is greater than it was 12 months prior to such date.

Notice of Proposed Zone Boundary Changes

The bill requires that a local government intending to seek an enterprise zone boundary change provide an explanation of this possibility and the consequences of it in the notice that is produced 90 days before the meeting regarding the adoption of the boundary change resolution. Currently, there is no notice requirement for such boundary changes and affected businesses may lose their eligibility without their knowledge.

Relief for Businesses Excluded in Zones by 2005 Law

The bill provides for a limited, two-year period in which a project excluded from an enterprise zone through the redesignation process required by ch. 2005-287, L.O.F., may retain eligibility for the building materials tax exemption provided by s. 212.08(5)(g) if it meets the following requirements:

- The project must be located in an enterprise zone on or before December 31, 2005;
- The project must have a duration extending beyond December 31, 2005;
- The project has been excluded from the enterprise zone because the portion of the zone in which the project is located did not meet the pervasive poverty rate requirements of s. 290.0058(2)(a) or (b);
- The difference between the pervasive poverty rate requirements of s. 290.0058(2)(a) and the actual poverty rate in the area in which the project is located must be five percentage points or less;
- The business applies for a certificate of eligibility for the project with the enterprise zone development agency by November 1, 2006 and demonstrates that the project meets the requirements of this section; and
- The enterprise zone development agency provides a copy of the certificate of eligibility to the Department of Revenue.

This provision is intended to provide limited relief for multi-year projects involving the rehabilitation of real property located in an enterprise zone that were planned and begun before the 2005 law took place and that have subsequently lost their planned tax benefit eligibility.

Expiration Dates

The bill changes an obsolete expiration date within the definition of "adjusted federal income," to correspond with the expiration date of the Florida Enterprise Zone Act, which is December 31, 2015.

C. SECTION DIRECTORY:

Section 1: Amends s. 195.099, F.S., to correct an expiration date.

Section 2: Amends s. 220.03(1)(ff), F.S., to revise the definition of "new job has been created."

Section 3: Amends s. 212.08(5)(g), F.S., to limit the exemption of taxes paid for the rehabilitation of real property in an enterprise zone to one exemption per parcel unless there has been a change in ownership; providing for retroactive application.

Section 4: Amends s. 212.096, F.S., to revise the definition of "new job has been created."

Section 5: Amends s. 220.13, F.S., to correct expiration dates.

Section 6: Amends s. 220.181, F.S., to revise the requirement for demonstrating an increase in jobs.

Section 7: Amends s. 290.0055, F.S., to require a local government to provide notice of affects of a proposed boundary change.

Section 8. Provides that certain multi-year projects may retain eligibility for the building materials tax exemption through December 31, 2007 if certain requirements are met.

Section 9: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference estimates the following:

	FY 2006-07	FY 2007-08
General Revenue:	($3.3)m	($3.2)m
Total	($3.3)m	($3.2)m

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-07	FY 2007-08
Revenue Sharing	($0.1)m	($0.1)m
Local Government Half Cent	($0.3)m	($0.3)m
Local Option:	($0.3)m	($0.3m
Total	($0.7)m	($0.7)m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide limited relief to certain businesses excluded from an existing enterprise zone by operation of ch. 2005-287, L.O.F., if that business was excluded in the course of the redesignation process enacted in law because the area in which it was located fell short of the required poverty thresholds by five or fewer percentage points.

In addition, Commercial and residential owners of real property will only be eligible to receive the enterprise zone building materials sales tax credit once per parcel of real property.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although the bill reduces the authority of cities and counties to raise revenues in the aggregate, the impact is less than $1.8 million and is insignificant. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Finance and Tax Committee adopted two amendments. The first was a technical change to s. 212.096(1)(a), F.S., relating to the enterprise zone building materials tax credit program. It corrected an omission of the change in the "new job has been created" definition. The second was to remove the requirement that every business and property owner subject to exclusion due to a boundary change receive written notification. Instead, the local government must explain this possibility and the consequences of it in the notice that is produced 90 days before the meeting regarding the adoption of the boundary change resolution.

CHAMBER ACTION

1 The Finance & Tax 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 enterprise zones; amending s. 195.099,
7 F.S.; reenacting a periodic review requirement; providing
8 for future expiration; amending s. 220.03, F.S.; revising
9 a definition; amending s. 212.08, F.S.; limiting the
10 exemption by refund of certain taxes for rehabilitation of
11 certain property in an enterprise zone; providing an
12 exception; providing for retroactive application; amending
13 s. 212.096, F.S.; revising definitions; revising an
14 information requirement for claiming an enterprise zone
15 jobs tax credit; amending s. 220.13, F.S.; reenacting a
16 definitional provision; providing for future expiration of
17 provisions relating to enterprise zone credits; amending
18 s. 220.181, F.S.; revising certain criteria for granting
19 an enterprise zone jobs tax credit; amending s. 290.0055,
20 F.S.; providing a meeting notice requirement for a
21 governing body adopting an enterprise zone boundary change
22 resolution; providing for time-limited continuing
23 eligibility for a building materials tax exemption for

24 certain businesses; specifying eligibility requirements;
25 providing for retroactive application; providing for
26 future repeal; providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Subsection (1) of section 195.099, Florida
31 Statutes, is reenacted and amended to read:
32 195.099 Periodic review.--
33 (1)(a) The department shall periodically review the
34 assessments of new, rebuilt, and expanded business reported
35 according to s. 193.077(3), to ensure parity of level of
36 assessment with other classifications of property.
37 (b) ~~The provisions of~~ This subsection shall expire ~~and be~~
38 ~~void~~ on the date specified in s. 290.016 for the expiration of
39 the Florida Enterprise Zone Act ~~June 30, 2005~~.
40 Section 2. Paragraph (ff) of subsection (1) of section
41 220.03, Florida Statutes, is amended to read:
42 220.03 Definitions.--
43 (1) SPECIFIC TERMS.--When used in this code, and when not
44 otherwise distinctly expressed or manifestly incompatible with
45 the intent thereof, the following terms shall have the following
46 meanings:
47 (ff) "New job has been created" means that, on the date of
48 application, the total number of full-time jobs is greater than
49 the total was ~~has increased in an enterprise zone from the~~
50 ~~average of the previous~~ 12 months prior to that date, as

51 demonstrated to the department by a business located in the
52 enterprise zone.
53 Section 3. Paragraph (g) of subsection (5) of section
54 212.08, Florida Statutes, is amended to read:
55 212.08 Sales, rental, use, consumption, distribution, and
56 storage tax; specified exemptions.--The sale at retail, the
57 rental, the use, the consumption, the distribution, and the
58 storage to be used or consumed in this state of the following
59 are hereby specifically exempt from the tax imposed by this
60 chapter.
61 (5) EXEMPTIONS; ACCOUNT OF USE.--
62 (g) Building materials used in the rehabilitation of real
63 property located in an enterprise zone.--
64 1. Building materials used in the rehabilitation of real
65 property located in an enterprise zone shall be exempt from the
66 tax imposed by this chapter upon an affirmative showing to the
67 satisfaction of the department that the items have been used for
68 the rehabilitation of real property located in an enterprise
69 zone. Except as provided in subparagraph 2., this exemption
70 inures to the owner, lessee, or lessor of the rehabilitated real
71 property located in an enterprise zone only through a refund of
72 previously paid taxes. To receive a refund pursuant to this
73 paragraph, the owner, lessee, or lessor of the rehabilitated
74 real property located in an enterprise zone must file an
75 application under oath with the governing body or enterprise
76 zone development agency having jurisdiction over the enterprise
77 zone where the business is located, as applicable, which
78 includes:

79 a. The name and address of the person claiming the refund.
80 b. An address and assessment roll parcel number of the
81 rehabilitated real property in an enterprise zone for which a
82 refund of previously paid taxes is being sought.
83 c. A description of the improvements made to accomplish
84 the rehabilitation of the real property.
85 d. A copy of the building permit issued for the
86 rehabilitation of the real property.
87 e. A sworn statement, under the penalty of perjury, from
88 the general contractor licensed in this state with whom the
89 applicant contracted to make the improvements necessary to
90 accomplish the rehabilitation of the real property, which
91 statement lists the building materials used in the
92 rehabilitation of the real property, the actual cost of the
93 building materials, and the amount of sales tax paid in this
94 state on the building materials. In the event that a general
95 contractor has not been used, the applicant shall provide this
96 information in a sworn statement, under the penalty of perjury.
97 Copies of the invoices which evidence the purchase of the
98 building materials used in such rehabilitation and the payment
99 of sales tax on the building materials shall be attached to the
100 sworn statement provided by the general contractor or by the
101 applicant. Unless the actual cost of building materials used in
102 the rehabilitation of real property and the payment of sales
103 taxes due thereon is documented by a general contractor or by
104 the applicant in this manner, the cost of such building
105 materials shall be an amount equal to 40 percent of the increase
106 in assessed value for ad valorem tax purposes.

107 f. The identifying number assigned pursuant to s. 290.0065
108 to the enterprise zone in which the rehabilitated real property
109 is located.
110 g. A certification by the local building code inspector
111 that the improvements necessary to accomplish the rehabilitation
112 of the real property are substantially completed.
113 h. Whether the business is a small business as defined by
114 s. 288.703(1).
115 i. If applicable, the name and address of each permanent
116 employee of the business, including, for each employee who is a
117 resident of an enterprise zone, the identifying number assigned
118 pursuant to s. 290.0065 to the enterprise zone in which the
119 employee resides.
120 2. This exemption inures to a city, county, other
121 governmental agency, or nonprofit community-based organization
122 through a refund of previously paid taxes if the building
123 materials used in the rehabilitation of real property located in
124 an enterprise zone are paid for from the funds of a community
125 development block grant, State Housing Initiatives Partnership
126 Program, or similar grant or loan program. To receive a refund
127 pursuant to this paragraph, a city, county, other governmental
128 agency, or nonprofit community-based organization must file an
129 application which includes the same information required to be
130 provided in subparagraph 1. by an owner, lessee, or lessor of
131 rehabilitated real property. In addition, the application must
132 include a sworn statement signed by the chief executive officer
133 of the city, county, other governmental agency, or nonprofit
134 community-based organization seeking a refund which states that

135 the building materials for which a refund is sought were paid
136 for from the funds of a community development block grant, State
137 Housing Initiatives Partnership Program, or similar grant or
138 loan program.
139 3. Within 10 working days after receipt of an application,
140 the governing body or enterprise zone development agency shall
141 review the application to determine if it contains all the
142 information required pursuant to subparagraph 1. or subparagraph
143 2. and meets the criteria set out in this paragraph. The
144 governing body or agency shall certify all applications that
145 contain the information required pursuant to subparagraph 1. or
146 subparagraph 2. and meet the criteria set out in this paragraph
147 as eligible to receive a refund. If applicable, the governing
148 body or agency shall also certify if 20 percent of the employees
149 of the business are residents of an enterprise zone, excluding
150 temporary and part-time employees. The certification shall be in
151 writing, and a copy of the certification shall be transmitted to
152 the executive director of the Department of Revenue. The
153 applicant shall be responsible for forwarding a certified
154 application to the department within the time specified in
155 subparagraph 4.
156 4. An application for a refund pursuant to this paragraph
157 must be submitted to the department within 6 months after the
158 rehabilitation of the property is deemed to be substantially
159 completed by the local building code inspector or by September 1
160 after the rehabilitated property is first subject to assessment.
161 5. The provisions of s. 212.095 do not apply to any refund
162 application made pursuant to this paragraph. Not more than one

163 exemption through a refund of previously paid taxes for the
164 rehabilitation of real property shall be permitted for any
165 single parcel of property unless there is a change in ownership,
166 a new lessor, or a new lessee of the real property. No refund
167 shall be granted pursuant to this paragraph unless the amount to
168 be refunded exceeds $500. No refund granted pursuant to this
169 paragraph shall exceed the lesser of 97 percent of the Florida
170 sales or use tax paid on the cost of the building materials used
171 in the rehabilitation of the real property as determined
172 pursuant to sub-subparagraph 1.e. or $5,000, or, if no less than
173 20 percent of the employees of the business are residents of an
174 enterprise zone, excluding temporary and part-time employees,
175 the amount of refund granted pursuant to this paragraph shall
176 not exceed the lesser of 97 percent of the sales tax paid on the
177 cost of such building materials or $10,000. A refund approved
178 pursuant to this paragraph shall be made within 30 days of
179 formal approval by the department of the application for the
180 refund. This subparagraph shall apply retroactively to July 1,
181 2005.
182 6. The department shall adopt rules governing the manner
183 and form of refund applications and may establish guidelines as
184 to the requisites for an affirmative showing of qualification
185 for exemption under this paragraph.
186 7. The department shall deduct an amount equal to 10
187 percent of each refund granted under the provisions of this
188 paragraph from the amount transferred into the Local Government
189 Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20
190 for the county area in which the rehabilitated real property is

