



Civil Justice & Courts Policy Committee

**Monday, March 1, 2010
2:15 PM - 4:15 PM
Reed Hall**

Meeting Packet

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**



The Florida House of Representatives

Criminal & Civil Justice Policy Council

Civil Justice & Courts Policy Committee

Larry Cretul
Speaker

Carl J. Domino
Chair

March 1, 2010

AGENDA
2:15 PM – 4:15 PM
Reed Hall

I. Call Meeting to Order

II. Consideration of Bills

HB 125 Rental Property Foreclosure or Short-sale Actions by Rogers

HB 329 Condominium Foreclosures by Robaina

HB 513 Mobile Home Park Tenancies by Horner

HB 689 Negligence by Aubuchon

III. Adjourn

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Civil Justice & Courts Policy Committee

Start Date and Time: Monday, March 01, 2010 02:15 pm
End Date and Time: Monday, March 01, 2010 04:15 pm
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 125 Rental Property Foreclosure or Short-sale Actions by Rogers
HB 329 Condominium Foreclosures by Robaina
HB 513 Mobile Home Park Tenancies by Horner
HB 689 Negligence by Aubuchon

NOTICE FINALIZED on 02/22/2010 16:10 by Ingram.Michele

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Law

Foreclosure is the legal process for enforcing a lien against real property through the use of a forced sale of the property where the proceeds of the sale are paid to the lender or other persons who hold liens against the property in the order of their priority. As of August, 2009, Florida had the second highest residential foreclosure rate in the county, with 1 in every 140 housing units in foreclosure.¹

Florida law does not provide any specific protection to tenants in foreclosure. A tenant will be given notice of the foreclosure at its commencement, and will be provided periodic notices if the tenant files an appearance in the action. However, a tenant who enters into occupancy after the commencement of the foreclosure may not receive any notice required by state law until the conclusion of the process. That notice is a Writ of Possession, which gives the tenant 24 hours notice to vacate. A tenant that does not vacate within those 24 hours may be forcibly removed.

A recent federal law appears to resolve the issue of some tenants receiving very little notice to vacate. On May 20, 2009, the President signed a law containing the "Protecting Tenants at Foreclosure Act of 2009."² The act provides that the purchaser of residential real property at foreclosure takes title subject to the rights of a bona fide tenant of the property. A bona fide lease is an arms-length lease where the tenant is not a close relative of the owner who was foreclosed and the rent is not substantially less than the fair-market rent for the property. A bona fide tenant must be given 90 days notice to vacate the property. The purchaser at the foreclosure sale must also honor the lease of a bona fide tenant through its term, although if the property is subsequently sold to a person who will occupy the property the tenant may be asked to leave on 90 days notice. The act is repealed effective December 31, 2012.

Tenants, together with the general public, are given notice that a property subject to foreclosure will be auctioned off at public sale at a date and time certain. Every tenant has the right, under current law, to purchase the leased property at its fair market value at the foreclosure sale.

¹ *FORECLOSURE ACTIVITY REMAINS NEAR RECORD LEVEL IN AUGUST*, by RealtyTrac, accessed at <http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&acct=0&itemid=7381> on October 12, 2009.

² Title VII of Pub.L. 111-22
STORAGE NAME: h0125.CJCP.doc
DATE: 1/5/2010

Effect of Bill

This bill creates an unnumbered section of law regarding tenants' rights in foreclosure.

The bill requires a lender to notify a tenant that a foreclosure case is pending. The form of notice is not specified. If the lender fails to provide this notice, the lender is liable to the tenant for "closing costs or relocation costs and attorney's fees and related costs." It is unclear how these damages would be calculated. A tenant has 90 days after learning of the foreclosure within which to file an action for damages under this provision.

The bill requires a lender to "provide the tenant or lessee with a first right of refusal to purchase the property at fair market value." It is unclear what this means. A "first right of refusal" is the right to match the price offered by a third party, which price may or may not be the fair market value of the property. For a tenant to have this option right, the tenant must show proof of the rental agreement and must have been a tenant for at least one year prior to the exercise of the right.

If the tenant exercises the purchase option, the lender must credit the remaining balance in the escrow fund for closing costs. If a tenant does not exercise the option, the lender must use escrow funds to pay the tenants' relocation costs.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law related to tenants' rights in foreclosure actions.

Section 2 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to create the potential for a significant negative economic impact on mortgage lenders and a corresponding positive impact on tenants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill requires a lender to disburse monies held in the escrow account for the benefit of a tenant. The escrow fund represents monies paid by the borrower and held for the benefit of the borrower until paid for a specific purpose. The typical specific purpose of those funds in escrow is to pay property taxes and property insurance owed by the borrower, and to ensure to the lender that these important obligations are paid. Until disbursed for those purposes on behalf of the borrower, the borrower is the owner of such funds. A requirement to use escrow funds for another purpose and to be distributed to another person may be construed by a court to be in impairment of contract prohibited by art. I, s. 10 of the state and federal constitutions, or may be considered an unlawful taking under art. X, s. 6 of the state constitution or the 14th amendment to the federal constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A lack of specificity in the bill is likely to lead to extensive litigation. The bill uses the term "first right of refusal", but appears to create an option to purchase the real property. The bill requires sale at fair market value, but fails to say how fair market value is to be determined, the form of notice to the tenant, what date the tenant will be required by exercise the option by, and who is responsible for closing costs. It is unclear how the lender can comply with the requirement to offer the property for sale to the tenant, given that the notice appears to be required at the commencement of the action, yet the lender is not the legal owner of the property at that time (and will not be the legal owner of the property unless the owner continues to default, the court enters a final judgment, the property goes to sale, and the lender is the winning bidder at the auction).

The bill presumes that a lender will have escrow funds available to pay to a tenant. By the time a property is sold at foreclosure sale, it is uncommon for there to be any funds in escrow. Escrow funds are used by a lender to pay property insurance and property taxes. Federal law limits lenders to holding no more than is necessary in the escrow account, plus a cushion of no more than 2 months. Lenders typically wait at least 3 months without payment before filing a foreclosure suit, and a typical foreclosure case is over a year from filing to foreclosure sale, thus it would be unusual for there to be a remaining balance in an escrow account.

The measure of damages for failure to give a tenant notice required by this bill is the tenants' moving costs. It is unclear how these damages would be calculated and is unclear whether such damages would be limited to the cost of a local move or limited to reasonable costs incurred by the tenant.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

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A bill to be entitled
 An act relating to rental property foreclosure or short-sale actions; requiring lenders to notify tenants or lessees of potential foreclosure or short-sale actions against the rental property; requiring the lenders to provide tenants or lessees a first right of refusal to purchase the property at fair market value; specifying eligibility requirements to exercise such right; requiring lenders to use certain escrow funds for certain purposes; specifying lender liability for certain costs for failure to comply with certain notice requirements; specifying time restrictions on tenants or lessees bringing actions for damages; providing an effective date.

