



Civil Justice & Courts Policy Committee

**Tuesday, March 16, 2010
8:00 AM - 10:00 AM
Reed Hall**

Action Packet

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Summary:

Civil Justice & Courts Policy Committee

Tuesday March 16, 2010 08:00 am

CS/HB 501	Favorable	Yeas: 12	Nays: 0
HB 887	Favorable	Yeas: 14	Nays: 0
HB 1107	Favorable With Committee Substitute	Yeas: 8	Nays: 6
HB 1159	Favorable	Yeas: 12	Nays: 0
HB 1179	Favorable	Yeas: 10	Nays: 0
HB 1237	Favorable With Committee Substitute	Yeas: 14	Nays: 0
HB 1523	Temporarily Deferred		

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Carl Domino (Chair)	X		
Eric Eisnaugle	X		
Adam M. Fetterman	X		
Anitere Flores	X		
James Frishe	X		
Audrey Gibson	X		
Eduardo Gonzalez	X		
Tom Grady	X		
Seth McKeel	X		
Dave Murzin	X		
H. Marlene O'Toole	X		
Ralph Poppell	X		
Darren Soto	X		
Michael Weinstein	X		
Totals:	14	0	0

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

CS/HB 501 : Estates and Trusts

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman			X		
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady					X
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 12		Total Nays: 0			

Appearances:

Estates and Trusts

Paul Sanford (Lobbyist) - Proponent

ACLI-FIC

106 South Monroe Street

Tallahassee Florida 32301

Phone: 850-222-7200

Estates and Trusts

Scott Jenkins (Lobbyist) - Information Only

Florida Bankers Association

1001 Thomasville Road

Tallahassee Florida

Phone: 850-224-2265

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 887 : Adverse Possession

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 14 Total Nays: 0					

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 1107 : Sovereign Immunity

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman		X			
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez		X			
Tom Grady		X			
Seth McKeel	X				
Dave Murzin		X			
H. Marlene O'Toole		X			
Ralph Poppell		X			
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 8		Total Nays: 6			

Appearances:

Sovereign Immunity

Brandon Wagner (Lobbyist) - Opponent
Hillsborough County Government
601 E. Kennedy Blvd
Tampa Florida 33602
Phone: 813-276-2640

Sovereign Immunity

Jim Brainerd (Lobbyist) - Information Only
Polk County
2814 Rabbit Hill Road
Tallahassee Florida 32308
Phone: 850-508-6716

Sovereign Immunity (Amendment)

John W. Smith (Lobbyist) - Proponent
Florida Association of Counties
300 S Monroe Steet
Tallahassee Florida 32301
Phone: 850-922-9300

Sovereign Immunity (Bill)

John W. Smith (Lobbyist) - Opponent
Florida Association of Counties
300 S Monroe Steet
Tallahassee Florida 32301
Phone: 850-922-9300

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Sovereign Immunity (Bill & Amendment)

Mark Delegal (Lobbyist) - Opponent

Safety Net Hospital Alliance
215 S. Monroe Street, #200
Tallahassee Florida 32301
Phone: 850-222-3533

Sovereign Immunity (Rep Soto's Am to Am)

Mark Delegal (Lobbyist) - Proponent

Safety Net Hospital Alliance
215 S. Monroe Street, #200
Tallahassee Florida 32301
Phone: 850-222-3533

Sovereign Immunity

William Large (Lobbyist) - Opponent

Florida Justice Reform Institute
210 South Monroe Street
Tallahassee Florida 32301
Phone: 850-222-0170

Sovereign Immunity

Bill Bell (Lobbyist) - Opponent

Fla Hospital Association
306 E College Avenue
Tallahassee Florida 32301
Phone: 850-222-9800

Sovereign Immunity

George Meros (Lobbyist) - Opponent

City of Jacksonville
301 South Bronough
Tallahassee Florida 32301
Phone: 850-577-9090

Sovereign Immunity

Steven Wingo - Information Only

2023 SE 15th Lane
Ocala Florida 34471
Phone: 352-387-0220

Sovereign Immunity

Kurt Spitzer (Lobbyist) - Opponent

Florida Association of Counties Insurance Trust
719 E Park Avenue
Tallahassee Florida 32301
Phone: 561-0904