191 located and shall transfer that amount to the General Revenue
192 Fund.
193 8. For the purposes of the exemption provided in this
194 paragraph:
195 a. "Building materials" means tangible personal property
196 which becomes a component part of improvements to real property.
197 b. "Real property" has the same meaning as provided in s.
198 192.001(12).
199 c. "Rehabilitation of real property" means the
200 reconstruction, renovation, restoration, rehabilitation,
201 construction, or expansion of improvements to real property.
202 d. "Substantially completed" has the same meaning as
203 provided in s. 192.042(1).
204 9. This paragraph expires on the date specified in s.
205 290.016 for the expiration of the Florida Enterprise Zone Act.
206 Section 4. Paragraphs (a) and (e) of subsection (1) and
207 paragraph (e) of subsection (3) of section 212.096, Florida
208 Statutes, are amended to read:
209 212.096 Sales, rental, storage, use tax; enterprise zone
210 jobs credit against sales tax.--
211 (1) For the purposes of the credit provided in this
212 section:
213 (a) "Eligible business" means any sole proprietorship,
214 firm, partnership, corporation, bank, savings association,
215 estate, trust, business trust, receiver, syndicate, or other
216 group or combination, or successor business, located in an
217 enterprise zone. The business must demonstrate to the department
218 that, on the date of application, the total number of full-time

219 jobs defined under paragraph (d) is greater than the total was
220 ~~has increased from the average of the previous~~ 12 months prior
221 to that date. An eligible business does not include any business
222 which has claimed the credit permitted under s. 220.181 for any
223 new business employee first beginning employment with the
224 business after July 1, 1995.
225 (e) "New job has been created" means that, on the date of
226 application, the total number of full-time jobs is greater than
227 the total was ~~has increased in an enterprise zone from the~~
228 ~~average of the previous~~ 12 months prior to that date, as
229 demonstrated to the department by a business located in the
230 enterprise zone.
231
232 A person shall be deemed to be employed if the person performs
233 duties in connection with the operations of the business on a
234 regular, full-time basis, provided the person is performing such
235 duties for an average of at least 36 hours per week each month.
236 The person must be performing such duties at a business site
237 located in the enterprise zone.
238 (3) In order to claim this credit, an eligible business
239 must file under oath with the governing body or enterprise zone
240 development agency having jurisdiction over the enterprise zone
241 where the business is located, as applicable, a statement which
242 includes:
243 (e) Demonstration to the department that, on the date of
244 application, the total number of full-time jobs defined under
245 paragraph (1)(d) is greater than the total was ~~has increased in~~

246 ~~an enterprise zone from the average of the previous~~ 12 months
247 prior to that date.
248 Section 5. Paragraph (a) of subsection (1) of section
249 220.13, Florida Statutes, is reenacted and amended to read:
250 220.13 "Adjusted federal income" defined.--
251 (1) The term "adjusted federal income" means an amount
252 equal to the taxpayer's taxable income as defined in subsection
253 (2), or such taxable income of more than one taxpayer as
254 provided in s. 220.131, for the taxable year, adjusted as
255 follows:
256 (a) Additions.--There shall be added to such taxable
257 income:
258 1. The amount of any tax upon or measured by income,
259 excluding taxes based on gross receipts or revenues, paid or
260 accrued as a liability to the District of Columbia or any state
261 of the United States which is deductible from gross income in
262 the computation of taxable income for the taxable year.
263 2. The amount of interest which is excluded from taxable
264 income under s. 103(a) of the Internal Revenue Code or any other
265 federal law, less the associated expenses disallowed in the
266 computation of taxable income under s. 265 of the Internal
267 Revenue Code or any other law, excluding 60 percent of any
268 amounts included in alternative minimum taxable income, as
269 defined in s. 55(b)(2) of the Internal Revenue Code, if the
270 taxpayer pays tax under s. 220.11(3).
271 3. In the case of a regulated investment company or real
272 estate investment trust, an amount equal to the excess of the

273 net long-term capital gain for the taxable year over the amount
274 of the capital gain dividends attributable to the taxable year.
275 4. That portion of the wages or salaries paid or incurred
276 for the taxable year which is equal to the amount of the credit
277 allowable for the taxable year under s. 220.181. ~~The provisions~~
278 ~~of~~ This subparagraph shall expire ~~and be void~~ on the date
279 specified in s. 290.016 for the expiration of the Florida
280 Enterprise Zone Act ~~June 30, 2005~~.
281 5. That portion of the ad valorem school taxes paid or
282 incurred for the taxable year which is equal to the amount of
283 the credit allowable for the taxable year under s. 220.182. ~~The~~
284 ~~provisions of~~ This subparagraph shall expire ~~and be void~~ on the
285 date specified in s. 290.016 for the expiration of the Florida
286 Enterprise Zone Act ~~June 30, 2005~~.
287 6. The amount of emergency excise tax paid or accrued as a
288 liability to this state under chapter 221 which tax is
289 deductible from gross income in the computation of taxable
290 income for the taxable year.
291 7. That portion of assessments to fund a guaranty
292 association incurred for the taxable year which is equal to the
293 amount of the credit allowable for the taxable year.
294 8. In the case of a nonprofit corporation which holds a
295 pari-mutuel permit and which is exempt from federal income tax
296 as a farmers' cooperative, an amount equal to the excess of the
297 gross income attributable to the pari-mutuel operations over the
298 attributable expenses for the taxable year.
299 9. The amount taken as a credit for the taxable year under
300 s. 220.1895.

301 10. Up to nine percent of the eligible basis of any
302 designated project which is equal to the credit allowable for
303 the taxable year under s. 220.185.
304 11. The amount taken as a credit for the taxable year
305 under s. 220.187.
306 Section 6. Paragraph (a) of subsection (1) and paragraph
307 (f) of subsection (2) of section 220.181, Florida Statutes, are
308 amended to read:
309 220.181 Enterprise zone jobs credit.--
310 (1)(a) There shall be allowed a credit against the tax
311 imposed by this chapter to any business located in an enterprise
312 zone which demonstrates to the department that, on the date of
313 application, the total number of full-time jobs is greater than
314 the total was ~~has increased from the average of the previous~~ 12
315 months prior to that date. The credit shall be computed as 20
316 percent of the actual monthly wages paid in this state to each
317 new employee hired when a new job has been created, as defined
318 under s. 220.03(1)(ff), unless the business is located in a
319 rural enterprise zone, pursuant to s. 290.004(6), in which case
320 the credit shall be 30 percent of the actual monthly wages paid.
321 If no less than 20 percent of the employees of the business are
322 residents of an enterprise zone, excluding temporary and part-
323 time employees, the credit shall be computed as 30 percent of
324 the actual monthly wages paid in this state to each new employee
325 hired when a new job has been created, unless the business is
326 located in a rural enterprise zone, in which case the credit
327 shall be 45 percent of the actual monthly wages paid, for a
328 period of up to 24 consecutive months. If the new employee hired

329 when a new job is created is a participant in the welfare
330 transition program, the following credit shall be a percent of
331 the actual monthly wages paid: 40 percent for $4 above the
332 hourly federal minimum wage rate; 41 percent for $5 above the
333 hourly federal minimum wage rate; 42 percent for $6 above the
334 hourly federal minimum wage rate; 43 percent for $7 above the
335 hourly federal minimum wage rate; and 44 percent for $8 above
336 the hourly federal minimum wage rate.
337 (2) When filing for an enterprise zone jobs credit, a
338 business must file under oath with the governing body or
339 enterprise zone development agency having jurisdiction over the
340 enterprise zone where the business is located, as applicable, a
341 statement which includes:
342 (f) Demonstration to the department that, on the date of
343 application, the total number of full-time jobs is greater than
344 the total was ~~has increased from the average of the previous~~ 12
345 months prior to that date.
346 Section 7. Paragraph (c) is added to subsection (6) of
347 section 290.0055, Florida Statutes, to read:
348 290.0055 Local nominating procedure.--
349 (6)
350 (c) At least 90 days before adopting a resolution seeking
351 a change in the boundary of an enterprise zone, the governing
352 body shall include in a notice of the meeting at which the
353 resolution will be considered an explanation that a change in
354 the boundary of an enterprise zone will be considered and that
355 the change may result in loss of enterprise zone eligibility for
356 the area affected by the boundary change.

357 Section 8. (1) Notwithstanding the provisions of s.
358 212.08(5)(g), Florida Statutes, as amended by this act, a
359 business developing a project involving the rehabilitation of
360 real property that has been excluded from an enterprise zone
361 because of the redesignation requirements of s. 290.012 or s.
362 290.0065, Florida Statutes, shall remain eligible to apply for
363 the building materials tax exemption under s. 212.08(5)(g),
364 Florida Statutes, for that project through December 31, 2007, if
365 the following requirements are met:
366 (a) The project must have been located in an enterprise
367 zone on or before December 31, 2005.
368 (b) The project must have a duration extending beyond
369 December 31, 2005.
370 (c) The project must have been excluded from the
371 enterprise zone due to the portion of the enterprise zone in
372 which the project is located not meeting the pervasive poverty
373 rate requirements of s. 290.0058(2)(a) or (b), Florida Statutes.
374 (d) The difference between the pervasive poverty rate
375 requirements of s. 290.0058(2)(a), Florida Statutes, and the
376 actual poverty rate in the area in which the project is located
377 must be 5 percentage points or less.
378 (e) The business must apply for a certificate of
379 eligibility for the project with the enterprise zone development
380 agency by November 1, 2006, and demonstrate that the project
381 meets the requirements of this section.
382 (f) The enterprise zone development agency must provide a
383 copy of the certificate of eligibility to the Department of
384 Revenue.

385 (2) The provisions of this section are remedial in nature
386 and shall apply retroactively to December 31, 2005. This section
387 is repealed December 31, 2007.
388 Section 9. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7167 PCB GM 06-01 Growth Management
SPONSOR(S): Growth Management Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Growth Management Committee	10 Y, 0 N	Grayson	Grayson
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7167 (formerly PCB GM-06-01) is the glitch bill for CS/CS/CS SB 360 (2005), ch. 2005-290, L.O.F., the Act, relating to infrastructure planning and funding. The bill:

- Conforms terminology to the phrase "proportionate fair-share mitigation."
- Corrects cross-references.
- Merges language into one provision relating to the public schools interlocal agreement.
- Provides that the "under actual-construction" requirement of transportation facility concurrency is met when construction funding needed is provided in the first 3 years of the Department of Transportation's (DOT) work plan.
- Requires DOT to publish and distribute, after public workshops, policy guidelines to assist local governments in planning to assess and mitigate impacts of proposed concurrency management areas.
- Provides a consequence for failure to timely adopt the local government proportionate fair-share mitigation methodology and to include it into its transportation concurrency management plan.
- Requires DOT to concur or withhold its concurrence, within 30 days, with the local government's plan for mitigation of impacts to the Strategic Intermodal System (SIS) from proposed transportation exception areas.
- Corrects, adjusts, or readdresses a number of funding issues as follows:
  - Non-recurring SIS Appropriation.
  - State Infrastructure Bank non-recurring transfer.
  - Classrooms for Kids appropriations recurring and non-recurring appropriations.
  - High Growth District Capital Outlay Assistance Grant Program recurring appropriation.
  - Century Commission for a Sustainable Florida recurring appropriation.

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

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:

This bill addresses inadvertent errors and other glitches contained in ch. 2005-290, L.O.F., the growth management act of the 2005 Legislative Session.

Background

The 2005 Legislature enacted ch. 2005-290, L.O.F. (the Act), relating to infrastructure planning and funding. The Act was the subject of a conference committee during the last two days of the 2005 Session and was the last bill to pass both houses during the last hour of that Session. As a result, the Act contains a number of matters that may require correction or clarification.

Effect of Proposed Changes

Terminology for Proportionate Share

As outlined in the table below, the Act utilizes seven different terms to refer to the concept of "proportionate fair-share mitigation." The Florida Department of Transportation (DOT) utilized the phrase "proportionate fair-share mitigation" in their development of the model ordinance required in s. 163.3180(16(a), F.S., as a result of the Act. That phrase appears to best represent the concepts embodied in the Act.

Act Section	Statute Section	Term(s) Used
1	163.3164(32)	"proportionate share"
5	163.3180(13)(e)	"mitigation proportionate to" & "proportionate-share mitigation"
5	163.3180(13)(e)1	"proportionate – share mitigation"
5	163.3180(13)(e)2	"proportionate – share mitigation"
5	163.3180(13)(e)3	"proportionate – share mitigation"
	163.3180(16)	"proportionate fair – share mitigation"
5	163.3180(16)(a)	"proportionate fair – share mitigation"
5	163.3180(16)(b)1	"proportionate fair – share mitigation" & "proportionate fair – share contributions"
5	163.3180(16)(b)2	"proportionate fair-share mitigation"
5	163.3180(16)(c)	"proportionate fair – share mitigation" & "proportionate fair-share contribution"
5	163.3180(16)(f)	"proportionate share agreement" & "proportionate share"
17	380.06(24)(l), (m), & (n)	"proportionate share"

Cross-references

The Act contains a number of cross-references that are inaccurate and should be corrected as outlined below.