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

Section 1. (1) Upon consideration of initiating a foreclosure or short-sale proceeding against mortgaged property that is subject to a rental or lease agreement, the lender shall notify each tenant or lessee that such action may be initiated against the property of which the tenant's or lessee's dwelling unit is a part. The lender shall provide the tenant or lessee with a first right of refusal to purchase the property at fair market value. In order to exercise such right, the tenant or lessee must show proof of the rental agreement and a rental history of at least 1 year. The lender shall use any funds held in escrow relating to such mortgage or note for the purpose of closing costs of the purchase if the tenant or lessee chooses

29 | the option to purchase. If the tenant or lessee does not choose
 30 | the option to purchase, the lender shall use such escrow funds
 31 | to relocate the tenant or lessee.

32 | (2) Failure to comply with the notice requirements of
 33 | subsection (1) renders the lender liable for closing costs or
 34 | relocation costs and attorney's fees and related costs. Any
 35 | action by the tenant or lessee to recover damages must be
 36 | brought within 90 days after such notice or after the tenant or
 37 | lessee learns of the lender's failure to provide such notice.

38 | Section 2. This act shall take effect July 1, 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 _____

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

3 Representative(s) Rogers offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 45.035, Florida Statutes, is created to
8 read:

9 45.035 Rights of a residential tenant in foreclosure
10 actions.--

11 (1) APPLICABILITY.--This section shall only apply to real
12 property that is:

13 (a) Occupied by a tenant which tenancy is subject to part
14 II of chapter 83; and

15 (b) Is subject to a foreclosure action.

16 (2) DEFINITIONS.--As used in this section:

17 (a) A lease or tenancy shall be considered bona fide only
18 if the mortgagor or the child, spouse, or parent of the
19 mortgagor under the contract is not the tenant; the lease or

Amendment No. 1

20 tenancy was the result of an arms-length transaction; and the
21 lease or tenancy requires the receipt of rent that is not
22 substantially less than fair market rent for the property or the
23 unit's rent is reduced or subsidized due to a Federal, State, or
24 local subsidy.

25 (b) The term "short sale" shall mean a negotiated sale of
26 real property in which any mortgagee holding a mortgage
27 encumbering the real property agrees that the mortgagor may sell
28 the real property to a third party and the mortgagee will
29 release the mortgagee's lien against the real property in
30 exchange for a sum that is less than the current outstanding
31 balance owed on such mortgage.

32 (3) NOTICE TO VACATE AFTER FORECLOSURE SALE.--In the case
33 of any foreclosure of any dwelling or residential real property,
34 any immediate successor in interest in such property pursuant to
35 the foreclosure shall assume such interest subject to:

36 (a) The provision, by such successor in interest of a
37 notice to vacate to any bona fide tenant at least 90 days before
38 the effective date of such notice; and

39 (b) The rights of any bona fide tenant, as of the date of
40 such notice of foreclosure:

41 1. Under any bona fide lease entered into before the notice
42 of foreclosure to occupy the premises until the end of the
43 remaining term of the lease, except that a successor in interest
44 may terminate a lease effective on the date of sale of the unit
45 to a purchaser who will occupy the unit as a primary residence,
46 subject to the receipt by the tenant of the 90 day notice under
47 paragraph (1); or

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 125 (2010)

Amendment No. 1

48 2. Without a lease or with a lease terminable at will,
49 subject to the receipt by the tenant of the 90 day notice under
50 subsection (1).

51 (c) Nothing under this subsection shall affect the
52 requirements for termination of any Federal- or State-subsidized
53 tenancy or of any law that provides longer time periods or other
54 additional protections for tenants.

55 (d) It is the intent of the legislature that this
56 subsection be interpreted in harmony with the federal Protecting
57 Tenants in Foreclosure Act of 2009.

58 (4) TENANT'S FIRST RIGHT OF REFUSAL UPON SHORT SALE.--

59 (a) If a mortgagor and mortgagee agree to a short sale of
60 the leased property to a third party other than a bona fide
61 tenant, the mortgagee or the mortgagor shall notify the bona
62 fide tenant of the sales contract and the terms thereof and
63 shall give such bona fide tenant a first right of refusal to
64 purchase the leased property on the same terms and conditions.
65 The notice must be in writing, must give reply addresses for the
66 mortgagee and mortgagor, must be hand delivered with a receipt
67 or furnished by certified mail, and must clearly inform the
68 tenant of the right of first refusal together with what the
69 tenant must do to exercise the right.

70 (b) The tenant shall have 15 days from receipt of the
71 notice to exercise the first right of refusal. To be effective,
72 the exercise of the right must:

73 1. Be in writing furnished to mortgagee and mortgagor at
74 the addresses indicated in the notice of the right.

Amendment No. 1

75 2. Be accompanied by proof that the tenant has furnished a
76 contract deposit of at least the lesser or the amount in the
77 contract with the third party or one percent of the contract
78 amount. The security deposit may be placed, at the tenant's
79 election, with a person licensed under ch. 475, an attorney
80 licensed by the Florida Bar, or a title insurance agency
81 licensed under s. 626.8418. If the contract does not close, the
82 deposit shall be refundable on the same terms and conditions as
83 the deposit would be refundable to the third party.

84 (c) A tenant who has exercised the right of first refusal
85 shall be given at least 30 days from exercise of the right to
86 close.

87 (d) If a bona fide tenant is not provided any notice as
88 required in paragraph (a), or if the notice is substantially
89 deficient, the tenant shall have a cause of action against the
90 mortgagor and the mortgagee, who shall be jointly and severally
91 liable to the tenant for all reasonable local moving expenses of
92 the tenant moving from the leased property. A tenant must file
93 an action under this paragraph within 1 year of moving.

94 (5) SALE TO TENANT AFTER FORECLOSURE SALE.--

95 (a) If the mortgagee is the successful bidder at the
96 foreclosure sale, the mortgagee shall offer to sell the property
97 to a bona fide tenant pursuant to this subsection. The offer
98 shall be to purchase the property at its fair market value. The
99 mortgagee shall notify the tenant of the right to purchase.
100 Notice must be in writing, must give a reply address for the
101 mortgagee, must contain a copy of an appraisal setting forth the
102 fair market value of the property, must be hand delivered with a

Amendment No. 1

103 receipt or furnished by certified mail, and must clearly inform
104 the tenant of the right to purchase together with what the
105 tenant must do to exercise the right. The notice shall be sent
106 within 15 days after the clerk issues the certificate of title.

107 (b) The tenant shall have 15 days from receipt of the
108 notice to exercise the option to purchase. To be effective, the
109 exercise of the right must:

110 1. Be in writing furnished to mortgagee at the address
111 indicated in the notice of the right.