Sovereign Immunity

Kraig Conn (Lobbyist) - Opponent

Florida League of Cities
301 S. Bronough
Tallahassee Florida 32301
Phone: 222-9684

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

Sovereign Immunity

Jess McCartney (Lobbyist) - Opponent

Miami Dade County

111 NW 1st Street, Ste 2810

Miami Florida 33128

Phone: 305-979-7110

Sovereign Immunity

Howard E "Gene" Adams (Lobbyist) - Opponent

Fla Sheriff's Self Insurance Group

215 South Monroe Street

Tallahassee Florida 32301

Phone: 850-222-3533

Sovereign Immunity

Tom Bonlarron (Lobbyist) - Opponent

Palm Beach County

301 N. Olive Avenue, Ste 1101

Palm Beach County Florida 33405

Phone: 561-355-3451

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	<input type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input checked="" type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

*Adopted w/out
objection
3-16-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Nehr offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Effective October 1, 2010, and applicable to
8 claims arising on or after that date, subsections (5) and (8) of
9 section 768.28, Florida Statutes, are amended to read:

10 768.28 Waiver of sovereign immunity in tort actions;
11 recovery limits; limitation on attorney fees; statute of
12 limitations; exclusions; indemnification; risk management
13 programs.-

14 (5) (a) The state and its agencies ~~and subdivisions~~ shall
15 be liable for tort claims in the same manner and to the same
16 extent as a private individual under like circumstances, but
17 liability shall not include punitive damages or interest for the
18 period before judgment. Neither the state nor its agencies ~~or~~
19 ~~subdivisions~~ shall be liable to pay a claim or a judgment by any

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

20 one person which exceeds the sum of \$100,000 or any claim or
21 judgment, or portions thereof, which, when totaled with all
22 other claims or judgments paid by the state or its agencies ~~or~~
23 ~~subdivisions~~ arising out of the same incident or occurrence,
24 exceeds the sum of \$200,000. However, a judgment or judgments
25 may be claimed and rendered in excess of these amounts and may
26 be settled and paid pursuant to this act up to \$100,000 or
27 \$200,000, as the case may be; and that portion of the judgment
28 that exceeds these amounts may be reported to the Legislature,
29 but may be paid in part or in whole only by further act of the
30 Legislature. Notwithstanding the limited waiver of sovereign
31 immunity provided in this paragraph herein, the state or an
32 agency ~~or subdivision thereof~~ may agree, within the limits of
33 insurance coverage provided, to settle a claim made or a
34 judgment rendered against it without further action by the
35 Legislature, but the state or agency ~~or subdivision thereof~~
36 shall not be deemed to have waived any defense of sovereign
37 immunity or to have increased the limits of its liability as a
38 result of its obtaining insurance coverage for tortious acts in
39 excess of the \$100,000 or \$200,000 waiver provided above. The
40 limitations of liability set forth in this paragraph subsection
41 shall apply to the state and its agencies ~~and subdivisions~~
42 whether or not the state or its agencies ~~or subdivisions~~
43 possessed sovereign immunity before July 1, 1974.

44 (b) A subdivision of the state shall be liable for tort
45 claims in the same manner and to the same extent as a private
46 individual under like circumstances, but liability shall not
47 include punitive damages or interest for the period before

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

48 judgment. A subdivision of the state shall not be liable to pay
49 a claim or a judgment by any one person which exceeds the sum of
50 \$100,000 or any claim or judgment, or portions thereof, which,
51 when totaled with all other claims or judgments paid by the
52 subdivision of the state arising out of the same incident or
53 occurrence, exceeds the sum of \$200,000. Notwithstanding the
54 limited waiver of sovereign immunity provided in this paragraph,
55 a subdivision of the state may agree, within the limits of
56 insurance coverage, self-insurance, or other funds set aside for
57 the payment of claims, to settle a claim made or a judgment
58 rendered against it without further action by the Legislature.
59 However, if the subdivision does not agree to pay that portion
60 of a settlement or a judgment rendered against it which is in
61 excess of the limits of liability specified in this paragraph,
62 in part or in whole, that portion of the settlement or judgment
63 which exceeds those amounts and is not agreed to by the
64 subdivision may be reported to the Legislature, but may be paid
65 by the subdivision in part or in whole only by further act of
66 the Legislature. The subdivision shall not be deemed to have
67 waived any defense of sovereign immunity or to have increased
68 the limits of its liability as a result of its obtaining
69 insurance coverage for tortious acts in excess of the \$100,000
70 or \$200,000 waiver provided above or as a result of its having
71 agreed to a settlement or to pay a judgment in an amount
72 exceeding the limits of liability set forth in this paragraph.
73 The limitations of liability set forth in this paragraph shall
74 apply to subdivisions whether or not the subdivision possessed
75 sovereign immunity before July 1, 1974.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