- Correction: In s. 163.3177(13)(c)4, F.S., the cross-reference to "subsection (2)" should be "subsection (14)".

  Explanation: The section addresses the topics which a local government must discuss as part of the workshops and public meetings for the development of a community vision. Specifically, this reference is to the designation of an urban service boundary, which is referred to in subsection (14), and not subsection (2).

- Correction: In s. 163.3180(13)(f)1., F.S., the citation to s. 163.31777(6), F.S., should be "163.31777, F.S."

  Explanation: Section 163.3180(13)(f)1., F.S., relates to an exception for municipalities from being a signatory to the public school interlocal agreement. The citation in question was intended to reference other provisions of the statute that established the requirement to enter into the interlocal agreement. The erroneous citation refers to an exemption from the public school interlocal agreement requirements; and should rather refer to the entire section itself, s. 163.31777, F.S.

- Correction: In s. 163.3180(16)(b)1., F.S., the citation to s. 163.164(32), F.S., should be "s. 163.3164(32), F.S."

  Explanation: Section 163.164(32), F.S., does not exist. The citation was intended to refer to the definition of "financially feasible" which is found at s. 163.3164(32), F.S.

- Correction: In s. 163.3184(17), F.S., the citation to s. 163.31773(13), F.S., should be "s. 163.3177(13) F.S."

  Explanation: Section 163.31773 does not exist. The reference is to a local government that has adopted a community vision and an urban service boundary. Section 163.3177(13) F.S., and (14), F.S., relate to community vision and urban service boundaries, respectively.

- Correction: In s. 339.2819(4)(a)2., F.S., the citation to s. 163.3177(9) F.S., should be "s. 163.3180(9), F.S."

  Explanation: Section 339.2819(4)(a)2., F.S., relates to requirements for projects to be funded through the Transportation Regional Incentive Program. The citation in question was intended to relate to the statutory authority for a local government to implement a long-term concurrency management system. The erroneous citation, s. 163.3177(9), F.S., relates to adoption of minimum criteria for review and determination of compliance of local government plan elements. The correct citation, s. 163.3180(9), F.S., relates to long-term transportation and school concurrency management systems.

Funding Issues

The Act contains a number of appropriations and other funding matters that are inadvertent or otherwise need to be corrected, adjusted, or readdressed, as outlined below.

- Transportation Funding

  - Non-recurring Strategic Intermodal System (SIS) Appropriation - The Act appropriates $200 million for the 2005-2006 fiscal year to fund projects on the SIS. The intended funding level was $175 million non-recurring to correspond with a one-time $175 million transfer. The bill makes this correction.

- SIB non-recurring transfer – The Act contains language relating to a recurring appropriation for State Infrastructure Bank (SIB) in addition to $100M non-recurring for SIB appropriated correctly for fiscal year 2005-2006. The bill deletes that language found at s. 339.55(10), F.S.

- Education Funding
  - Classrooms for Kids appropriations – The Act contains a recurring appropriation for the Classrooms for Kids Program in the amount of $41.75 million. The Act also contains a $75 million dollar recurring transfer. The bill corrects the recurring appropriation to the intended level of $75 million. Additionally, the bill appropriates the nonrecurring sum of $33.35 million to account for the error in the FY 2005-2006 appropriation.

  - High Growth District Capital Outlay Assistance Grant Program - The Act contains a $30 million recurring appropriation for the High Growth District Capital Outlay Assistance Grant Program. The Governor vetoed this appropriation. The bill reappropriates the amount to support the grant program.

- Century Commission for a Sustainable Florida

  - Recurring appropriation - The Act contains both a non-recurring appropriation for FY 2005-2006 and a recurring transfer and appropriation of $250,000 for the Century Commission for a Sustainable Florida. The Governor vetoed the recurring appropriation. The bill reappropriates the recurring funding for this commission from funds appropriated to the Grants and Donations Trust Fund within the Department of Community Affairs.

Public Schools Interlocal Agreement

The bill amends several sections of existing law to merge the requirements for the public schools interlocal agreement into s. 163.31777, F.S. This was undertaken in an effort to provide a single statutory source for these requirements. Specifically, requirements currently existing in ss. 163.3180(13)(g), 1013.33(2) and (3), F.S., are combined and revised into the s. 163.31777, F.S.

Concurrency

Transportation Facilities: The bill provides that if the construction funding needed for transportation facilities is provided in the first 3 years of the DOT work program, then the "under-actual-construction" requirement of s. 163.3180(2)(c), F.S., is satisfied.

Impacts to the Strategic Intermodal System

Transportation Concurrency Exception Areas: The bill provides that DOT must publish and distribute, after publicly noticed workshops, policy guidelines containing criteria and options to assist local government in planning to assess and mitigate impacts of a proposed concurrency exception area as described in ss. 163.3180(5)(f) and (7), F.S.

Required Adoption of a Proportionate Fair-Share Mitigation Methodology and Transportation Concurrency Management System

The bill provides a consequence for the failure of local government to meet current law to timely adopt a methodology for assessing proportionate fair-share mitigation; and for failure to timely include its methodology into its transportation concurrency management system. The deadline for those local government actions is December 1, 2006. The consequence provided is the inability to impose a transportation impact fee.

DOT Comments on Proposed Transportation Concurrency Exception Areas

The Act provides that a local government proposing a transportation concurrency exception area must confer with the DOT regarding impacts to, and mitigation of impacts to, SIS facilities. The bill provides that the DOT must concur or withhold its concurrence with the mitigation of development impacts to facilities on the SIS within 30 days of the date of submission. If DOT fails to respond within the allotted time period, then the agency is deemed to have concurred.

C. SECTION DIRECTORY:

Section 1 - Amends s. 163.3164(32), F.S., correcting terminology.

Section 2 – Amends s. 163.3177(13)(c), F.S., correcting cross-reference.

Section 3 – Amends ss. 163.31777, F.S., relating to public schools interlocal agreements.

Section 4 – Amends ss. 163.3180, F.S., relating to concurrency.

Section 5 – Amends s. 163.3184(17), F.S., relating to adoption and amendment of comprehensive plans.

Section 6 – Amends s. 339.2819(4)(a), F.S., relating to the Transportation Regional Incentive Program.

Section 7 – Amends s. 339.55, F.S., relating to the state-funded infrastructure bank; and correcting an appropriations error.

Section 8 – Amends ss. 380.06(24)(l), (m) and (n), F.S., relating to developments of regional impact; correcting terminology.

Section 9 – Amends ss. 1013.33(2), (3), and (12), F.S., relating to the coordination of school planning with local governments.

Section 10 – Amends s. 1013.65(2)(a), F.S., relating to the Public Education Capital Outlay and Debt Service Trust Fund; correcting an appropriation for the Classrooms for Kids Program.

Section 11 – Amends s. 27 of ch. 2005-290, L.O.F., relating to appropriations.

Section 12 – Creates appropriations.

Section 13 - Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have an impact on state revenues.

2. Expenditures:

   The bill contains appropriations as follows

   - Corrects non-recurring SIS appropriation from $200 million to $175 million.
   - Deletes s. 339.55(10), F.S., relating to a recurring SIB appropriation.
   - Corrects the recurring Classroom for Kids appropriation from $41.75 to $75 million.

- Creates a nonrecurring $33.35 million appropriation for Classrooms for Kids.
- Creates a $30 million recurring appropriation for the High Growth District Capital Outlay Assistance Grant Program.
- Creates a recurring $250,000 appropriation for the Century Commission for a Sustainable Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill provides the potential for some local governments to benefit from appropriations to both the Classrooms for Kids Program and the High Growth County District Capital Outlay Assistance Program. Counties that fail to enact the proportionate share ordinance may loose out on some impact fee revenues.

2. Expenditures:

Indeterminate. While the bill strengthens certain timing requirements for local government planning related activities, the requirement to undertake those activities exists in current law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill both strengthens the timing requirements for certain local government actions and appropriates funding which provides the potential for some local government benefits. Both of these features may result in either advancing or delaying local development activities depending upon specific local circumstances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill does not appear to raise any constitutional issues.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Growth Management Committee adopted one amendment. The amendment removed the deletion of s. 163.31777(3)(b) and (c), F.S. from the bill.

1 A bill to be entitled
2 An act relating to growth management; amending s.
3 163.3164, F.S.; revising a definition; amending s.
4 163.3177, F.S.; correcting a cross-reference; amending s.
5 163.31777, F.S.; revising requirements and procedures for
6 public schools interlocal agreements; amending s.
7 163.3180, F.S.; revising concurrency requirements and
8 procedures; amending ss. 163.3184 and 339.2819, F.S.;
9 correcting cross-references; amending s. 339.55, F.S.;
10 deleting an annual appropriation from the State
11 Transportation Trust Fund for State Infrastructure Bank
12 purposes; amending s. 380.06, F.S.; revising certain
13 statutory exemption provisions for developments of
14 regional impact; amending s. 1013.33, F.S.; revising
15 requirements and procedures for coordination of planning
16 with local governing bodies; amending s. 1013.65, F.S.;
17 revising an appropriation from the Public Education
18 Capital Outlay and Debt Service Trust Fund to the
19 Classroom for Kids Program; amending s. 27, ch. 2005-290,
20 Laws of Florida; revising an appropriation from the State
21 Transportation Trust Fund for Florida Strategic Intermodal
22 System purposes; providing appropriations; providing an
23 effective date.
24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Subsection (32) of section 163.3164, Florida
28 Statutes, is amended to read:

29 163.3164 Local Government Comprehensive Planning and Land
30 Development Regulation Act; definitions.--As used in this act:
31 (32) "Financial feasibility" means that sufficient
32 revenues are currently available or will be available from
33 committed funding sources for the first 3 years, or will be
34 available from committed or planned funding sources for years 4
35 and 5, of a 5-year capital improvement schedule for financing
36 capital improvements, such as ad valorem taxes, bonds, state and
37 federal funds, tax revenues, impact fees, and developer
38 contributions, which are adequate to fund the projected costs of
39 the capital improvements identified in the comprehensive plan
40 necessary to ensure that adopted level-of-service standards are
41 achieved and maintained within the period covered by the 5-year
42 schedule of capital improvements. The requirement that level-of-
43 service standards be achieved and maintained shall not apply if
44 the proportionate fair-share mitigation ~~proportionate share~~
45 process set forth in s. 163.3180(12) and (16) is used.
46 Section 2. Paragraph (c) of subsection (13) of section
47 163.3177, Florida Statutes, is amended to read:
48 163.3177 Required and optional elements of comprehensive
49 plan; studies and surveys.--
50 (13) Local governments are encouraged to develop a
51 community vision that provides for sustainable growth,
52 recognizes its fiscal constraints, and protects its natural
53 resources. At the request of a local government, the applicable
54 regional planning council shall provide assistance in the
55 development of a community vision.

56 (c) As part of the workshops and public meetings, the
57 local government must discuss strategies for addressing the
58 topics discussed under paragraph (b), including:
59 1. Strategies to preserve open space and environmentally
60 sensitive lands, and to encourage a healthy agricultural
61 economy, including innovative planning and development
62 strategies, such as the transfer of development rights;
63 2. Incentives for mixed-use development, including
64 increased height and intensity standards for buildings that
65 provide residential use in combination with office or commercial
66 space;
67 3. Incentives for workforce housing;
68 4. Designation of an urban service boundary pursuant to
69 subsection (14) ~~(2)~~; and
70 5. Strategies to provide mobility within the community and
71 to protect the Strategic Intermodal System, including the
72 development of a transportation corridor management plan under
73 s. 337.273.
74 Section 3. Subsections (1) and (2), paragraph (a) of
75 subsection (3), and subsection (4) of section 163.31777, Florida
76 Statutes, are amended to read:
77 163.31777 Public schools interlocal agreement.--
78 (1)(a) The district school board, county, and nonexempt
79 municipalities located within the geographic area of a school
80 district shall enter into an interlocal agreement ~~with the~~
81 ~~district school board~~ which jointly establishes the specific
82 ways in which the plans and processes of the district school
83 board and the local governments are to be coordinated. ~~The~~

84 ~~interlocal agreements shall be submitted to the state land~~
85 ~~planning agency and the Office of Educational Facilities and the~~
86 ~~SMART Schools Clearinghouse in accordance with a schedule~~
87 ~~published by the state land planning agency.~~
88 ~~(b) The schedule must establish staggered due dates for~~
89 ~~submission of interlocal agreements that are executed by both~~
90 ~~the local government and the district school board, commencing~~
91 ~~on March 1, 2003, and concluding by December 1, 2004, and must~~
92 ~~set the same date for all governmental entities within a school~~
93 ~~district. However, if the county where the school district is~~
94 ~~located contains more than 20 municipalities, the state land~~
95 ~~planning agency may establish staggered due dates for the~~
96 ~~submission of interlocal agreements by these municipalities. The~~
97 ~~schedule must begin with those areas where both the number of~~
98 ~~districtwide capital outlay full-time equivalent students equals~~
99 ~~80 percent or more of the current year's school capacity and the~~
100 ~~projected 5-year student growth is 1,000 or greater, or where~~
101 ~~the projected 5-year student growth rate is 10 percent or~~
102 ~~greater.~~
103 (b) ~~(c)~~ If the student population has declined over the 5-
104 year period preceding the due date for submittal of an
105 interlocal agreement by the local government and the district
106 school board, the local government and the district school board
107 may petition the state land planning agency for a waiver of one
108 or more requirements of subsection (2). The waiver must be
109 granted if the procedures called for in subsection (2) are
110 unnecessary because of the school district's declining school
111 age population, considering the district's 5-year facilities