112 2. Be accompanied by proof that the tenant has posted a
113 security deposit of at least one percent of the fair market
114 value of the property. The security deposit may be placed with
115 a listing agent named by the mortgagee, or with an attorney or
116 title company of the tenant's choosing.

117 (c) The terms of the sales contract between the parties
118 shall be as follows:

119 1. The sales price shall be the fair market value of the
120 property. The mortgagee shall furnish the tenant with a recent
121 appraisal of the property. The fair market value of the
122 property shall be the appraised value of the property as set
123 forth in this appraisal unless the tenant objects to the
124 appraised value, in which case the parties shall attempt to
125 negotiate a price or a court finds that the appraisal is
126 substantially wrong, in which case the court shall set the
127 price. Fair market value shall not be diminished by any
128 intentional damage to the property caused by the tenant.

129 2. At closing, the mortgagee shall pay for documentary
130 stamp taxes, an owner's title insurance policy, and FHA/VA costs

Amendment No. 1

131 required of a seller, if any. The tenant shall pay all other
132 closing costs.

133 3. The closing date shall be at a negotiated time and
134 place. The time for closing shall be at least 30 days from the
135 date of the tenant's notice to the mortgagee that the tenant is
136 exercising the option.

137 4. The contract is not assignable by the tenant.

138 5. Inspection terms, right to refund of the deposit, and
139 other terms shall be as if the parties had executed the standard
140 FAR/Florida Bar residential real estate contract.

141 (d) At closing, the tenant shall be given a credit for rent
142 paid in advance and all security deposits. The mortgagor may
143 not deduct any monies from a security deposit for damages to the
144 dwelling unit, and shall not be liable for the notices at the
145 end of a lease term otherwise required under s. 83.49.

146 (e) If a bona fide tenant is not provided any notice as
147 required in paragraph (a), or if the notice is substantially
148 deficient, the tenant shall have a cause of action against the
149 mortgagor and the mortgagee, who shall be jointly and severally
150 liable to the tenant for all reasonable local moving expenses of
151 the tenant moving from the leased property. A tenant must file
152 an action under this paragraph within 1 year of moving.

153 (6) WAIVER.--The rights of a bona fide tenant created by
154 this section may not be waived as a condition of the lease, but
155 may be waived by a tenant at any time after the filing of the
156 foreclosure action by a separate writing and consideration.

Amendment No. 1

157 (7) COSTS AND FEES.--The prevailing party in any litigation
158 under this section shall be awarded reasonable costs and
159 attorney's fees.

160 (8) TITLE.--No claim under this section shall affect the
161 validity or finality of a final judgment in foreclosure. No
162 claim under this section shall affect the validity or finality
163 of any sale held pursuant to such judgment or order. No claim
164 under this section shall affect the validity of title to real
165 property.

166 Section 2. This act shall take effect July 1, 2010.

167
168
169 -----
170 **T I T L E A M E N D M E N T**

171 Remove the entire title and insert:

172 An act relating to rental property foreclosure or short sale
173 actions; providing applicability; providing a definition;
174 requiring notice to a certain tenants regarding foreclosure;
175 providing an exception; providing legislative intent; creating a
176 tenant's first right of refusal in a short sale transaction;
177 requiring notice; specifying contents of notice; providing terms
178 of sale and closing; creating a cause of action for failure to
179 provide notice; requiring notice to certain tenants after
180 foreclosure sale; requiring a lender to allow a tenant to
181 purchase the foreclosed property at fair market value; providing
182 terms and conditions of sale; providing for payment of closing
183 costs; creating a cause of action for failure to provide notice;
184 providing that rights created by this act may not be waived in

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 125 (2010)

Amendment No. 1

185 | the lease but may be waived after foreclosure filing; specifying
186 | time restrictions on tenants bringing actions for damages;
187 | providing for costs and attorneys fees; limiting claims against
188 | title to real property; providing an effective date.

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	_____	

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

3 Representative Rogers offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 45.036, Florida Statutes, is created to
8 read:

9 45.036 Additional notice requirements in certain
10 foreclosure actions.--

11 (1) The chief judge of each judicial circuit shall by local
12 administrative order create a foreclosure information form
13 applicable to each county of the circuit. The order shall
14 determine a color that the form shall be printed on, which color
15 may not be used in any other form or notice attached to a
16 foreclosure complaint and summons. In any action for
17 foreclosure of improved real property utilized for residential
18 purposes, the plaintiff shall attach a copy of the form to the

Amendment No. 2

19 original summons and complaint delivered to any defendant. At a
20 minimum, the form must include the following:

21
22 IMPORTANT NOTICE TO RESIDENT

23 A FORECLOSURE ACTION HAS BEEN FILED AGAINST THIS PROPERTY

24 YOU MAY HAVE LEGAL RIGHTS DURING THE FORECLOSURE

25
26 LEGAL RESOURCES

27 You may employ a lawyer to protect your rights. If you are able
28 to afford a lawyer, you may contact the lawyer referral service
29 of the local bar association. If you cannot afford an attorney,
30 you may contact a local legal aid organization or legal service
31 provider. Some of those organizations are:

32
33 (list names, addresses and phone numbers)

34
35 HOUSING RESOURCES

36 You may wish to contact an agency providing housing counseling
37 services to find out more information. Some of those
38 organizations are:

39
40 (list names, addresses and phone numbers)

41
42 OTHER COMMUNITY RESOURCES

43
44 (list names, addresses and phone numbers)

45
46 AVOID FORECLOSURE RESCUE SCAMS:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 125 (2010)

Amendment No. 2

47 If you are the owner, you may be contacted by individuals or
48 companies that claim they can save this home from foreclosure.
49 Please seek legal advice before you sign any documents or pay
50 money to anyone offering to save this home from foreclosure. If
51 you think that you have been a victim of a foreclosure scam, you
52 may call one of the following numbers for assistance:

53
54 (list names, addresses and phone numbers)

55
56 (2) At any time prior to entry of a final judgment, the
57 court shall abate the action pending compliance with the notice
58 requirement in subsection (1).

59 (3) No claim under this section shall affect the validity
60 or finality of a final judgment in foreclosure. No claim under
61 this section shall affect the validity or finality of any sale
62 held pursuant to such judgment or order. No claim under this
63 section shall affect the validity of title to real property.

64 Section 2. Section 83.505, Florida Statutes, is created to
65 read:

66 83.505 Landlord's obligation to disclose potential short
67 sale of leased premises.--

68 (1) DEFINITIONS.--As used in this section:

69 (a) A lease or tenancy shall be considered bona fide only
70 if the mortgagor or the child, spouse, or parent of the
71 mortgagor under the contract is not the tenant; the lease or
72 tenancy was the result of an arms-length transaction; and the
73 lease or tenancy requires the receipt of rent that is not
74 substantially less than fair market rent for the property or the

Amendment No. 2

75 unit's rent is reduced or subsidized due to a Federal, State, or
76 local subsidy.