76 (c) In any case where any one person seeks or where
77 multiple claimants seek a judgment or settlement against more
78 than one subdivision, or against the state and one or more
79 subdivisions, or against the state's agencies and one or more
80 subdivisions, or any combination thereof, the liability limits
81 of this section shall apply so that the combined liability for
82 all government entities when totaled together shall not exceed
83 \$100,000 to pay a claim or judgment out of the same incident to
84 any one person, and shall not exceed \$200,000 to pay multiple
85 claims against the state or its agencies or subdivisions out of
86 the same incident.

87 (8) No attorney may charge, demand, receive, or collect,
88 for services rendered, fees in excess of 25 percent of any
89 judgment or settlement plus an additional 5 percent of any
90 recovery after the institution of any appellate proceeding is
91 filed or postjudgment or postsettlement relief or action is
92 required for recovery.

93 Section 2. Effective October 1, 2011, and applicable to
94 claims arising on or after that date, subsection (5) of section
95 768.28, Florida Statutes, as amended by this act, is amended to
96 read:

97 768.28 Waiver of sovereign immunity in tort actions;
98 recovery limits; limitation on attorney fees; statute of
99 limitations; exclusions; indemnification; risk management
100 programs.-

101 (5) (a) The state and its agencies shall be liable for tort
102 claims in the same manner and to the same extent as a private
103 individual under like circumstances, but liability shall not

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

104 include punitive damages or interest for the period before
105 judgment. Neither the state nor its agencies shall be liable to
106 pay a claim or a judgment by any one person which exceeds the
107 sum of \$250,000 ~~\$100,000~~ or any claim or judgment, or portions
108 thereof, which, when totaled with all other claims or judgments
109 paid by the state or its agencies arising out of the same
110 incident or occurrence, exceeds the sum of \$1,000,000 ~~\$200,000~~.
111 However, a judgment or judgments may be claimed and rendered in
112 excess of these amounts and may be settled and paid pursuant to
113 this act up to \$250,000 or \$1,000,000, ~~\$100,000 or \$200,000,~~ as
114 the case may be; and that portion of the judgment that exceeds
115 these amounts may be reported to the Legislature, but may be
116 paid in part or in whole only by further act of the Legislature.
117 Notwithstanding the limited waiver of sovereign immunity
118 provided in this paragraph, the state or an agency may agree,
119 within the limits of insurance coverage provided, to settle a
120 claim made or a judgment rendered against it without further
121 action by the Legislature, but the state or agency shall not be
122 deemed to have waived any defense of sovereign immunity or to
123 have increased the limits of its liability as a result of its
124 obtaining insurance coverage for tortious acts in excess of the
125 \$250,000 or 1,000,000 ~~\$100,000 or \$200,000~~ waiver provided
126 above. The limitations of liability set forth in this paragraph
127 shall apply to the state and its agencies whether or not the
128 state or its agencies possessed sovereign immunity before July
129 1, 1974.

130 (b) A subdivision of the state shall be liable for tort
131 claims in the same manner and to the same extent as a private

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

132 individual under like circumstances, but liability shall not
133 include punitive damages or interest for the period before
134 judgment. A subdivision of the state shall not be liable to pay
135 a claim or a judgment by any one person which exceeds the sum of
136 \$250,000 ~~\$100,000~~ or any claim or judgment, or portions thereof,
137 which, when totaled with all other claims or judgments paid by
138 the subdivision of the state arising out of the same incident or
139 occurrence, exceeds the sum of \$1,000,000 ~~\$200,000~~.