112 work program prepared pursuant to s. 1013.35. The state land
113 planning agency may modify or revoke the waiver upon a finding
114 that the conditions upon which the waiver was granted no longer
115 exist. The district school board and local governments must
116 submit an interlocal agreement within 1 year after notification
117 by the state land planning agency that the conditions for a
118 waiver no longer exist.
119 (c) ~~(d) Interlocal agreements between local governments and~~
120 ~~district school boards adopted pursuant to s. 163.3177 before~~
121 ~~the effective date of this section must be updated and executed~~
122 ~~pursuant to the requirements of this section, if necessary.~~
123 ~~Amendments to interlocal agreements adopted pursuant to this~~
124 ~~section must be submitted to the state land planning agency~~
125 ~~within 30 days after execution by the parties for review~~
126 ~~consistent with this section.~~ Local governments and the district
127 school board in each school district are encouraged to adopt a
128 single updated interlocal agreement to which all join as
129 parties. The state land planning agency shall assemble and make
130 available model interlocal agreements meeting the requirements
131 of this section and notify local governments and, jointly with
132 the Department of Education, the district school boards of the
133 requirements of this section, the dates for compliance, and the
134 sanctions for noncompliance. The state land planning agency
135 shall be available to informally review proposed interlocal
136 agreements. If the state land planning agency has not received a
137 proposed interlocal agreement for informal review, the state
138 land planning agency shall, at least 60 days before the deadline
139 for submission of the executed agreement, renotify the local

140 government and the district school board of the upcoming
141 deadline and the potential for sanctions.
142 (2) The interlocal agreement must acknowledge the school
143 board's constitutional and statutory obligations to provide a
144 uniform system of free public schools on a countywide basis and
145 the land use authority of local governments, including the
146 authority to approve or deny comprehensive plan amendments and
147 development orders. ~~At a minimum,~~ The interlocal agreement must
148 ~~address interlocal agreement requirements in s. 163.3180(13)(g),~~
149 ~~except for exempt local governments as provided in s.~~
150 ~~163.3177(12), and must~~ address the following issues:
151 (a) Mechanisms for coordinating the development, adoption,
152 and amendment of each local government's public school
153 facilities element with each other local government that is a
154 party to the agreements and the plans of the school board to
155 ensure a uniform districtwide school concurrency system.
156 (b) A process for developing siting criteria that
157 encourages the location of public schools proximate to urban
158 residential areas to the extent possible and seeks to collocate
159 schools with other public facilities, including, but not limited
160 to, parks, libraries, and community centers, to the extent
161 possible.
162 (c) Uniform, districtwide, level-of-service standards for
163 public schools of the same type and a process for modifying
164 adopted level-of-service standards.
165 (d) A process for establishing a financially feasible
166 public school capital facilities program and a process and
167 schedule for incorporation of the public school capital

168 facilities program into the local government comprehensive plans
169 on an annual basis.
170 (e) If school concurrency is to be applied on a less than
171 districtwide basis in the form of concurrency service areas,
172 criteria and standards for the establishment and modification of
173 school concurrency service areas. The agreement must also
174 establish a process and schedule for the mandatory incorporation
175 of the school concurrency service areas and the criteria and
176 standards for establishment of the service areas into the local
177 government comprehensive plans. The agreement must ensure
178 maximum use of school capacity, taking into account
179 transportation costs and court-approved desegregation plans and
180 other applicable factors.
181 (f) A uniform districtwide procedure for implementing
182 school concurrency that provides for:
183 1. Evaluation of development applications for compliance
184 with school concurrency requirements, including, but not limited
185 to, information provided by the school board on affected
186 schools.
187 2. Monitoring and evaluation of the school concurrency
188 system.
189 (g) A process and uniform methodology for determining
190 proportionate fair-share mitigation pursuant to s. 380.06.
191 (h) ~~(a)~~ A process by which each local government and the
192 district school board agree and base their plans on consistent
193 projections of the amount, type, and distribution of population
194 growth and student enrollment. The geographic distribution of

195 jurisdiction-wide growth forecasts is a major objective of the
196 process.
197 (i) ~~(b)~~ A process to coordinate and share information
198 relating to existing and planned public school facilities,
199 including school renovations and closures, and local government
200 plans for development and redevelopment.
201 (j) ~~(c)~~ Participation by affected local governments with
202 the district school board in the process of evaluating potential
203 school closures, significant renovations to existing schools,
204 and new school site selection before land acquisition. Local
205 governments shall advise the district school board as to the
206 consistency of the proposed closure, renovation, or new site
207 with the local comprehensive plan, including appropriate
208 circumstances and criteria under which a district school board
209 may request an amendment to the comprehensive plan for school
210 siting.
211 (k) ~~(d)~~ A process for determining the need for and timing
212 of onsite and offsite improvements to support new, proposed
213 expansion, or redevelopment of existing schools. The process
214 must address identification of the party or parties responsible
215 for the improvements.
216 ~~(e) A process for the school board to inform the local~~
217 ~~government regarding the effect of comprehensive plan amendments~~
218 ~~on school capacity. The capacity reporting must be consistent~~
219 ~~with laws and rules relating to measurement of school facility~~
220 ~~capacity and must also identify how the district school board~~
221 ~~will meet the public school demand based on the facilities work~~
222 ~~program adopted pursuant to s. 1013.35.~~

223 (l) ~~(f)~~ Participation of the local governments in the
224 preparation of the annual update to the district school board's
225 5-year district facilities work program and educational plant
226 survey prepared pursuant to s. 1013.35.
227 (m) ~~(g)~~ A process for determining where and how joint use
228 of either school board or local government facilities can be
229 shared for mutual benefit and efficiency.
230 (n) ~~(h)~~ A procedure for the resolution of disputes between
231 the district school board and local governments, which may
232 include the dispute resolution processes contained in chapters
233 164 and 186.
234 (o) ~~(i)~~ An oversight process, including an opportunity for
235 public participation, for the implementation of the interlocal
236 agreement.
237 (p) A process for development of a public school
238 facilities element pursuant to s. 163.3177(12).
239 (q) Provisions for siting and modification or enhancements
240 to existing school facilities so as to encourage urban infill
241 and redevelopment.
242 (r) A process for the use and conversion of historic
243 school facilities that are no longer suitable for educational
244 purposes, as determined by the district school board.
245 (s) A process for informing the local government regarding
246 the effect of comprehensive plan amendments and rezonings on
247 school capacity. The capacity reporting must be consistent with
248 laws and rules relating to measurement of school facility
249 capacity and must also identify how the district school board
250 will meet the public school demand based on the facilities work

251 program adopted pursuant to s. 1013.35.
252 (t) A process to ensure an opportunity for the school
253 board to review and comment on the effect of comprehensive plan
254 amendments and rezonings on the public school facilities plan.
255
256 For those local governments that receive a waiver pursuant to
257 subsection (1), the interlocal agreement shall not include the
258 issues provided for in paragraphs (a), (c), (d), (e), (f), (g),
259 and (p). For counties or municipalities that do not have a
260 public school interlocal agreement or public school facility
261 element, the assessment shall determine whether the local
262 government continues to meet the criteria of s. 163.3177(12). If
263 a county or municipality determines that it no longer meets the
264 criteria, the county or municipality must adopt appropriate
265 school concurrency goals, objectives, and policies in its plan
266 amendments pursuant to the requirements of the public school
267 facility element and enter into the existing interlocal
268 agreement required by this section and s. 173.3177(6)(h)2. in
269 order to fully participate in the school concurrency system.
270 (3)(a) The updated interlocal agreement adopted pursuant
271 to the schedule adopted in accordance with s. 163.3177(12)(i)
272 and any subsequent amendments must be submitted to the state
273 land planning agency and the Office of Educational Facilities
274 within 30 days after execution by the parties to the agreement
275 for review consistent with this section. The office ~~and SMART~~
276 ~~Schools Clearinghouse~~ shall submit any comments or concerns
277 regarding the executed interlocal agreement or agreement
278 amendments to the state land planning agency within 30 days

279 after receipt of the executed interlocal agreement or agreement
280 amendments. The state land planning agency shall review the
281 updated executed interlocal agreement or agreement amendments to
282 determine whether they are ~~it is~~ consistent with the
283 requirements of subsection (2), the adopted local government
284 comprehensive plan, and other requirements of law. Within 60
285 days after receipt of an updated executed interlocal agreement
286 or agreement amendments, the state land planning agency shall
287 publish a notice on the agency's Internet website that states ~~of~~
288 ~~intent in the Florida Administrative Weekly and shall post a~~
289 ~~copy of the notice on the agency's Internet site. The notice of~~
290 ~~intent must state~~ whether the interlocal agreement is consistent
291 or inconsistent with the requirements of subsection (2) and this
292 subsection, as appropriate.
293 (4) If an updated executed interlocal agreement is not
294 timely submitted to the state land planning agency for review,
295 the state land planning agency shall, within 15 working days
296 after the deadline for submittal, issue to the local government
297 and the district school board a Notice to Show Cause why
298 sanctions should not be imposed for failure to submit an
299 executed interlocal agreement by the deadline established by the
300 agency. The agency shall forward the notice and the responses to
301 the Administration Commission, which may enter a final order
302 citing the failure to comply and imposing sanctions against the
303 local government and district school board by directing the
304 appropriate agencies to withhold at least 5 percent of state
305 funds pursuant to s. 163.3184(11) and by directing the
306 Department of Education to withhold from the district school

307 board at least 5 percent of funds for school construction
308 available pursuant to ss. 1013.65, 1013.68, 1013.70, and
309 1013.72.
310 Section 4. Paragraph (c) of subsection (2), paragraph (f)
311 of subsection (5), subsection (7), paragraphs (e), (f), (g), and
312 (h) of subsection (13), and paragraphs (a), (b), (c), (e), and
313 (f) of subsection (16) of section 163.3180, Florida Statutes,
314 are amended to read:
315 163.3180 Concurrency.--
316 (2)
317 (c) Consistent with the public welfare, and except as
318 otherwise provided in this section, transportation facilities
319 needed to serve new development shall be in place or under
320 actual construction within 3 years after the local government
321 approves a building permit or its functional equivalent that
322 results in traffic generation. For purposes of this paragraph
323 and all provisions relating to transportation concurrency, if
324 the construction funding needed for facilities is provided in
325 the first 3 years of the Department of Transportation's work
326 program or the local government's schedule of capital
327 improvements, the under-actual-construction requirements of this
328 paragraph shall be deemed to have been met.
329 (5)
330 (f) Prior to the designation of a concurrency exception
331 area, the Department of Transportation shall be consulted by the
332 local government to assess the impact that the proposed
333 exception area is expected to have on the adopted level-of-
334 service standards established for Strategic Intermodal System

335 facilities, as defined in s. 339.64, and roadway facilities
336 funded in accordance with s. 339.2819. Further, the local
337 government shall, in cooperation with the Department of
338 Transportation, develop a plan to mitigate ~~any~~ impacts to the
339 Strategic Intermodal System, including, if appropriate, the
340 development of a long-term concurrency management system
341 pursuant to subsection (9) and s. 163.3177(3)(d). The exceptions
342 may be available only within the specific geographic area of the
343 jurisdiction designated in the plan. Pursuant to s. 163.3184,
344 any affected person may challenge a plan amendment establishing
345 these guidelines and the areas within which an exception could
346 be granted. By October 1, 2006, the Department of
347 Transportation, after publicly noticed workshops, shall publish
348 and distribute to local governments a policy guideline
349 containing criteria and options to assist local governments in
350 planning to assess and mitigate the impacts of a proposed
351 concurrency exception area as described in this paragraph.
352 (7) In order to promote infill development and
353 redevelopment, one or more transportation concurrency management
354 areas may be designated in a local government comprehensive
355 plan. A transportation concurrency management area must be a
356 compact geographic area with an existing network of roads where
357 multiple, viable alternative travel paths or modes are available
358 for common trips. A local government may establish an areawide
359 level-of-service standard for such a transportation concurrency
360 management area based upon an analysis that provides for a
361 justification for the areawide level of service, how urban
362 infill development or redevelopment will be promoted, and how