77 (b) The term "short sale" shall mean a negotiated sale of
78 real property in which any mortgagee holding a mortgage
79 encumbering the real property agrees that the mortgagor may sell
80 the real property to a third party and the mortgagee will
81 release the mortgagee's lien against the real property in
82 exchange for a sum that is less than the current outstanding
83 balance owed on such mortgage.

84 (2) At the time of offering the premises for sale if the
85 landlord is contemplating a short sale, the landlord or the
86 landlord's agent shall provide a bona fide tenant with the
87 following notice:

88
89 IMPORTANT NOTICE

90 The landlord of the property you are leasing has decided to
91 offer the property for sale. Section 83.53(1) of the Florida
92 statutes requires you to reasonably cooperate with the landlord
93 when the landlord or the landlord's agent wishes to show the
94 property to potential buyers. If the property is sold, section
95 83.49(7) of the Florida statutes requires the landlord to
96 transfer any security deposit to the buyer. Upon such transfer,
97 the buyer will be responsible for holding your security deposit.
98 Florida law requires a regular buyer of the property to honor
99 your current lease through the end of its term.

100 It is possible that this property may be subject to a
101 foreclosure lawsuit now or in the future. If so, the laws are
102 different. If the property is sold at a foreclosure sale, the

Amendment No. 2

103 buyer may be able to require you to move out of this property
104 before the end of your lease term. It is possible that the
105 buyer at a foreclosure sale may not have access to your security
106 deposit.

107 If you wish to learn of your legal rights related to this
108 property and to your lease, you may wish to contact an attorney.
109 If you are able to afford a lawyer, you may contact the lawyer
110 referral service of the local bar association. If you cannot
111 afford an attorney, you may contact a local legal aid
112 organization or legal service provider. Some of those
113 organizations are:

114
115 (list names, addresses and phone numbers)

116
117 HOUSING RESOURCES

118 You may wish to contact an agency providing housing counseling
119 services to find out more information. Some of those
120 organizations are:

121
122 (list names, addresses and phone numbers)

123
124 OTHER COMMUNITY RESOURCES

125
126 (list names, addresses and phone numbers)

127
128 (3) A landlord shall reference the local notice created
129 pursuant to s. 45.036 for names, addresses and phone numbers to
130 use in the form.

Amendment No. 2

131 Section 3. This act shall take effect July 1, 2010.

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

136

Remove the entire title and insert:

137

An act relating to rental property foreclosure or short sale

138

actions; creating s. 45.036, F.S.; requiring a specific notice

139

to occupants upon the filing of a foreclosure action; limiting

140

claims against title to real property; creating s. 83.505, F.S.;

141

providing definitions; requiring a specific notice to tenants;

142

providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329

Condominium Foreclosures

SPONSOR(S): Robaina

TIED BILLS: None

IDEN./SIM. BILLS: None

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond <i>VB</i>	De La Paz <i>[Signature]</i>
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Many condominium associations are suffering financial problems because unit owners are defaulting in their obligations owed to the association. When those units are sold at foreclosure, current law limits the mortgage lender's liability for payment of those past due assessments. This bill amends landlord-tenant law and condominium law to increase the opportunities for associations to collect assessments by providing that:

- The association may demand that a tenant of a delinquent unit owner pay rent directly to the association to be credited to the tenant's account with the landlord if the unit is 30 days or more delinquent.
- The association may deny an owner or tenant occupancy of the unit and may deny use of common areas if the unit is 90 days or more delinquent. The denials do not apply to a bona fide tenant paying the association fees directly to the association.
- A mortgage lender must pay a portion of past due assessments on the filing of a foreclosure action, and is fully liable for past due assessments owed by the mortgaged unit.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have significant private sector fiscal impacts.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association. A unit owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.¹ Of great frustration to associations is situations

¹ See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 Florida Community Association Mortgage Foreclosure Survey, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis*

where the unit is rented and the unit owner in default keeps the rents while the association is required to allow the tenant to use the common areas.²

Effect of Bill

Tenant Pays on 30 Days Delinquent

This bill amends s. 83.46, F.S., a part of the Residential Landlord-Tenant Act, to provide that, if assessments due from a condominium unit are more than 30 days delinquent, the association may demand that the tenant pay the association the total due to the association, but no more than the rent due to the landlord. Monies paid to the association are credited against rent owed to the landlord. The debt owed to the association must be paid first and in full before the tenant pays rent to the landlord. A tenant may not claim to have pre-paid rent unless the prepayment is part of the lease and can show proof of payment. If the tenant fails to pay after demand, the association may deny the tenant access to common facilities and may evict the tenant.

Denial of Occupancy or Use on 90 Days Delinquent

Section 718.106, F.S., requires a condominium association to allow a unit owner, or a tenant of a rented unit, to use the common areas of the condominium association. This bill amends s. 718.106, F.S., to provide that, if a unit owner is over 90 days delinquent, the association may deny the unit owner, or the unit owner's tenant, the right to:

- Occupy the condominium unit
- Use the common areas
- Use recreational facilities
- Use parking or marina spaces
- Vote in any election.

This bill also amends s. 718.116(2), F.S., to provide that denial of occupancy or use is not grounds for a reduction in the regular assessments.

However, if a tenant is paying a fair market rental rate and is paying all of said rent to the association, the association must allow the tenant to remain in the unit, and may use common areas, parking, and recreational facilities. Rent paid directly to the association must be credited by the landlord to the tenant's account.

Increased Lender Liability for Past Due Assessments

This bill amends s. 718.116, F.S., to require a lender seeking to file a foreclosure action involving a condominium unit must first request an estoppel letter from the association, which letter sets forth the current monthly maintenance amount and the sum of 6 months assessments. The association may charge up to \$50 for the letter, and must reply within 15 days. Within 30 days of the filing of the foreclosure action, the foreclosing lender must pay the association 6 months assessments, which sum is credited to the unit's account with the association.

If the foreclosure action is still pending on the one year anniversary of the filing of the action (defined as no certificate of title having been issued as of that anniversary), the foreclosing lender must pay to the association all outstanding monies owed by the unit and must pay future assessments as they come due.

Within State's Condo and HOA Population, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

² See s. 718.106(4), F.S.

If the foreclosing lender fails to make any payment owed to the association under these new requirements, the association may file for dismissal of the foreclosure action and may be awarded attorney's fees and costs for the motion.