140 Notwithstanding the limited waiver of sovereign immunity
141 provided in this paragraph, a subdivision of the state may
142 agree, within the limits of insurance coverage, self-insurance,
143 or other funds set aside for the payment of claims to settle a
144 claim made or a judgment rendered against it without further
145 action by the Legislature. However, if the subdivision does not
146 agree to pay that portion of a settlement or a judgment rendered
147 against it which is in excess of the limits of liability
148 specified in this paragraph, in part or in whole, that portion
149 of the settlement or judgment which exceeds those amounts and is
150 not agreed to by the subdivision may be reported to the
151 Legislature, but may be paid by the subdivision in part or in
152 whole only by further act of the Legislature. The subdivision
153 shall not be deemed to have waived any defense of sovereign
154 immunity or to have increased the limits of its liability as a
155 result of its obtaining insurance coverage for tortious acts in
156 excess of the \$250,000 ~~\$100,000~~ or 1,000,000 ~~\$200,000~~ waiver
157 provided above or as a result of its having agreed to a
158 settlement or to pay a judgment in an amount exceeding the
159 limits of liability set forth in this paragraph. The limitations

Amendment No. 1

160 of liability set forth in this paragraph shall apply to
161 subdivisions whether or not the subdivision possessed sovereign
162 immunity before July 1, 1974.

163 (c) In any case where any one person seeks or where
164 multiple claimants seek a judgment or settlement against more
165 than one subdivision, or against the state and one or more
166 subdivisions, or against the state's agencies and one or more
167 subdivisions, or any combination thereof, the liability limits
168 of this section shall apply so that the combined liability for
169 all government entities when totaled together shall not exceed
170 ~~\$100,000~~ \$250,000 to pay a claim or judgment out of the same
171 incident to any one person, and shall not exceed ~~\$200,000~~
172 \$1,000,000 to pay multiple claims against the state or its
173 agencies or subdivisions out of the same incident.

174 Section 3. Except as otherwise expressly provided in this
175 act, this act shall take effect October 1, 2010.

176

177

T I T L E A M E N D M E N T

178 Remove the entire title and insert:

179 An act relating to sovereign immunity; amending s. 768.28,
180 F.S.; providing that a subdivision of the state may pay a
181 judgment in excess of statutory limits on the waiver of
182 sovereign immunity without an act of the Legislature if it
183 so chooses; providing that such payment in excess of the
184 limits does not waive the subdivision's defense of
185 sovereign immunity or increase the limits of its
186 liability; providing for an additional attorney fee in
187

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1107 (2010)

Amendment No. 1

188 | certain circumstances; amending s. 768.28, F.S., effective
189 | October 1, 2011; increasing the statutory limits on
190 | liability; providing applicability; providing effective
191 | dates.

192



HOUSE OF REPRESENTATIVES

Council/Committee on _____

Date 3-16-10 Action _____

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY
(may be used in Council/Committee, but **not** on House Floor)

Amendment No. 2

Bill No. 1107

Superseded
by SUBSTITUTE
AMENDMENT
(by PERCII)
3-16-10

(For filing with the Clerk, Council, Committee and Member Amendments **must** be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee on Civil Justice
and Courts Policy SOTO

offered the following amendment: to Amendment No 2 (HB1107)

Amendment:

on page 3, line(s) 50-75,

"\$250,000 or any claim or judgment,
or portions thereof, which when totaled
with all other claims or judgments paid
by the subdivision of the state arising
out of the same incident or occurrence,
exceeds the sum of \$1,000,000."

Copy to Council/Committee Administrative Assistant



HOUSE OF REPRESENTATIVES

Council/Committee on _____

Date 3-16-10 Action adopted

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY

(may be used in Council/Committee, but **not** on House Floor)

#3
Amendment No. 2A

Bill No. 1107 ADOPTED
3-16-10

(For filing with the Clerk, Council, Committee and Member Amendments must be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee on Civil Justice

and Courts Policy

offered the following ~~amendment~~ SUB 110 to Amendment No 2 (HB1107)

Amendment:

on page 3, line(s) 50-75,

" ~~\$200,000~~ or any claim or judgment,
or portions thereof, which when totaled
with all other claims or judgments paid
by the subdivision of the state arising
out of the same incident or occurrence,
exceeds the sum of ~~\$1,000,000~~ "
\$400,000