363 mobility will be accomplished within the transportation
364 concurrency management area. Prior to the designation of a
365 concurrency management area, the Department of Transportation
366 shall be consulted by the local government to assess the impact
367 that the proposed concurrency management area is expected to
368 have on the adopted level-of-service standards established for
369 Strategic Intermodal System facilities, as defined in s. 339.64,
370 and roadway facilities funded in accordance with s. 339.2819.
371 Further, the local government shall, in cooperation with the
372 Department of Transportation, develop a plan to mitigate any
373 impacts to the Strategic Intermodal System, including, if
374 appropriate, the development of a long-term concurrency
375 management system pursuant to subsection (9) and s.
376 163.3177(3)(d). Transportation concurrency management areas
377 existing prior to July 1, 2005, shall meet, at a minimum, the
378 provisions of this section by July 1, 2006, or at the time of
379 the comprehensive plan update pursuant to the evaluation and
380 appraisal report, whichever occurs last. The state land planning
381 agency shall amend chapter 9J-5, Florida Administrative Code, to
382 be consistent with this subsection. By October 1, 2006, the
383 Department of Transportation, after publicly noticed workshops,
384 shall publish and distribute to local governments a policy
385 guideline containing criteria and options to assist local
386 governments in planning to assess and mitigate the impacts of a
387 proposed concurrency exception area as described in this
388 paragraph.
389 (13) School concurrency shall be established on a
390 districtwide basis and shall include all public schools in the

391 district and all portions of the district, whether located in a
392 municipality or an unincorporated area unless exempt from the
393 public school facilities element pursuant to s. 163.3177(12).
394 The application of school concurrency to development shall be
395 based upon the adopted comprehensive plan, as amended. All local
396 governments within a county, except as provided in paragraph
397 (f), shall adopt and transmit to the state land planning agency
398 the necessary plan amendments, along with the interlocal
399 agreement, for a compliance review pursuant to s. 163.3184(7)
400 and (8). The minimum requirements for school concurrency are the
401 following:
402 (e) Availability standard.--Consistent with the public
403 welfare, a local government may not deny an application for site
404 plan, final subdivision approval, or the functional equivalent
405 for a development or phase of a development authorizing
406 residential development for failure to achieve and maintain the
407 level-of-service standard for public school capacity in a local
408 school concurrency management system where adequate school
409 facilities will be in place or under actual construction within
410 3 years after the issuance of final subdivision or site plan
411 approval, or the functional equivalent. School concurrency shall
412 be satisfied if the developer executes a legally binding
413 commitment to provide proportionate fair-share mitigation
414 against ~~proportionate to~~ the demand for public school facilities
415 to be created by actual development of the property, including,
416 but not limited to, the options described in subparagraph 1.
417 Options for proportionate fair-share ~~proportionate-share~~
418 mitigation of impacts on public school facilities shall be

419 established in the public school facilities element and the
420 interlocal agreement pursuant to s. 163.31777.
421 1. Appropriate proportionate fair-share mitigation options
422 include the contribution of land; the construction, expansion,
423 or payment for land acquisition or construction of a public
424 school facility; or the creation of mitigation banking based on
425 the construction of a public school facility in exchange for the
426 right to sell capacity credits. Such options must include
427 execution by the applicant and the local government of a binding
428 development agreement that constitutes a legally binding
429 commitment to pay proportionate fair-share ~~proportionate share~~
430 mitigation for the additional residential units approved by the
431 local government in a development order and actually developed
432 on the property, taking into account residential density allowed
433 on the property prior to the plan amendment that increased
434 overall residential density. The district school board shall be
435 a party to such an agreement. As a condition of its entry into
436 such a development agreement, the local government may require
437 the landowner to agree to continuing renewal of the agreement
438 upon its expiration.
439 2. If the education facilities plan and the public
440 educational facilities element authorize a contribution of land;
441 the construction, expansion, or payment for land acquisition; or
442 the construction or expansion of a public school facility, or a
443 portion thereof, as proportionate fair-share ~~proportionate share~~
444 mitigation, the local government shall credit such a
445 contribution, construction, expansion, or payment toward any

446 other impact fee or exaction imposed by local ordinance for the
447 same need, on a dollar-for-dollar basis at fair market value.
448 3. Any proportionate fair-share ~~proportionate share~~
449 mitigation must be directed by the school board toward a school
450 capacity improvement identified in a financially feasible 5-year
451 district work plan and which satisfies the demands created by
452 that development in accordance with a binding developer's
453 agreement.
454 4. This paragraph does not limit the authority of a local
455 government to deny a development permit or its functional
456 equivalent pursuant to its home rule regulatory powers, except
457 as provided in this part.
458 (f) Intergovernmental coordination.--
459 1. When establishing concurrency requirements for public
460 schools, a local government shall satisfy the requirements for
461 intergovernmental coordination set forth in s. 163.3177(6)(h)1.
462 and 2., except that a municipality is not required to be a
463 signatory to the interlocal agreement required by ss.
464 163.3177(6)(h)2. and 163.31777~~(6)~~, as a prerequisite for
465 imposition of school concurrency, and as a nonsignatory, shall
466 not participate in the adopted local school concurrency system,
467 if the municipality meets all of the following criteria for
468 having no significant impact on school attendance:
469 a. The municipality has issued development orders for
470 fewer than 50 residential dwelling units during the preceding 5
471 years, or the municipality has generated fewer than 25
472 additional public school students during the preceding 5 years.

473 b. The municipality has not annexed new land during the
474 preceding 5 years in land use categories which permit
475 residential uses that will affect school attendance rates.
476 c. The municipality has no public schools located within
477 its boundaries.
478 d. At least 80 percent of the developable land within the
479 boundaries of the municipality has been built upon.
480 2. A municipality which qualifies as having no significant
481 impact on school attendance pursuant to the criteria of
482 subparagraph 1. must review and determine at the time of its
483 evaluation and appraisal report pursuant to s. 163.3191 whether
484 it continues to meet the criteria pursuant to s. 163.31777(6).
485 If the municipality determines that it no longer meets the
486 criteria, it must adopt appropriate school concurrency goals,
487 objectives, and policies in its plan amendments based on the
488 evaluation and appraisal report, and enter into the existing
489 interlocal agreement required by ss. 163.3177(6)(h)2. and
490 163.31777, in order to fully participate in the school
491 concurrency system. If such a municipality fails to do so, it
492 will be subject to the enforcement provisions of s. 163.3191.
493 ~~(g) Interlocal agreement for school concurrency. When~~
494 ~~establishing concurrency requirements for public schools, a~~
495 ~~local government must enter into an interlocal agreement that~~
496 ~~satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and~~
497 ~~163.31777 and the requirements of this subsection. The~~
498 ~~interlocal agreement shall acknowledge both the school board's~~
499 ~~constitutional and statutory obligations to provide a uniform~~
500 ~~system of free public schools on a countywide basis, and the~~

501 ~~land use authority of local governments, including their~~
502 ~~authority to approve or deny comprehensive plan amendments and~~
503 ~~development orders. The interlocal agreement shall be submitted~~
504 ~~to the state land planning agency by the local government as a~~
505 ~~part of the compliance review, along with the other necessary~~
506 ~~amendments to the comprehensive plan required by this part. In~~
507 ~~addition to the requirements of ss. 163.3177(6)(h) and~~
508 ~~163.31777, the interlocal agreement shall meet the following~~
509 ~~requirements:~~
510 ~~1. Establish the mechanisms for coordinating the~~
511 ~~development, adoption, and amendment of each local government's~~
512 ~~public school facilities element with each other and the plans~~
513 ~~of the school board to ensure a uniform districtwide school~~
514 ~~concurrency system.~~
515 ~~2. Establish a process for the development of siting~~
516 ~~criteria which encourages the location of public schools~~
517 ~~proximate to urban residential areas to the extent possible and~~
518 ~~seeks to collocate schools with other public facilities such as~~
519 ~~parks, libraries, and community centers to the extent possible.~~
520 ~~3. Specify uniform, districtwide level of service~~
521 ~~standards for public schools of the same type and the process~~
522 ~~for modifying the adopted level of service standards.~~
523 ~~4. Establish a process for the preparation, amendment, and~~
524 ~~joint approval by each local government and the school board of~~
525 ~~a public school capital facilities program which is financially~~
526 ~~feasible, and a process and schedule for incorporation of the~~
527 ~~public school capital facilities program into the local~~
528 ~~government comprehensive plans on an annual basis.~~

529 ~~5. Define the geographic application of school~~
530 ~~concurrency. If school concurrency is to be applied on a less~~
531 ~~than districtwide basis in the form of concurrency service~~
532 ~~areas, the agreement shall establish criteria and standards for~~
533 ~~the establishment and modification of school concurrency service~~
534 ~~areas. The agreement shall also establish a process and schedule~~
535 ~~for the mandatory incorporation of the school concurrency~~
536 ~~service areas and the criteria and standards for establishment~~
537 ~~of the service areas into the local government comprehensive~~
538 ~~plans. The agreement shall ensure maximum utilization of school~~
539 ~~capacity, taking into account transportation costs and court-~~
540 ~~approved desegregation plans, as well as other factors. The~~
541 ~~agreement shall also ensure the achievement and maintenance of~~
542 ~~the adopted level of service standards for the geographic area~~
543 ~~of application throughout the 5 years covered by the public~~
544 ~~school capital facilities plan and thereafter by adding a new~~
545 ~~fifth year during the annual update.~~
546 ~~6. Establish a uniform districtwide procedure for~~
547 ~~implementing school concurrency which provides for:~~
548 ~~a. The evaluation of development applications for~~
549 ~~compliance with school concurrency requirements, including~~
550 ~~information provided by the school board on affected schools,~~
551 ~~impact on levels of service, and programmed improvements for~~
552 ~~affected schools and any options to provide sufficient capacity;~~
553 ~~b. An opportunity for the school board to review and~~
554 ~~comment on the effect of comprehensive plan amendments and~~
555 ~~rezonings on the public school facilities plan; and~~

556 ~~c. The monitoring and evaluation of the school concurrency~~
557 ~~system.~~
558 ~~7. Include provisions relating to amendment of the~~
559 ~~agreement.~~
560 ~~8. A process and uniform methodology for determining~~
561 ~~proportionate share mitigation pursuant to subparagraph (c)1.~~
562 (g) ~~(h)~~ Local government authority.--This subsection does
563 not limit the authority of a local government to grant or deny a
564 development permit or its functional equivalent prior to the
565 implementation of school concurrency.
566 (16) It is the intent of the Legislature to provide a
567 method by which the impacts of development on transportation
568 facilities can be mitigated by the cooperative efforts of the
569 public and private sectors. The methodology used to calculate
570 proportionate fair-share mitigation under this section shall be
571 as provided for in subsection (12).
572 (a) By December 1, 2006, each local government shall adopt
573 by ordinance a methodology for assessing proportionate fair-
574 share mitigation options. A local government that fails to adopt
575 a methodology for assessing proportionate fair-share mitigation
576 options by December 1, 2006, may not impose any transportation
577 impact fee after that date until such methodology has been
578 adopted. By December 1, 2005, the Department of Transportation
579 shall develop a model transportation concurrency management
580 ordinance with methodologies for assessing proportionate fair-
581 share mitigation options.
582 (b)1. In its transportation concurrency management system,
583 a local government shall, by December 1, 2006, include

584 methodologies that will be applied to calculate proportionate
585 fair-share mitigation. A local government that fails to include
586 such methodologies by December 1, 2006, may not impose any
587 transportation impact fee after that date until such
588 methodologies have been adopted. A developer may choose to
589 satisfy all transportation concurrency requirements by
590 contributing or paying proportionate fair-share mitigation if
591 transportation facilities or facility segments identified as
592 mitigation for traffic impacts are specifically identified for
593 funding in the 5-year schedule of capital improvements in the
594 capital improvements element of the local plan or the long-term
595 concurrency management system or if such contributions or
596 payments to such facilities or segments are reflected in the 5-
597 year schedule of capital improvements in the next regularly
598 scheduled update of the capital improvements element. Updates to
599 the 5-year capital improvements element which reflect
600 proportionate fair-share contributions may not be found not in
601 compliance based on ss. 163.3164(32) ~~163.164(32)~~ and 163.3177(3)
602 if additional contributions, payments or funding sources are
603 reasonably anticipated during a period not to exceed 10 years to
604 fully mitigate impacts on the transportation facilities.
605 2. Proportionate fair-share mitigation shall be applied as
606 a credit against impact fees to the extent that all or a portion
607 of the proportionate fair-share mitigation is used to address
608 the same capital infrastructure improvements contemplated by the
609 local government's impact fee ordinance.
610 (c) Proportionate fair-share mitigation includes, without
611 limitation, separately or collectively, private funds,

612 contributions of land, and construction and contribution of
613 facilities and may include public funds as determined by the
614 local government. The fair market value of the proportionate
615 fair-share mitigation shall not differ based on the form of
616 mitigation. A local government may not require a development to
617 pay more than its proportionate fair-share mitigation
618 ~~contribution~~ regardless of the method of mitigation.
619 (e) Mitigation for development impacts to facilities on
620 the Strategic Intermodal System made pursuant to this subsection
621 requires the concurrence of the Department of Transportation.
622 The department has 30 days from the date of submission by the
623 applicable local government to concur or withhold concurrence
624 with the mitigation of development impacts to facilities on the
625 Strategic Intermodal System. If the department does not respond
626 within the 30-day period, the department is deemed to have
627 concurred with the mitigation.
628 (f) If ~~In the event the~~ funds in an adopted 5-year capital
629 improvements element are insufficient to fully fund construction
630 of a transportation improvement required by the local
631 government's concurrency management system, a local government
632 and a developer may still enter into a binding proportionate
633 fair-share mitigation ~~proportionate share~~ agreement authorizing
634 the developer to construct that amount of development on which
635 the proportionate fair-share mitigation ~~proportionate share~~ is
636 calculated if the proportionate fair-share mitigation
637 ~~proportionate share~~ amount in such agreement is sufficient to
638 pay for one or more improvements which will, in the opinion of
639 the governmental entity or entities maintaining the