Section 718.116, F.S., provides that a purchaser of a condominium unit is jointly and severally liable with the seller of the unit for all assessments due at the time of the sale or transfer. However, a first mortgagee, or the successor or assignee of the first mortgagee, who takes title pursuant to a foreclosure sale is only liable to the association for the lesser of the amount owed at the sale, 6 months assessments, or 1% of the original mortgage amount. This bill amends s. 718.116, F.S., to remove the limitations on the liability of a first mortgagee after foreclosure sale, making all purchasers of a condominium unit jointly and severally liable for all monies owed the association at the time of the sale or transfer.

B. SECTION DIRECTORY:

Section 1 amends s. 83.46, F.S., amending the Residential Landlord-Tenant Act to provide for payment of rent during foreclosure to a condominium association.

Section 2 amends s. 718.106, F.S., relating to use of common areas in condominium associations.

Section 3 amends s. 718.116, F.S., relating to assessments in a condominium association.

Section 4 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill substantially increases the liability of mortgage lenders for past due assessments related to condominium units, and correspondingly substantially increases the likely collection rates for condominium associations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It may be advisable to amend the prohibitions on retaliatory conduct by a landlord pursuant to the Residential Landlord-Tenant Act, at s. 83.64, F.S., to prohibit retaliatory conduct against a tenant that complies with a lawful demand by a condominium association for payment of rents.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a-

1 A bill to be entitled
 2 An act relating to condominium foreclosures; amending s.
 3 83.46, F.S.; requiring certain condominium unit tenants to
 4 pay moneys owed on behalf of the unit to the association;
 5 providing liability; providing a tenant's obligations to
 6 the association; amending s. 718.106, F.S.; providing
 7 condominium associations with certain powers relating to
 8 owners and tenants of a unit in foreclosure and more than
 9 90 days delinquent; providing an exception for a tenant
 10 who pays the rent directly to the association; amending s.
 11 718.116, F.S.; requiring a mortgagee to request an
 12 estoppel letter from an association prior to filing a
 13 foreclosure action; authorizing the association to charge
 14 a fee for the production of an estoppel letter; requiring
 15 the association to reply to the letter within a specified
 16 period of time; providing for dismissal of the action for
 17 failure to request the letter or make payments; requiring
 18 certain payments; deleting provisions limiting the
 19 liability of the mortgagee and successors acquiring the
 20 title by foreclosure or by deed in lieu of foreclosure for
 21 certain unpaid assessments; deleting an exemption from
 22 liability for certain unpaid assessments for certain
 23 persons acquiring the title to a condominium as a result
 24 of the foreclosure of the mortgage or by deed in lieu of
 25 the foreclosure of the mortgage; deleting the definition
 26 of the term "successor or assignee"; specifying additional
 27 circumstances for which liability for assessments may not
 28 be avoided; providing an effective date.

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

Section 1. Subsection (4) is added to section 83.46, Florida Statutes, to read:

83.46 Rent; duration of tenancies.--

(4) (a) If assessments upon a condominium unit subject to a rental agreement are delinquent for more than 30 days, the association may require the tenant to pay the association any moneys the unit owner landlord owes the association, not to exceed the amount of moneys the tenant owes the unit owner landlord during the pendency of the rental agreement. Any payment made by the tenant to the association shall be credited to the unit owner landlord's account with the condominium association.

(b) If a unit is subject to a rental agreement, and if a unit or the unit owner's monetary obligations to the association become delinquent, the unit's tenant is jointly and severally liable with the unit and unit owner for the unit and unit owner's monetary obligations to the association.

1. The tenant's monetary obligations to the association include, but are not limited to, all assessments and installments, late charges, collection costs, attorney's fees and court costs, and other monetary obligations from the unit owner to the association, and any interest thereon, that come due against the unit or the unit owner from the date of the association's notice to the tenant, and accruing to the date all the monetary obligations are paid in full, regardless of whether

57 the lease is terminated or otherwise concluded. In addition to
58 all other remedies, the association may enforce the tenant's
59 liability by evicting the tenant, either in the association's
60 name or in the name of the unit owner, and by suspending the
61 unit's right to utilize common elements other than those
62 necessary for ingress and egress.

63 2. The liability of a tenant is limited to the amount of
64 moneys due from the tenant to the unit owner. However, a
65 tenant's prepayment of a lease obligation does not excuse the
66 tenant for liability for the amount of the prepayment unless the
67 prepayment is either expressly stated in the lease or is for an
68 installment of monthly rent as expressly provided in the lease
69 and paid within 5 days after the installment due date, and the
70 tenant provides the association proof of payment in the form of
71 a canceled check.

72 3. Upon the association's notice to the tenant, the tenant
73 shall pay all moneys, whether as rent or otherwise, owed
74 pursuant to the lease, directly to the association until payment
75 of the monetary obligations due and accruing from the unit owner
76 to the association are paid in full, for which the unit owner,
77 contingent upon the unit owner's default, transfers, assigns,
78 conveys, sets over, and delivers to the association all moneys,
79 whether as rent or otherwise, owed under the lease with the
80 right, but without the obligation, to collect all of such moneys
81 that may come due under the lease.

82 Section 2. Subsection (6) is added to section 718.106,
83 Florida Statutes, to read:

84 718.106 Condominium parcels; appurtenances; possession and
 85 enjoyment.--

86 (6) Notwithstanding the provisions of this section, if a
 87 condominium unit is in foreclosure and the unit has unpaid
 88 assessments of 90 days or more, the association may, but is not
 89 required to, take one or more of the following actions:

90 (a) Deny any owner or tenant the right to occupy the
 91 condominium unit.

92 (b) Deny any owner or tenant of the unit the use of the
 93 common areas. However, this paragraph shall not prevent any
 94 owner or tenant from using the common areas in order to leave
 95 the premises.

96 (c) Deny any owner or tenant of the unit use of
 97 recreational facilities.

98 (d) Deny any owner or tenant of the unit the use of a
 99 parking or marina space, which may be enforced by towing of the
 100 motor vehicle or vessel at the expense of the owner.

101 (e) Deny any owner of his or her voting rights.

102
 103 Notwithstanding any provision of this subsection, if a tenant is
 104 paying a fair market rent and the tenant pays the entire rental
 105 amount due for a rental period to the association, the
 106 association may not deny the tenant under this subsection the
 107 right to occupy the unit, the use of common areas, the use of
 108 recreational facilities, or the use of parking areas during such
 109 rental period. Any rent paid by the tenant to the association
 110 shall be credited to the landlord's account with the condominium
 111 association for that unit pursuant to s. 83.46(4).