Copy to Council/Committee Administrative Assistant



Council/Committee/Subcommittee on Civil Justice & Courts
Date 3/15/10

Action _____

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY

(may be used in Council/Committee/Subcommittee, but not on House Floor)

Amendment No. ~~3~~ 4

Bill No. HB 1107

(For filing with the Clerk, Council, Committee and Member Amendments must be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee/Subcommittee on Poppell

offered the following amendment: to the Amendment(s)

Amendment on page 5, line(s) Remove 107-113, Adopted 3-16-10

sum of \$200,000, ~~\$100,000~~ or any claim, or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies arising out of the same incident or occurrence, exceeds the sum of \$400,000, ~~\$200,000~~. However, a judgment or judgments may be claimed and rendered to this act up to \$200,000 or \$400,000 ~~\$100,000 or \$200,000~~ as



Council/Committee/Subcommittee on _____

Date _____

Action _____

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY

(may be used in Council/Committee/Subcommittee, but **not** on House Floor)

Amendment No. 45

Bill No. 1107

*Adopted
3-16-10*

(For filing with the Clerk, Council, Committee and Member Amendments must be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/~~The Council/Committee/Subcommittee on~~ Murzin

offered the following amendment: to amendment 1 by Nehr:
(SA)

Amendment
on page Remove, line(s) 89-92, and insert:

judgment or settlement.

== Title Amendment ==

Remove lines 187-188 and insert:

liability; amending s. 768.28,
F.S., effective

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 1159 : Veterans' Guardianship

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman			X		
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady				X	
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 12		Total Nays: 0			

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 1179 : Electronic Documents Recorded in the Official Records

Favorable

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman			X		
Anitere Flores	X				
James Frishe	X				
Audrey Gibson				X	
Eduardo Gonzalez			X		
Tom Grady				X	
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 10 Total Nays: 0					

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 1237 : Probate Procedures

Favorable With Committee Substitute

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Eric Eisnaugle	X				
Adam M. Fetterman	X				
Anitere Flores	X				
James Frishe	X				
Audrey Gibson	X				
Eduardo Gonzalez	X				
Tom Grady	X				
Seth McKeel	X				
Dave Murzin	X				
H. Marlene O'Toole	X				
Ralph Poppell	X				
Darren Soto	X				
Michael Weinstein	X				
Carl Domino (Chair)	X				
Total Yeas: 14		Total Nays: 0			

Appearances:

Probate Procedures

Scott Jenkins (Lobbyist) - Proponent

Florida Bankers Association
 1001 Thomasville Road
 Tallahassee Florida
 Phone: 850-224-2265

Probate Procedures

Laird A. Lile - Proponent

3033 Riviera Drive
 Naples Florida
 Phone: 259-649-7778

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1237 (2010)

Amendment No. 1

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 _____

*Adopted w/out objection
3-16-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Hukill offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 377-381 and insert:

7 (6) An insurance company, financial institution, or other
8 obligor making payment according to the terms of its policy or
9 obligation is not liable by reason of this section unless,
10 before payment, it received written notice of a claim pursuant
11 to this section.

12 (a) The notice required by this subsection must be in
13 writing and must be accomplished in a manner reasonably suitable
14 under the circumstances and likely to result in receipt of the
15 notice. Permissible methods of notice include first-class mail,
16 personal delivery, delivery to the person's last known place of
17 residence or place of business, or a properly directed facsimile
18 or other electronic message.

Amendment No. 1

19 (b) To be effective, notice to a financial institution or
20 insurance company must contain the name, address and the
21 taxpayer identification number, or the account or policy number,
22 of the principal obligee or person whose life is insured and
23 shall be directed to an officer or a manager of the financial
24 institution or insurance company in Florida. If the financial
25 institution or insurance company has no offices in Florida, the
26 notice shall be directed to the principal office of the
27 financial institution or insurance company.

28 (c) Notice shall be effective when it is given, except that
29 notice upon a financial institution or insurance company is not
30 effective until 5 business days after it is given.