640 transportation facilities, significantly benefit the impacted
641 transportation system. The improvement or improvements funded by
642 the proportionate fair-share mitigation ~~proportionate share~~
643 component must be adopted into the 5-year capital improvements
644 schedule of the comprehensive plan at the next annual capital
645 improvements element update.
646 Section 5. Subsection (17) of section 163.3184, Florida
647 Statutes, is amended to read:
648 163.3184 Process for adoption of comprehensive plan or
649 plan amendment.--
650 (17) A local government that has adopted a community
651 vision and urban service boundary under s. 163.3177(13)
652 ~~163.31773(13)~~ and (14) may adopt a plan amendment related to map
653 amendments solely to property within an urban service boundary
654 in the manner described in subsections (1), (2), (7), (14),
655 (15), and (16) and s. 163.3187(1)(c)1.d. and e., 2., and 3.,
656 such that state and regional agency review is eliminated. The
657 department may not issue an objections, recommendations, and
658 comments report on proposed plan amendments or a notice of
659 intent on adopted plan amendments; however, affected persons, as
660 defined by paragraph (1)(a), may file a petition for
661 administrative review pursuant to the requirements of s.
662 163.3187(3)(a) to challenge the compliance of an adopted plan
663 amendment. This subsection does not apply to any amendment
664 within an area of critical state concern, to any amendment that
665 increases residential densities allowable in high-hazard coastal
666 areas as defined in s. 163.3178(2)(h), or to a text change to
667 the goals, policies, or objectives of the local government's

668 comprehensive plan. Amendments submitted under this subsection
669 are exempt from the limitation on the frequency of plan
670 amendments in s. 163.3187.
671 Section 6. Paragraph (a) of subsection (4) of section
672 339.2819, Florida Statutes, is amended to read:
673 339.2819 Transportation Regional Incentive Program.--
674 (4)(a) Projects to be funded with Transportation Regional
675 Incentive Program funds shall, at a minimum:
676 1. Support those transportation facilities that serve
677 national, statewide, or regional functions and function as an
678 integrated regional transportation system.
679 2. Be identified in the capital improvements element of a
680 comprehensive plan that has been determined to be in compliance
681 with part II of chapter 163, after July 1, 2005, or to implement
682 a long-term concurrency management system adopted by a local
683 government in accordance with s. 163.3180(9) ~~163.3177(9)~~.
684 Further, the project shall be in compliance with local
685 government comprehensive plan policies relative to corridor
686 management.
687 3. Be consistent with the Strategic Intermodal System Plan
688 developed under s. 339.64.
689 4. Have a commitment for local, regional, or private
690 financial matching funds as a percentage of the overall project
691 cost.
692 Section 7. Subsection (10) of section 339.55, Florida
693 Statutes, is amended to read:
694 339.55 State-funded infrastructure bank.--

695 ~~(10) Funds paid into the State Transportation Trust Fund~~
696 ~~pursuant to s. 201.15(1)(d) for the purposes of the State~~
697 ~~Infrastructure Bank are hereby annually appropriated for~~
698 ~~expenditure to support that program.~~
699 Section 8. Paragraphs (l), (m), and (n) of subsection (24)
700 of section 380.06, Florida Statutes, are amended to read:
701 380.06 Developments of regional impact.--
702 (24) STATUTORY EXEMPTIONS.--
703 (l) Any proposed development within an urban service
704 boundary established under s. 163.3177(14) is exempt from the
705 provisions of this section if the local government having
706 jurisdiction over the area where the development is proposed has
707 adopted the urban service boundary and has entered into a
708 binding agreement with adjacent jurisdictions and the Department
709 of Transportation regarding the mitigation of impacts on state
710 and regional transportation facilities, and has adopted a
711 proportionate fair-share mitigation ~~share~~ methodology pursuant
712 to s. 163.3180(16).
713 (m) Any proposed development within a rural land
714 stewardship area created under s. 163.3177(11)(d) is exempt from
715 the provisions of this section if the local government that has
716 adopted the rural land stewardship area has entered into a
717 binding agreement with jurisdictions that would be impacted and
718 the Department of Transportation regarding the mitigation of
719 impacts on state and regional transportation facilities, and has
720 adopted a proportionate fair-share mitigation ~~share~~ methodology
721 pursuant to s. 163.3180(16).

722 (n) Any proposed development or redevelopment within an
723 area designated as an urban infill and redevelopment area under
724 s. 163.2517 is exempt from the provisions of this section if the
725 local government has entered into a binding agreement with
726 jurisdictions that would be impacted and the Department of
727 Transportation regarding the mitigation of impacts on state and
728 regional transportation facilities, and has adopted a
729 proportionate fair-share mitigation ~~share~~ methodology pursuant
730 to s. 163.3180(16).
731 Section 9. Subsections (2), (3), and (12) of section
732 1013.33, Florida Statutes, are amended to read:
733 1013.33 Coordination of planning with local governing
734 bodies.--
735 (2)(a) The school board, county, and nonexempt
736 municipalities located within the geographic area of a school
737 district shall enter into an interlocal agreement that jointly
738 establishes the specific ways in which the plans and processes
739 of the district school board and the local governments are to be
740 coordinated. Any updated ~~The~~ interlocal agreements and agreement
741 amendments shall be submitted to the state land planning agency
742 and the Office of Educational Facilities ~~and the SMART Schools~~
743 ~~Clearinghouse~~ in accordance with a schedule published by the
744 state land planning agency pursuant to s. 163.3177(12)(i).
745 ~~(b) The schedule must establish staggered due dates for~~
746 ~~submission of interlocal agreements that are executed by both~~
747 ~~the local government and district school board, commencing on~~
748 ~~March 1, 2003, and concluding by December 1, 2004, and must set~~
749 ~~the same date for all governmental entities within a school~~

750 ~~district. However, if the county where the school district is~~
751 ~~located contains more than 20 municipalities, the state land~~
752 ~~planning agency may establish staggered due dates for the~~
753 ~~submission of interlocal agreements by these municipalities. The~~
754 ~~schedule must begin with those areas where both the number of~~
755 ~~districtwide capital outlay full-time equivalent students equals~~
756 ~~80 percent or more of the current year's school capacity and the~~
757 ~~projected 5 year student growth rate is 1,000 or greater, or~~
758 ~~where the projected 5 year student growth rate is 10 percent or~~
759 ~~greater.~~
760 (b) ~~(c)~~ If the student population has declined over the 5-
761 year period preceding the due date for submittal of an
762 interlocal agreement by the local government and the district
763 school board, the local government and district school board may
764 petition the state land planning agency for a waiver of one or
765 more of the requirements of subsection (3). The waiver must be
766 granted if the procedures called for in subsection (3) are
767 unnecessary because of the school district's declining school
768 age population, considering the district's 5-year work program
769 prepared pursuant to s. 1013.35. The state land planning agency
770 may modify or revoke the waiver upon a finding that the
771 conditions upon which the waiver was granted no longer exist.
772 The district school board and local governments must submit an
773 interlocal agreement within 1 year after notification by the
774 state land planning agency that the conditions for a waiver no
775 longer exist.
776 (c) ~~(d)~~ ~~Interlocal agreements between local governments and~~
777 ~~district school boards adopted pursuant to s. 163.3177 before~~

778 ~~the effective date of subsections (2)-(9) must be updated and~~
779 ~~executed pursuant to the requirements of subsections (2)-(9), if~~
780 ~~necessary. Amendments to interlocal agreements adopted pursuant~~
781 ~~to subsections (2)-(9) must be submitted to the state land~~
782 ~~planning agency within 30 days after execution by the parties~~
783 ~~for review consistent with subsections (3) and (4).~~ Local
784 governments and the district school board in each school
785 district are encouraged to adopt a single updated interlocal
786 agreement in which all join as parties. The state land planning
787 agency shall assemble and make available model interlocal
788 agreements meeting the requirements of subsections (2)-(9) and
789 shall notify local governments and, jointly with the Department
790 of Education, the district school boards of the requirements of
791 subsections (2)-(9), the dates for compliance, and the sanctions
792 for noncompliance. The state land planning agency shall be
793 available to informally review proposed interlocal agreements.
794 If the state land planning agency has not received a proposed
795 interlocal agreement for informal review, the state land
796 planning agency shall, at least 60 days before the deadline for
797 submission of the executed agreement, renotify the local
798 government and the district school board of the upcoming
799 deadline and the potential for sanctions.
800 (3) ~~At a minimum,~~ The interlocal agreement must address
801 ~~interlocal agreement requirements in s. 163.3180(13)(g), except~~
802 ~~for exempt local governments as provided in s. 163.3177(12), and~~
803 ~~must address~~ the ~~following~~ issues specified in s. 163.31777(2).~~:~~
804 ~~(a) A process by which each local government and the~~
805 ~~district school board agree and base their plans on consistent~~

806 ~~projections of the amount, type, and distribution of population~~
807 ~~growth and student enrollment. The geographic distribution of~~
808 ~~jurisdiction wide growth forecasts is a major objective of the~~
809 ~~process.~~
810 ~~(b) A process to coordinate and share information relating~~
811 ~~to existing and planned public school facilities, including~~
812 ~~school renovations and closures, and local government plans for~~
813 ~~development and redevelopment.~~
814 ~~(c) Participation by affected local governments with the~~
815 ~~district school board in the process of evaluating potential~~
816 ~~school closures, significant renovations to existing schools,~~
817 ~~and new school site selection before land acquisition. Local~~
818 ~~governments shall advise the district school board as to the~~
819 ~~consistency of the proposed closure, renovation, or new site~~
820 ~~with the local comprehensive plan, including appropriate~~
821 ~~circumstances and criteria under which a district school board~~
822 ~~may request an amendment to the comprehensive plan for school~~
823 ~~siting.~~
824 ~~(d) A process for determining the need for and timing of~~
825 ~~onsite and offsite improvements to support new construction,~~
826 ~~proposed expansion, or redevelopment of existing schools. The~~
827 ~~process shall address identification of the party or parties~~
828 ~~responsible for the improvements.~~
829 ~~(e) A process for the school board to inform the local~~
830 ~~government regarding the effect of comprehensive plan amendments~~
831 ~~on school capacity. The capacity reporting must be consistent~~
832 ~~with laws and rules regarding measurement of school facility~~
833 ~~capacity and must also identify how the district school board~~

834 ~~will meet the public school demand based on the facilities work~~
835 ~~program adopted pursuant to s. 1013.35.~~
836 ~~(f) Participation of the local governments in the~~
837 ~~preparation of the annual update to the school board's 5-year~~
838 ~~district facilities work program and educational plant survey~~
839 ~~prepared pursuant to s. 1013.35.~~
840 ~~(g) A process for determining where and how joint use of~~
841 ~~either school board or local government facilities can be shared~~
842 ~~for mutual benefit and efficiency.~~
843 ~~(h) A procedure for the resolution of disputes between the~~
844 ~~district school board and local governments, which may include~~
845 ~~the dispute resolution processes contained in chapters 164 and~~
846 ~~186.~~
847 ~~(i) An oversight process, including an opportunity for~~
848 ~~public participation, for the implementation of the interlocal~~
849 ~~agreement.~~
850 (12) As early in the design phase as feasible and
851 consistent with an interlocal agreement entered pursuant to
852 subsections (2)-(8), but no later than 120 ~~90~~ days before
853 commencing construction, the district school board shall in
854 writing request a determination of consistency with the local
855 government's comprehensive plan. The local governing body that
856 regulates the use of land shall determine, in writing within 45
857 days after receiving the necessary information and a school
858 board's request for a determination, whether a proposed
859 educational facility is consistent with the local comprehensive
860 plan and consistent with local land development regulations. If
861 the determination is affirmative, school construction may

862 commence and further local government approvals are not
863 required, except as provided in this section. Failure of the
864 local governing body to make a determination in writing within
865 90 days after a district school board's request for a
866 determination of consistency shall be considered an approval of
867 the district school board's application. Campus master plans and
868 development agreements must comply with the provisions of ss.
869 1013.30 and 1013.63.
870 Section 10. Paragraph (a) of subsection (2) of section
871 1013.65, Florida Statutes, is amended to read:
872 1013.65 Educational and ancillary plant construction
873 funds; Public Education Capital Outlay and Debt Service Trust
874 Fund; allocation of funds.--
875 (2)(a) The Public Education Capital Outlay and Debt
876 Service Trust Fund shall be comprised of the following sources,
877 which are hereby appropriated to the trust fund:
878 1. Proceeds, premiums, and accrued interest from the sale
879 of public education bonds and that portion of the revenues
880 accruing from the gross receipts tax as provided by s. 9(a)(2),
881 Art. XII of the State Constitution, as amended, interest on
882 investments, and federal interest subsidies.
883 2. General revenue funds appropriated to the fund for
884 educational capital outlay purposes.
885 3. All capital outlay funds previously appropriated and
886 certified forward pursuant to s. 216.301.
887 4.a. Funds paid pursuant to s. 201.15(1)(d).
888 b. The sum of $75 ~~$41.75~~ million from recurring funds in
889 the Public Education Capital Outlay and Debt Service Trust Fund