112 Section 3. Subsections (1) and (2) of section 718.116,
 113 Florida Statutes, are amended to read:

114 718.116 Assessments; liability; lien and priority;
 115 interest; collection; rent during foreclosure.--

116 (1)(a) A unit owner, regardless of how his or her title
 117 has been acquired, including by purchase at a foreclosure sale
 118 or by deed in lieu of foreclosure, is liable for all assessments
 119 which come due while he or she is the unit owner. Additionally,
 120 a unit owner is jointly and severally liable with the previous
 121 owner for all unpaid assessments that came due up to the time of
 122 transfer of title. This liability is without prejudice to any
 123 right the owner may have to recover from the previous owner the
 124 amounts paid by the owner.

125 (b) Before a mortgagee of a loan secured by a lien on a
 126 condominium unit may file an action for foreclosure of the
 127 condominium unit, the mortgagee shall request an estoppel letter
 128 from the association for which the association may charge \$50.
 129 Failure to make such a request for an estoppel letter shall be
 130 grounds for dismissal of the foreclosure action. The request
 131 shall be in writing and shall indicate the name of the borrower
 132 and the unit number. The association shall reply within 15 days
 133 with an estoppel letter stating the current monthly maintenance
 134 fee for the unit and the sum of 6 months' assessments. Within 30
 135 days after the filing of the foreclosure action, the mortgagee
 136 shall pay to the association the sum of 6 months' assessments as
 137 indicated on the estoppel letter, which sum shall be credited to
 138 the unit's account. On the first anniversary of the filing of
 139 the foreclosure action, if the case is still pending without the

140 issuance of a certificate of title, regardless of cause, the
 141 mortgagee shall pay to the association all outstanding moneys
 142 owed by the unit as of that date and shall pay future
 143 assessments as they come due. Any payment to the association by
 144 the mortgagee shall be taxed as a cost in the foreclosure
 145 action, and the mortgagor shall be personally liable to the
 146 mortgagee for the value of the payment made to the association
 147 plus interest at the interest rate provided for in the
 148 promissory note for advances, all late charges, and attorney's
 149 fees. The court shall dismiss a foreclosure action when a
 150 plaintiff mortgagee has failed to make all monetary payments
 151 required by this subsection. Failure to make such payments shall
 152 result in the court awarding the association attorney's fees
 153 from the mortgagee. ~~The liability of a first mortgagee or its~~
 154 ~~successor or assignees who acquire title to a unit by~~
 155 ~~foreclosure or by deed in lieu of foreclosure for the unpaid~~
 156 ~~assessments that became due prior to the mortgagee's acquisition~~
 157 ~~of title is limited to the lesser of:~~

158 1. ~~The unit's unpaid common expenses and regular periodic~~
 159 ~~assessments which accrued or came due during the 6 months~~
 160 ~~immediately preceding the acquisition of title and for which~~
 161 ~~payment in full has not been received by the association; or~~

162 2. ~~One percent of the original mortgage debt. The~~
 163 ~~provisions of this paragraph apply only if the first mortgagee~~
 164 ~~joined the association as a defendant in the foreclosure action.~~
 165 ~~Joinder of the association is not required if, on the date the~~
 166 ~~complaint is filed, the association was dissolved or did not~~

167 ~~maintain an office or agent for service of process at a location~~
 168 ~~which was known to or reasonably discoverable by the mortgagee.~~

169 (c) The person acquiring title shall pay the amount owed
 170 to the association within 30 days after transfer of title.
 171 Failure to pay the full amount when due shall entitle the
 172 association to record a claim of lien against the parcel and
 173 proceed in the same manner as provided in this section for the
 174 collection of unpaid assessments.

175 (d) With respect to each timeshare unit, each owner of a
 176 timeshare estate therein is jointly and severally liable for the
 177 payment of all assessments and other charges levied against or
 178 with respect to that unit pursuant to the declaration or bylaws,
 179 except to the extent that the declaration or bylaws may provide
 180 to the contrary.

181 ~~(e) Notwithstanding the provisions of paragraph (b), a~~
 182 ~~first mortgagee or its successor or assignees who acquire title~~
 183 ~~to a condominium unit as a result of the foreclosure of the~~
 184 ~~mortgage or by deed in lieu of foreclosure of the mortgage shall~~
 185 ~~be exempt from liability for all unpaid assessments attributable~~
 186 ~~to the parcel or chargeable to the previous owner which came due~~
 187 ~~prior to acquisition of title if the first mortgage was recorded~~
 188 ~~prior to April 1, 1992. If, however, the first mortgage was~~
 189 ~~recorded on or after April 1, 1992, or on the date the mortgage~~
 190 ~~was recorded, the declaration included language incorporating by~~
 191 ~~reference future amendments to this chapter, the provisions of~~
 192 ~~paragraph (b) shall apply.~~

193 (e) ~~(f)~~ The provisions of this subsection are intended to
 194 clarify existing law, and shall not be available in any case

195 | where the unpaid assessments sought to be recovered by the
 196 | association are secured by a lien recorded prior to the
 197 | recording of the mortgage. Notwithstanding the provisions of
 198 | chapter 48, the association shall be a proper party to intervene
 199 | in any foreclosure proceeding to seek equitable relief.

200 | ~~(g) For purposes of this subsection, the term "successor~~
 201 | ~~or assignee" as used with respect to a first mortgagee includes~~
 202 | ~~only a subsequent holder of the first mortgage.~~

203 | (2) The liability for assessments may not be avoided by
 204 | waiver of the use or enjoyment of any common element, denial of
 205 | the use or enjoyment of the unit, denial of the use or enjoyment
 206 | of any common element, or ~~by~~ abandonment of the unit for which
 207 | the assessments are made.

208 | Section 4. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (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
2-2-10*
HB 329 TP -
POSTPONED
 2-2-10

1 Council/Committee hearing bill: Civil Justice & Courts Policy
 2 Committee
 3 Representative Robaina offered the following:
 4

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 83.46,

Florida Statutes, to read:

83.46 Rent; duration of tenancies.-

(4) (a) If assessments upon a condominium unit subject to a
rental agreement are delinquent for more than 30 days, the
association may require the tenant to pay the association any
moneys the unit owner landlord owes the association, not to
exceed the amount of moneys the tenant owes the unit owner
landlord during the pendency of the rental agreement. Any
payment made by the tenant to the association shall be credited
to the unit owner landlord's account with the condominium
association.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 1

19 (b) If a unit is subject to a rental agreement, and if a
20 unit or the unit owner's monetary obligations to the association
21 become delinquent, the unit's tenant is jointly and severally
22 liable with the unit and unit owner for the unit and unit
23 owner's monetary obligations to the association.

24 1. The tenant's monetary obligations to the association
25 include, but are not limited to, all assessments and
26 installments, late charges, collection costs, attorney's fees
27 and court costs, and other monetary obligations from the unit
28 owner to the association, and any interest thereon, that come
29 due against the unit or the unit owner from the date of the
30 association's notice to the tenant, and accruing to the date all
31 the monetary obligations are paid in full, regardless of whether
32 the lease is terminated or otherwise concluded. In addition to
33 all other remedies, the association may enforce the tenant's
34 liability by evicting the tenant, either in the association's
35 name or in the name of the unit owner, and by suspending the
36 unit's right to utilize common elements other than those
37 necessary for ingress and egress.