31
32
33 -----
34 **T I T L E A M E N D M E N T**

35 Remove line 36 and insert:

36 for the award of costs and fees; providing a limitation of
37 liability related to distributions made without notice of a
38 pending claim; providing for means of notice; providing a time

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1237 (2010)

Amendment No. 2

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 _____

*Adopted w/out
objection
3-16-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Hukill offered the following:
4

5 **Amendment (with title amendment)**

6 Between lines 390 and 391, insert:

7 Section 12. Subsection (1) of section 733.107, Florida
8 Statutes, is amended to read:

9 733.107 Burden of proof in contests; presumption of undue
10 influence.—

11 (1) In all proceedings contesting the validity of a will,
12 the burden shall be upon the proponent of the will to establish
13 prima facie its formal execution and attestation. A self-proving
14 affidavit executed in accordance with s. 732.503 or an oath of
15 an attesting witness executed as required in s. 733.201(2) is
16 admissible and establishes prima facie the formal execution and
17 attestation of the will. Thereafter, the contestant shall have
18 the burden of establishing the grounds on which the probate of
19 the will is opposed or revocation is sought.

Amendment No. 2

20 Section 13. Effective upon becoming law, section 733.1051,
21 Florida Statutes, is created to read:

22 733.1051 Limited judicial construction of will with
23 federal tax provisions.--

24 (1) Upon the application of a personal representative or a
25 person who is or may be a beneficiary who is affected by the
26 outcome of the construction, a court at any time may construe
27 the terms of a will to define the respective shares or determine
28 beneficiaries, in accordance with the intention of a testator,
29 if a disposition occurs during the applicable period and the
30 will contains a provision that:

31 (a) Includes a formula disposition referring to the
32 "unified credit", "estate tax exemption," "applicable exemption
33 amount," "applicable credit amount," "applicable exclusion
34 amount," "generation-skipping transfer tax exemption," "GST
35 exemption," "marital deduction," "maximum marital deduction,"
36 "unlimited marital deduction," or "maximum charitable
37 deduction;"

38 (b) Measures a share of an estate based on the amount that
39 can pass free of federal estate tax or the amount that can pass
40 free of federal generation-skipping transfer tax;

41 (c) Otherwise makes a disposition referring to a
42 charitable deduction, marital deduction, or another provision of
43 federal estate tax or generation-skipping transfer tax law; or

44 (d) Appears to be intended to reduce or minimize federal
45 estate tax or generation-skipping transfer tax.

46 (2) For the purpose of this section:

Amendment No. 2

47 (a) "Applicable period" means a period beginning January
48 1, 2010 and ending on the end of the day on the earlier of
49 December 31, 2010, or the day before the date that an act
50 becomes law that repeals or otherwise modifies or has the effect
51 of repealing or modifying s. 901 of The Economic Growth and Tax
52 Relief Reconciliation Act of 2001.

53 (b) A "disposition occurs" when the testator dies.

54 (3) In construing the will, the court shall consider the
55 terms and purposes of the will, the facts and circumstances
56 surrounding the creation of the will, and the testator's
57 probable intent. In determining the testator's probable intent,
58 the court may consider evidence relevant to the testator's
59 intent even though the evidence contradicts an apparent plain
60 meaning of the will.

61 (4) This section does not apply to a disposition that is
62 specifically conditioned upon no federal estate or generation
63 skipping transfer tax being imposed.

64 (5) Unless otherwise ordered by the court, during the
65 applicable period and without court order, the personal
66 representative administering a will containing one or more
67 provisions described in subsection (1) may:

68 (a) Delay or refrain from making any distribution;

69 (b) Incur and pay fees and costs reasonably necessary to
70 determine its duties and obligations, including compliance with
71 provisions of existing and reasonably anticipated future federal
72 tax laws; and

73 (c) Establish and maintain reserves for the payment of
74 these fees and costs and federal taxes.

Amendment No. 2

75
76 The personal representative shall not be liable for its actions
77 as provided in this subsection made or taken in good faith.

78 (6) The provisions of this section are in addition to, and
79 not in derogation of, rights under the common law to construe a
80 will.

81 (7) This law is remedial in nature and intended to provide
82 a new or modified legal remedy. This section shall operate
83 retroactively to January 1, 2010.