890 ~~of such funds~~ shall be appropriated ~~annually~~ for expenditure to
891 fund the Classrooms for Kids Program created in s. 1013.735 and
892 shall be distributed as provided by that section.
893 Section 11. Paragraph (a) of subsection (2) of section 27
894 of chapter 2005-290, Laws of Florida, is amended to read:
895 Section 27.
896 (2) The following appropriations are made for the 2005-
897 2006 fiscal year only on a nonrecurring basis:
898 (a) From the State Transportation Trust Fund in the
899 Department of Transportation:
900 1. One hundred seventy-five ~~Two hundred~~ million dollars
901 for the purposes specified in sections 339.61, 339.62, 339.63,
902 and 339.64, Florida Statutes.
903 2. Two hundred seventy-five million dollars for the
904 purposes specified in section 339.2819, Florida Statutes.
905 3. One hundred million dollars for the purposes specified
906 in section 339.55, Florida Statutes.
907 4. Twenty-five million for the purposes specified in
908 section 339.2817, Florida Statutes.
909 Section 12. (1) The sum of $33.35 million in nonrecurring
910 funds is appropriated from the Public Education Capital Outlay
911 and Debt Service Trust Fund to fund the Classrooms for Kids
912 Program created in s. 1013.735, Florida Statutes.
913 (2) The sum of $30 million from the Public Education
914 Capital Outlay and Debt Service Trust Fund is appropriated each
915 year for expenditures to fund the High Growth District Capital
916 Outlay Assistance Grant Program created in s. 1013.738, Florida
917 Statutes, and shall be distributed as provided in that section.

918 (3) The sum of $250,000 in recurring funds is appropriated
919 from the Department of Community Affairs' Grants and Donations
920 Trust Fund to support the Century Commission for a Sustainable
921 Florida pursuant to s. 163.3247, Florida Statutes.
922 Section 13. This act shall take effect July 1, 2006.

ADDEDUM
AMENDMENT PACKET

Transportation & Economic Development Appropriations Committee

Monday, April 17, 2006
3:00 p.m. – 4:00 p.m.
Reed Hall (102)

Allan G. Bense
Speaker

Don Davis
Chair

Amendment No. (for drafter's use only)

Bill No. **1359 CS**

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: Transportation & Economic
2 Development Appropriations Committee
3 Representative Patterson offered the following:
4
5 **Amendment (with title amendment)**
6 Between lines 134 and 135 insert:
7 Section 4. Subsections (2) and (3) of section 163.336,
8 Florida Statutes, are amended to read:
9
10 (2) PILOT PROJECT ADMINISTRATION.--
11 (a) To be eligible to participate in this pilot project,
12 all or a portion of the area must be within:
13 1. The coastal building zone as defined in s. 161.54; and
14 2. A community redevelopment area, enterprise zone,
15 brownfield area, empowerment zone, or other such economically
16 deprived areas as designated by the county or municipality with
17 jurisdiction over the area.
18 (b) Local governments are encouraged to use the full range
19 of economic and tax incentives available to facilitate and
20 promote redevelopment and revitalization within the pilot
21 project areas.

22 (c) The Office of the Governor, Department of
23 Environmental Protection, and the Department of Community
24 Affairs are directed to provide technical assistance to expedite
25 permitting for redevelopment projects and construction
26 activities within the pilot project areas consistent with the
27 principles, processes, and timeframes provided in s. 403.973.
28 (d) The Department of Environmental Protection shall
29 exempt construction activities within the pilot project area in
30 locations seaward of a coastal construction control line and
31 landward of existing armoring from certain siting and design
32 criteria pursuant to s. 161.053. However, such exemption shall
33 not be deemed to exempt property within the pilot project area
34 from applicable local land development regulations, including
35 but not limited to, setback, side lot line, and lot coverage
36 requirements. Such exemption shall apply to construction and
37 redevelopment of structures involving the coverage, excavation,
38 and impervious surface criteria of s. 161.053, and related
39 adopted rules, as follows:
40 1. This review by the department of applications for
41 permits for coastal construction within the pilot project area
42 must apply to construction and redevelopment of structures
43 subject to the coverage, excavation, and impervious surface
44 criteria of s. 161.053, and related adopted rules. It is the
45 intent of these provisions that the pilot project area be
46 enabled to redevelop in a manner which meets the economic needs
47 of the area while preserving public safety and existing
48 resources, including natural resources.
49 2. The criteria for review under s. 161.053 are applicable
50 within the pilot project area, except that the structures within
51 the pilot project area shall not be subject to specific shore

52 parallel coverage requirements and are allowed to exceed the 50
53 percent impervious surface requirement. In no case shall
54 stormwater discharge be allowed onto, or seaward of, the frontal
55 dune. Structures are also not bound by the restrictions on
56 excavation unless the construction will adversely affect the
57 integrity of the existing seawall or rigid coastal armoring
58 structure or stability of the existing beach and dune system. It
59 is specifically contemplated that underground structures,
60 including garages, will be permitted. <u>However, during the</u>
61 <u>permit-review process, pursuant to s. 161.053, the department</u>
62 <u>may favorably consider authorized sand placement on adjacent</u>
63 <u>properties if the permittee has demonstrated every reasonable</u>
64 <u>effort to effectively use all beach-quality material on site to</u>
65 <u>enhance the beach and dune system, and has prepared a</u>
66 <u>comprehensive plan for beach and dune nourishment for the</u>
67 <u>adjoining area.</u> All beach-compatible material excavated under
68 this subparagraph must be maintained on site seaward of the
69 coastal construction control line.
70 3. The review criteria in subparagraph 2. will apply to
71 all construction within the pilot project area lying seaward of
72 the coastal construction control line and landward of an
73 existing viable seawall or rigid coastal armoring structure, if
74 such construction is fronted by a seawall or rigid coastal
75 armoring structure extending at least 1,000 feet without any
76 interruptions other than beach access points. For purposes of
77 this section, a viable seawall or rigid coastal armoring
78 structure is a structure that has not deteriorated, dilapidated,
79 or been damaged to such a degree that it no longer provides
80 adequate protection to the upland property when considering the
81 following criteria, including, but not limited to:

82 a. The top must be at or above the still water level,
83 including setup, for the design storm of 30-year return storm
84 plus the breaking wave calculated at its highest achievable
85 level based on the maximum eroded beach profile and highest
86 surge level combination, and must be high enough to preclude
87 runup overtopping;
88 b. The armoring must be stable under the design storm of
89 30-year return storm including maximum localized scour, with
90 adequate penetration; and
91 c. The armoring must have sufficient continuity or return
92 walls to prevent flooding under the design storm of 30-year
93 return storm from impacting the proposed construction.
94 4. Where there exists a continuous line of rigid coastal
95 armoring structure on either side of unarmored property and the
96 adjacent line of rigid coastal armoring structures are having an
97 adverse effect on or threaten the unarmored property, and the
98 gap does not exceed 100 feet, the department may grant the
99 necessary permits under s. 161.085 to close the gap.
100 5. Structures approved pursuant to this section shall not
101 cause flooding of or result in adverse impacts to existing
102 upland structures or properties and shall comply with all other
103 requirements of s. 161.053 and its implementing rules.
104 6. Where there exists a continuous line of viable rigid
105 coastal armoring structure on either side of a nonviable rigid
106 coastal armoring structure, the department shall grant the
107 necessary permits under s. 161.085 to replace such nonviable
108 rigid coastal armoring structure with a viable rigid coastal
109 armoring structure as defined in this section. This shall not
110 apply to rigid coastal armoring structures constructed after May

111 1, 1998, unless such structures have been permitted pursuant to
112 s. 161.085(2).
113 (3) PILOT PROJECT EXPIRATION.--The authorization for the
114 pilot project and the provisions of this section expire December
115 31, 2014 ~~2006~~. The department and affected local governments
116 shall provide for an independent analysis of the economic value
117 and environmental impact of the pilot project and provide a
118 report to the Legislature on or before February 1, 2008. ~~The~~
119 ~~Legislature shall review these requirements before their~~
120 ~~scheduled expiration.~~
121
122
123 ========== T I T L E A M E N D M E N T ==========
124 Remove line 26 and insert:
125 163.336, F.S., revising the requirements for the placement of
126 beach-compatible material that is excavated during the pilot
127 project; extending the expiration date of the pilot project;
128 requiring a report; amending s. 381.0065, F.S., requiring the
129 issuance of certain permits

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: Transportation & Economic
2 Development Appropriations Committee
3 Representative(s) Grant offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Parts X and XI of chapter 288, Florida
8 Statutes, are redesignated as parts XI and XII, respectively,
9 and a new part X of that chapter, consisting of section
10 288.9621, Florida Statutes, is created to read:
11 288.9621 Capital formation.--
12 (1) SHORT TITLE.--This section may be cited as the
13 "Florida Capital Formation Act."
14 (2) DEFINITIONS.--As used in this section, the term:
15 (a) "Business unit" means an employing unit, as defined in
16 s. 443.036, which is registered with the Agency for Workforce
17 Innovation for purposes of unemployment compensation or a
18 subcategory or division of an employing unit that is accepted
19 by the agency as a reporting unit.
20 (b) "Certificate" means a contract between a company and a
21 designated investor evidencing the terms of a guarantee granted

22 to a designated investor of an investment of funds in the
23 company.
24 (c) "Company" means the Florida Opportunity Fund.
25 (d) "Designated investor" means a person, entity, or
26 lender who is a party to a certificate.
27 (e) "Florida Opportunity Fund allocation manager" or
28 "allocation manager" means one or more fund-of-funds investment
29 managers hired by the Florida Opportunity Fund to raise capital
30 and invest assets of the company in venture capital funds.
31 (f) "Florida-based" means operating in this state at a
32 permanent address and maintaining at least one business unit in
33 this state.
34 (g) "Office" means the Governor's Office of Tourism,
35 Trade, and Economic Development.
36 (3) FLORIDA CAPITAL INVESTMENT.--
37 (a) The office shall account for moneys transferred under
38 this section separately within the Economic Development Trust
39 Fund created in s. 288.095. The office shall make all such
40 funds available for investments by the State Board of
41 Administration or its designated investment manager as
42 requested by the State Board of Administration. The State Board
43 of Administration or its designated investment manager shall
44 invest and reinvest the moneys in accordance with s. 215.47 and
45 subject to the terms of any trust agreement between the State
46 Board of Administration and the office. Fees and expenses
47 incurred by the State Board of Administration for investing the
48 moneys shall be deducted as provided in a trust agreement. Upon
49 request of the office, the State Board of Administration shall
50 liquidate investments and advance the proceeds to the company
51 as required to fund certificate obligations pursuant to this
52 section as well as the company's reasonable and necessary

53 operational expenses. The exercise by the State Board of
54 Administration or its designated investment manager of powers
55 conferred by this section shall be deemed and held to be the
56 performance of essential public purposes.
57 (b) The State Board of Administration or its designated
58 investment manager shall invest and reinvest any funds returned
59 by the company in accordance with s. 215.47 and subject to the
60 terms of any trust agreement between the State Board of
61 Administration and the office. The company shall maintain
62 necessary working capital moneys; obtain funding from the trust
63 fund for certificate obligations, reasonable and necessary
64 operating costs, or replenishment of working capital balances;
65 and return for liquidity investment any moneys received in
66 excess of the company's working capital needs.
67 (4) FLORIDA OPPORTUNITY FUND; CREATION; POWERS AND
68 DUTIES.--
69 (a) Enterprise Florida, Inc., shall organize the Florida
70 Opportunity Fund as a wholly owned, private, not-for-profit,
71 limited liability Florida-based company. Enterprise Florida,
72 Inc., shall be the company's sole owner. The Florida
73 Opportunity Fund is not a public company or instrumentality of
74 the state. Enterprise Florida, Inc., shall annually evaluate
75 and report to the Governor, the President of the Senate, and
76 the Speaker of the House of Representatives whether the company
77 is being operated and state funds are being obligated in the
78 best interest of the state.
79 (b) The Florida Opportunity Fund shall be governed by a
80 board of directors consisting of five members who have
81 expertise in the area of the selection and supervision of
82 early-stage investment managers or in the fiduciary management
83 of investment funds or who have expertise in other areas