38 2. The liability of a tenant is limited to the amount of
39 moneys due from the tenant to the unit owner. However, a
40 tenant's prepayment of a lease obligation does not excuse the
41 tenant for liability for the amount of the prepayment unless the
42 prepayment is either expressly stated in the lease or is for an
43 installment of monthly rent as expressly provided in the lease
44 and paid within 5 days after the installment due date, and the
45 tenant provides the association proof of payment in the form of
46 a canceled check.

Amendment No. 1

47 3. Upon the association's notice to the tenant, the tenant
48 shall pay all moneys, whether as rent or otherwise, owed
49 pursuant to the lease, directly to the association until payment
50 of the monetary obligations due and accruing from the unit owner
51 to the association are paid in full, for which the unit owner,
52 contingent upon the unit owner's default, transfers, assigns,
53 conveys, sets over, and delivers to the association all moneys,
54 whether as rent or otherwise, owed under the lease with the
55 right, but without the obligation, to collect all of such moneys
56 that may come due under the lease.

57 Section 2. Section 627.714, Florida Statutes, is created
58 to read:

59 627.714 Residential condominium unit owner coverage; loss
60 assessment coverage required; excess coverage provision
61 required.-For policies issued or renewed on or after July 1,
62 2010, coverage under a unit owner's residential property policy
63 shall include property loss assessment coverage of at least
64 \$2,000 for all assessments made as a result of the same direct
65 loss to the property, regardless of the number of assessments,
66 owned by all members of the association collectively when such
67 loss is of the type of loss covered by the unit owner's
68 residential property insurance policy, to which a deductible
69 shall apply of no more than \$250 per direct property loss. If a
70 deductible was or will be applied to other property loss
71 sustained by the unit owner resulting from the same direct loss
72 to the property, no deductible shall apply to the loss
73 assessment coverage. Every individual unit owner's residential
74 property policy must contain a provision stating that the

Amendment No. 1

75 coverage afforded by such policy is excess coverage over the
76 amount recoverable under any other policy covering the same
77 property.

78 Section 3. Subsection (6) is added to section 718.106,
79 Florida Statutes, to read:

80 718.106 Condominium parcels; appurtenances; possession and
81 enjoyment.—

82 (6) Notwithstanding the provisions of this section, if a
83 condominium unit is in foreclosure and the unit has unpaid
84 assessments of 90 days or more, the association may, but is not
85 required to, take one or more of the following actions:

86 (a) Deny any owner or tenant the right to occupy the
87 condominium unit.

88 (b) Deny any owner or tenant of the unit the use of the
89 common areas. However, this paragraph shall not prevent any
90 owner or tenant from using the common areas in order to leave
91 the premises.

92 (c) Deny any owner or tenant of the unit use of
93 recreational facilities.

94 (d) Deny any owner or tenant of the unit the use of a
95 marina space, which may be enforced by towing of the vessel at
96 the expense of the owner.

97 (e) Deny any owner of his or her voting rights.

98
99 Notwithstanding any provision of this subsection, if a tenant is
100 paying a fair market rent and the tenant pays the entire rental
101 amount due for a rental period to the association, the
102 association may not deny the tenant under this subsection the

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 1

103 right to occupy the unit, the use of common areas, the use of
104 recreational facilities, or the use of parking areas during such
105 rental period. Any rent paid by the tenant to the association
106 shall be credited to the landlord's account with the condominium
107 association for that unit pursuant to s. 83.46(4).

108 Section 4. Paragraphs (a), (b), (c), (d), (f), (g), (j),
109 and (n) of subsection (11) of section 718.111, Florida Statutes,
110 are amended to read:

111 718.111 The association.—

112 (11) INSURANCE.—In order to protect the safety, health,
113 and welfare of the people of the State of Florida and to ensure
114 consistency in the provision of insurance coverage to
115 condominiums and their unit owners, this subsection applies to
116 every residential condominium in the state, regardless of the
117 date of its declaration of condominium. It is the intent of the
118 Legislature to encourage lower or stable insurance premiums for
119 associations described in this subsection.

120 (a) Adequate property hazard insurance, regardless of any
121 requirement in the declaration of condominium for coverage by
122 the association for full insurable value, replacement cost, or
123 similar coverage, shall be based upon the replacement cost of
124 the property to be insured as determined by an independent
125 insurance appraisal or update of a prior appraisal. The
126 replacement cost ~~full insurable value~~ shall be determined at
127 least once every 36 months.

128 1. An association or group of associations may provide
129 adequate property hazard insurance through a self-insurance fund
130 that complies with the requirements of ss. 624.460-624.488.

Amendment No. 1

131 2. The association may also provide adequate property
132 ~~hazard~~ insurance coverage for a group of no fewer than three
133 communities created and operating under this chapter, chapter
134 719, chapter 720, or chapter 721 by obtaining and maintaining
135 for such communities insurance coverage sufficient to cover an
136 amount equal to the probable maximum loss for the communities
137 for a 250-year windstorm event. Such probable maximum loss must
138 be determined through the use of a competent model that has been
139 accepted by the Florida Commission on Hurricane Loss Projection
140 Methodology. No policy or program providing such coverage shall
141 be issued or renewed after July 1, 2008, unless it has been
142 reviewed and approved by the Office of Insurance Regulation. The
143 review and approval shall include approval of the policy and
144 related forms pursuant to ss. 627.410 and 627.411, approval of
145 the rates pursuant to s. 627.062, a determination that the loss
146 model approved by the commission was accurately and
147 appropriately applied to the insured structures to determine the
148 250-year probable maximum loss, and a determination that
149 complete and accurate disclosure of all material provisions is
150 provided to condominium unit owners prior to execution of the
151 agreement by a condominium association.

152 3. When determining the adequate amount of property ~~hazard~~
153 insurance coverage, the association may consider deductibles as
154 determined by this subsection.

155 (b) If an association is a developer-controlled
156 association, the association shall exercise its best efforts to
157 obtain and maintain insurance as described in paragraph (a).
158 Failure to obtain and maintain adequate property ~~hazard~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 1

159 insurance during any period of developer control constitutes a
160 breach of fiduciary responsibility by the developer-appointed
161 members of the board of directors of the association, unless the
162 members can show that despite such failure, they have made their
163 best efforts to maintain the required coverage.

164 (c) Policies may include deductibles as determined by the
165 board.

166 1. The deductibles shall be consistent with industry
167 standards and prevailing practice for communities of similar
168 size and age, and having similar construction and facilities in
169 the locale where the condominium property is situated.