84
85
86 -----
87 **T I T L E A M E N D M E N T**

88 Remove line 37 and insert:

89 limitation on bringing such actions; amending s. 733.107, F.S.;

90 providing that, in a will contest, certain affidavits and oaths

91 are prima facie evidence regarding attestation of a will;

92 creating s. 733.1051, F.S.; providing authority for court

93 interpretation of certain wills not subject to the federal

94 estate tax; specifying will requirements; providing conditions;

95 providing definitions; providing criteria for court

96 interpretation of a will; providing an exception; authorizing a

97 personal representative to take certain actions pending a

98 determination of estate distribution; limiting personal

99 representative liability; preserving certain rights to construe

100 a will; providing for retroactive operation; amending s.

101 733.2123,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1237 (2010)

Amendment No. 3

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 _____

*Adopted w/out object
3-16-10*

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Hukill offered the following:

4
5
6
7
8
9
10
11
12
13
14

Amendment (with title amendment)

Remove line 477 and insert:

Section 17. Except as otherwise provided, this act shall
take effect October 1, 2010.

T I T L E A M E N D M E N T

Remove line 49 and insert:

providing effective dates.

COMMITTEE MEETING REPORT
Civil Justice & Courts Policy Committee

3/16/2010 8:00:00AM

Location: Reed Hall (102 HOB)

HB 1523 : Homeowner Relief

Temporarily Deferred

Appearances:

Homeowner Relief

Virginia Townes (Lobbyist) - Proponent

Florida Bankers Association

P.O. Box 231

Orlando Florida 32802

Phone: 407-423-4000

Homeowner Relief

Alice Vickers (Lobbyist) - Opponent

Florida Legal Services

2425 Torreya Drive

Tallahassee Florida 32303

Phone: 850-385-7900

Homeowner Relief

Pete Dunbar (Lobbyist) - Opponent

Real Property, Probate & Trust Law Section Florida Bar

215 South Monroe

Tallahassee Florida 32303

Phone: 850-222-3533

Homeowner Relief

Belvin Perry, Jr. (State Employee) - Information Only

Trial Court Budget Commission

425 N. Orange Ave.

Orlando Florida 32801

Phone: 407-836-2008

Homeowner Relief

David Daniel (Lobbyist) - Proponent

Florida Chamber

136 S. Bronough Street

Tallahassee Florida 32312

Phone: 850-521-1250

Committee meeting was reported out: Tuesday, March 16, 2010 2:26:32PM



HOUSE OF REPRESENTATIVES

Council/Committee on _____

Date 3-16-10 Action _____

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY FAILS
(may be used in Council/Committee, but not on House Floor)

3-16-10

Amendment No. 1

Bill No. 1523

(For filing with the Clerk, Council, Committee and Member Amendments must be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee on ~~Civil Justice~~

and ~~Fairness Policy~~ Soto

offered the following amendment: to HB 1523

Amendment: 25 Insert between lines 688-689
on page ~~688~~, line(s) ~~688-689~~

" 55 52.20 objection to Nonjudicial Foreclosure
(i) A debtor of a homestead residential real property subject to nonjudicial foreclosure may object to such nonjudicial foreclosure and request that a judicial foreclosure occur in accordance with Ch 702 upon such property. The objection must be sent by the debtor to the foreclosing creditor via US Mail within 90 days after the notice of foreclosure is given to that debtor. An objection is sent timely if it

Copy to Council/Committee Administrative Assistant



HOUSE OF REPRESENTATIVES

Council/Committee on _____

Date _____ Action _____

HOUSE AMENDMENT FOR DRAFTING PURPOSES ONLY

(may be used in Council/Committee, but not on House Floor)

Amendment No. _____

Bill No. 1523

(For filing with the Clerk, Council-Committee and Member Amendments must be prepared by House Bill Drafting Services (Rule 12.1))

Representative(s)/The Council/Committee on [Signature]

offered the following amendment: to HB 1523

Amendment:

on page _____, line(s) ~~_____~~

is postmarked by the 90th day after the notice of foreclosure is given to that debtor

(2) If the foreclosing creditor receives a timely objection from the debtor, then a nonjudicial foreclosure shall be prohibited and the foreclosing creditor shall file a judicial foreclosure action in accordance with Ch. 702 in order to foreclose upon the homestead residential real property of debtor.

Copy to Council/Committee Administrative Assistant