84 considered appropriate by the appointment committee. The vice
85 chair of Enterprise Florida, Inc., shall select from among its
86 board of directors a five-person appointment committee to
87 appoint the company's initial board of directors. After
88 appointment of the initial board of directors, vacancies on the
89 board of directors shall be filled by appointment by Enterprise
90 Florida, Inc. The board of directors shall be appointed to
91 serve staggered 3-year terms in accordance with the company's
92 organizational documents. Members of the board of directors and
93 officers and employees of the company are subject to any
94 restrictions on conflicts of interest specified in the
95 organizational documents of the company and may not have an
96 interest in the Florida Opportunity Fund allocation manager or
97 in any investments made by the company. Members of the board of
98 directors shall serve without compensation but board members
99 and officers and employees of the company may be reimbursed for
100 all reasonable, necessary, and actual expenses, as determined
101 by the board and approved by Enterprise Florida, Inc.
102 (c) The company has all of the powers specified under
103 chapter 608 for limited liability companies and may indemnify
104 members of the board of directors to the broadest extent
105 permissible under the laws of this state. However, board
106 members and officers and employees of the company have a
107 fiduciary duty with respect to the management of company assets
108 and selection and oversight of the company's allocation manager
109 and shall discharge those duties in the best interest of the
110 state.
111 (d) The company is subject to chapter 119, relating to
112 public meetings, and s. 286.011, relating to public records.
113 (e) The company shall select a Florida Opportunity Fund
114 allocation manager for the raising and investing of capital by

115 the company. The allocation manager shall demonstrate expertise
116 in the successful management and fund allocation of investments
117 in venture capital funds. In selecting an allocation manager,
118 the company shall consider, among other pertinent factors, each
119 candidate's level of experience, probability of success in
120 fundraising, quality of management performance, investment
121 philosophy and process, prior investment fund results, and
122 potential for achieving the purposes of this section.
123 (f) The company shall guarantee private capital
124 investments in the company pursuant to this section and shall
125 issue certificates to designated investors evidencing the terms
126 of a guarantee. The company shall invest on a fund-of-funds
127 basis in seed and early-state venture capital funds having
128 experienced managers or management teams with demonstrated
129 experience, expertise, and a successful history in the
130 investment of venture capital funds, focusing on opportunities
131 in this state. The company may not make direct investments in
132 individual businesses. While not precluded from investing in
133 venture capital funds that have investments outside this state,
134 the company must require a venture capital fund to show a
135 record of successful investment in this state, to be based in
136 this state, or to have an office in this state staffed with a
137 full-time, professional, venture investment executive in order
138 to be eligible for investment. The company may negotiate any
139 terms and conditions for its investments, including the
140 clawback of management fees and other provisions that maximize
141 investment in seed and early-state Florida-based companies. The
142 company may charge fees and earn a rate of return for its
143 guarantees such that the company can pay for ts operational
144 expenses and reinvest in venture capital funds to create new

145 businesses and jobs in this state and further diversify the
146 economy of this state.
147 (g) The company may not invest in a venture capital fund
148 unless that venture capital fund has raised capital from other
149 sources in an amount at least equal to the investment of the
150 company, such that the total invested in Florida-based
151 companies by the receiving venture capital fund totals at least
152 twice the investment of the company. Investments must be made
153 in Florida-based companies, including, without limitation,
154 enterprises in life sciences, information technology, advanced
155 manufacturing processes, aviation and aerospace, and homeland
156 security and defense, as well as other strategic technologies.
157 (5) ANNUAL REPORT.--The company shall submit an annual
158 report of its activities to the Governor, the President of the
159 Senate, and the Speaker of the House of Representatives within
160 3 months after the end of its fiscal year. The annual report
161 must include a copy of an independent audit of the company and
162 a valuation of the assets of the company, a review of the
163 progress of the Florida Opportunity Fund allocation manager in
164 implementing the allocation manager's investment plan, the rate
165 of return, and the benefits to the state resulting from this
166 program, including the amount of capital raised and deployed
167 and the amount of investment. The annual report must also
168 include a list of venture capital funds in which investments
169 were made and the number of Florida-based businesses created
170 and their associated industry.
171 Section 2. (1) For the 2006-2007 fiscal year, the sum of
172 $300,000 is appropriated from the General Revenue Fund to the
173 Economic Development Trust Fund in the Office of Tourism,
174 Trade, and Economic Development to be used for start-up
175 activities necessary to implement s. 288.9621, Florida

176 Statutes, including creation of the Florida Opportunity Fund
177 and the solicitation, and related due diligence, required for
178 contracting the services of the Florida Opportunity Fund
179 allocation manager.
180 (2) For the 2006-2007 fiscal year, the sum of $15 million
181 is transferred from nonrecurring moneys in the General Revenue
182 Fund to the Economic Development Trust Fund in the Office of
183 Tourism, Trade, and Economic Development for subsequent
184 investment in the Florida Opportunity Fund pursuant to s.
185 288.9621, Florida Statutes. Notwithstanding s. 216.301, Florida
186 Statutes, any balance remaining in the trust fund at the end of
187 any fiscal year shall remain in the trust fund and shall be
188 available for carrying out the purposes of s. 288.9621, Florida
189 Statutes. The transferred amount and any earnings on such
190 amount are appropriated and may be used for the purposes of s.
191 288.9621, Florida Statutes, until July 1, 2020, at which time
192 the sum of $15 million or the balance of funds in the trust
193 fund, whichever is less, shall be returned to the General
194 Revenue Fund and any obligated funds for outstanding
195 certificates shall remain until these certificates expire or
196 are terminated. The Florida Opportunity Fund shall continue to
197 administer its investments after July 1, 2020, until such
198 investments are liquidated. Proceeds from liquidation of
199 investments and any proceeds in excess of $15 million may be
200 retained for continuous reinvestment by the Florida Opportunity
201 Fund, if an amount of not less than $15 million has been
202 returned to the General Revenue Fund on or before July 1, 2020.
203 If at any time Enterprise Florida, Inc., dissolves the Florida
204 Opportunity Fund, all assets of the Florida Opportunity Fund
205 and any funds remaining for the purpose of this section shall

206 revert to the General Revenue Fund. Enterprise Florida, Inc.,
207 may not sell or transfer ownership of the company.
208 Section 3. This act shall take effect July 1, 2006.
209
210 ========== T I T L E A M E N D M E N T ==========
211 Remove the entire title and insert:
212 A bill to be entitled
213 An act relating to capital formation; creating s.
214 288.9621, F.S.; providing a short title; providing
215 definitions; requiring the Office of Tourism, Trade, and
216 Economic Development to account for certain moneys
217 separately within the Economic Development Trust Fund;
218 requiring the office to make certain funds available for
219 investment by the State Board of Administration; providing
220 for deducting certain fees and expenses; requiring the
221 State Board of Administration to liquidate investments and
222 advance proceeds to the Florida Opportunity Fund for
223 certain purposes; providing investment requirements for
224 the State Board of Administration; providing operational
225 requirements for the Florida Opportunity Fund; requiring
226 Enterprise Florida, Inc., to organize the Florida
227 Opportunity Fund as a wholly owned private, not-for-profit
228 limited liability Florida-based company; requiring
229 Enterprise Florida, Inc., to annually evaluate the company
230 and report to the Governor and Legislature; providing for
231 a board of directors for the company; providing for
232 appointment and terms of board members; providing
233 requirements and limitations for board members; requiring
234 board members to serve without compensation; providing for
235 reimbursement of expenses of board members and company
236 officers and employees; specifying powers of the company;

237 authorizing the company to indemnify board members;
238 specifying a fiduciary duty of board members and companyt
239 officers and employees; subjecting the company to public
240 meetings and public records requirements; specifying
241 duties of the company; requiring the company to select a
242 Florida Opportunity Fund allocation manager; specifying
243 duties and requirements of the allocation manager;
244 requiring the company to guarantee private capital
245 investments in the company; providing requirements for
246 such guarantees; specifying investment requirements for
247 the company; specifying investment limitations and
248 prohibitions for the company; requiring the company to
249 issue an annual report the Governor and the Legislature;
250 specifying report requirements; providing for an
251 independent audit; providing for a transfer of
252 nonrecurring funds in the General Revenue Fund to the
253 Economic Development Trust Fund for subsequent investment
254 in the Florida Opportunity Fund; providing for retention
255 of balances in the trust fund each year; providing for
256 continuing appropriation and use of such moneys for a
257 certain time period; providing for return of certain funds
258 to the General Revenue Fund; requiring the company to
259 continue administering investments for certain purposes;
260 providing for continuous reinvestment of certain funds by
261 the company; providing for reversion of assets and funds
262 of the company to the General Revenue Fund under certain
263 circumstances; prohibiting Enterprise Florida, Inc., from
264 selling or transferring ownership of the company;
265 providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **7167**

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: Transportation & Economic
2 Development Appropriations Committee
3 Representative Johnson offered the following:
4
5 **Amendment**
6 Remove line(s) 387 and insert:
7 proposed concurrency management area as described in this
8

000000

Amendment No. 2

Bill No. **7167**

COUNCIL/COMMITTEE ACTION

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

---

1 Council/Committee hearing bill: Transportation & Economic
2 Development Appropriations Committee
3 Representative Johnson offered the following:
4
5 **Amendment**
6 Remove lines 173-177 and insert:
7 school concurrency service areas. The agreement must ensure

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: Transportation & Economic
2 Development Appropriations Committee
3 Representative Johnson offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 870-921 and insert:
7
8 Section 10. Paragraph (a) of subsection (2) of section 27
9 of chapter 2005-290, Laws of Florida, is amended to read:
10 Section 27.
11 (2) The following appropriations are made for the 2005-
12 2006 fiscal year only on a nonrecurring basis:
13 (a) From the State Transportation Trust Fund in the
14 Department of Transportation:
15 1. One hundred and seventy-five ~~Two hundred~~ million
16 dollars for the purposes specified in sections 339.61, 339.62,
17 339.63, and 339.64, Florida Statutes.
18 2. Two hundred seventy-five million dollars for the
19 purposes specified in section 339.2819, Florida Statutes.
20 3. One hundred million dollars for the purposes specified
21 in section 339.55, Florida Statutes.

22 4. Twenty-five million for the purposes specified in
23 section 339.2817, Florida Statutes.
24 Section 11. Paragraph (a) of subsection (2) of section
25 1013.65, Florida Statutes, is amended to read:
26 1013.65 Educational and ancillary plant construction
27 funds; Public Education Capital Outlay and Debt Service Trust
28 Fund; allocation of funds.--
29 (2)(a) The Public Education Capital Outlay and Debt
30 Service Trust Fund shall be comprised of the following sources,
31 which are hereby appropriated to the trust fund:
32 1. Proceeds, premiums, and accrued interest from the sale
33 of public education bonds and that portion of the revenues
34 accruing from the gross receipts tax as provided by s. 9(a)(2),
35 Art. XII of the State Constitution, as amended, interest on
36 investments, and federal interest subsidies.
37 2. General revenue funds appropriated to the fund for
38 educational capital outlay purposes.
39 3. All capital outlay funds previously appropriated and
40 certified forward pursuant to s. 216.301.
41 4.~~a.~~ Funds paid pursuant to s. 201.15(1)(d).
42 ~~b. The sum of $41.75 million of such funds shall be~~
43 ~~appropriated annually for expenditure to fund the Classrooms for~~
44 ~~Kids Program created in s. 1013.735 and shall be distributed as~~
45 ~~provided by that section.~~
46
47
48 ========== T I T L E A M E N D M E N T ==========
49 Remove lines 16-23 and insert:
50

51 with local governing bodies; amending s. 27, ch. 2005-290,
52 Laws of Florida; revising an appropriation from the State
53 Transportation Trust Fund for Florida Strategic Intermodal
54 system purposes; amending s. 1013.65, F.S.; revising
55 provisions relating to appropriations to the Public
56 Education Capital Outlay and Debt Service Trust Fund;
57 deleting the sum appropriated for the Classrooms for Kids
58 Program; providing an effective date.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Transportation & Economic
2 Development Appropriations Committee
3 Representative Johnson offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 574-588 and insert:
7 share mitigation options. A local government that fails to adopt
8 a methodology for assessing proportionate fair-share mitigation
9 options by December 1, 2006, shall be subject to the sanctions
10 described in s. 163.3184(11)(a) imposed by the Administration
11 Commission and may not impose any transportation impact fee
12 after that date until such methodology has been adopted. By
13 December 1, 2005, the Department of Transportation shall develop
14 a model transportation concurrency management ordinance with
15 methodologies for assessing proportionate fair-share mitigation
16 options.
17 (b)1. In its transportation concurrency management system,
18 a local government shall, by December 1, 2006, include
19 methodologies that will be applied to calculate proportionate
20 fair-share mitigation. A local government that fails to include
21 such methodologies by December 1, 2006, shall be subject to the

22 sanctions described in s. 163.3184(11)(a) imposed by the
23 Administration Commission and may not impose any transportation
24 impact fee after that date until such methodologies have been
25 adopted. A developer may choose to
26
27 ========== T I T L E A M E N D M E N T ==========
28 Remove line 8 and insert:
29 procedures; providing sanctions; amending ss. 163.3184 and
30 339.2819, F.S.;