170 2. The deductibles may be based upon available funds,
171 including reserve accounts, or predetermined assessment
172 authority at the time the insurance is obtained.

173 3. The board shall establish the amount of deductibles
174 based upon the level of available funds and predetermined
175 assessment authority at a meeting of the board. ~~Such meeting
176 shall be open to all unit owners in the manner set forth in s.
177 718.112(2)(e). The notice of such meeting must state the
178 proposed deductible and the available funds and the assessment
179 authority relied upon by the board and estimate any potential
180 assessment amount against each unit, if any. The meeting
181 described in this paragraph may be held in conjunction with a
182 meeting to consider the proposed budget or an amendment thereto.~~

183 (d) An association controlled by unit owners operating as
184 a residential condominium shall use its best efforts to obtain
185 and maintain adequate property insurance to protect the
186 association, the association property, the common elements, and

Amendment No. 1

187 the condominium property that is required to be insured by the
188 association pursuant to this subsection.

189 (f) Every property hazard insurance policy issued or
190 renewed on or after January 1, 2009, for the purpose of
191 protecting the condominium shall provide primary coverage for:

192 1. All portions of the condominium property as originally
193 installed or replacement of like kind and quality, in accordance
194 with the original plans and specifications.

195 2. All alterations or additions made to the condominium
196 property or association property pursuant to s. 718.113(2).

197 3. The coverage shall exclude all personal property within
198 the unit or limited common elements, and floor, wall, and
199 ceiling coverings, electrical fixtures, appliances, water
200 heaters, water filters, built-in cabinets and countertops, and
201 window treatments, including curtains, drapes, blinds, hardware,
202 and similar window treatment components, or replacements of any
203 of the foregoing which are located within the boundaries of the
204 unit and serve only such unit. Such property and any insurance
205 thereupon shall be the responsibility of the unit owner.

206 (g) A condominium unit owner's policy shall conform to the
207 requirements of s. 627.714. Every hazard insurance policy issued
208 or renewed on or after January 1, 2009, to an individual unit
209 owner must contain a provision stating that the coverage
210 afforded by such policy is excess coverage over the amount
211 recoverable under any other policy covering the same property.
212 Such policies must include special assessment coverage of no
213 less than \$2,000 per occurrence. An insurance policy issued to
214 an individual unit owner providing such coverage does not

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215 ~~provide rights of subrogation against the condominium~~
216 ~~association operating the condominium in which such individual's~~
217 ~~unit is located.~~

218 ~~1. All improvements or additions to the condominium~~
219 ~~property that benefit fewer than all unit owners shall be~~
220 ~~insured by the unit owner or owners having the use thereof, or~~
221 ~~may be insured by the association at the cost and expense of the~~
222 ~~unit owners having the use thereof.~~

223 ~~2. The association shall require each owner to provide~~
224 ~~evidence of a currently effective policy of hazard and liability~~
225 ~~insurance upon request, but not more than once per year. Upon~~
226 ~~the failure of an owner to provide a certificate of insurance~~
227 ~~issued by an insurer approved to write such insurance in this~~
228 ~~state within 30 days after the date on which a written request~~
229 ~~is delivered, the association may purchase a policy of insurance~~
230 ~~on behalf of an owner. The cost of such a policy, together with~~
231 ~~reconstruction costs undertaken by the association but which are~~
232 ~~the responsibility of the unit owner, may be collected in the~~
233 ~~manner provided for the collection of assessments in s. 718.116.~~

234 ~~1.3.~~ All reconstruction work after a property casualty
235 loss shall be undertaken by the association except as otherwise
236 authorized in this section. A unit owner may undertake
237 reconstruction work on portions of the unit with the prior
238 written consent of the board of administration. However, such
239 work may be conditioned upon the approval of the repair methods,
240 the qualifications of the proposed contractor, or the contract
241 that is used for that purpose. A unit owner shall obtain all

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242 required governmental permits and approvals prior to commencing
243 reconstruction.

244 2.4. Unit owners are responsible for the cost of
245 reconstruction of any portions of the condominium property for
246 which the unit owner is required to carry property casualty
247 insurance, and any such reconstruction work undertaken by the
248 association shall be chargeable to the unit owner and
249 enforceable as an assessment pursuant to s. 718.116. ~~The~~
250 ~~association must be an additional named insured and loss payee~~
251 ~~on all casualty insurance policies issued to unit owners in the~~
252 ~~condominium operated by the association.~~

253 3.5. A multicondominium association may elect, by a
254 majority vote of the collective members of the condominiums
255 operated by the association, to operate such condominiums as a
256 single condominium for purposes of insurance matters, including,
257 but not limited to, the purchase of the property hazard
258 insurance required by this section and the apportionment of
259 deductibles and damages in excess of coverage. The election to
260 aggregate the treatment of insurance premiums, deductibles, and
261 excess damages constitutes an amendment to the declaration of
262 all condominiums operated by the association, and the costs of
263 insurance shall be stated in the association budget. The
264 amendments shall be recorded as required by s. 718.110.

265 (j) Any portion of the condominium property required to be
266 insured by the association against property casualty loss
267 pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be
268 reconstructed, repaired, or replaced as necessary by the
269 association as a common expense. All property hazard insurance

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270 deductibles, uninsured losses, and other damages in excess of
271 property hazard insurance coverage under the property hazard
272 insurance policies maintained by the association are a common
273 expense of the condominium, except that:

274 1. A unit owner is responsible for the costs of repair or
275 replacement of any portion of the condominium property not paid
276 by insurance proceeds, if such damage is caused by intentional
277 conduct, negligence, or failure to comply with the terms of the
278 declaration or the rules of the association by a unit owner, the
279 members of his or her family, unit occupants, tenants, guests,
280 or invitees, without compromise of the subrogation rights of any
281 insurer ~~as set forth in paragraph (g)~~.

282 2. The provisions of subparagraph 1. regarding the
283 financial responsibility of a unit owner for the costs of
284 repairing or replacing other portions of the condominium
285 property also apply to the costs of repair or replacement of
286 personal property of other unit owners or the association, as
287 well as other property, whether real or personal, which the unit
288 owners are required to insure ~~under paragraph (g)~~.

289 3. To the extent the cost of repair or reconstruction for
290 which the unit owner is responsible under this paragraph is
291 reimbursed to the association by insurance proceeds, and, to the
292 extent the association has collected the cost of such repair or
293 reconstruction from the unit owner, the association shall
294 reimburse the unit owner without the waiver of any rights of
295 subrogation.

296 4. The association is not obligated to pay for
297 reconstruction or repairs of property casualty losses as a

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298 | common expense if the property casualty losses were known or
299 | should have been known to a unit owner and were not reported to
300 | the association until after the insurance claim of the
301 | association for that property casualty was settled or resolved
302 | with finality, or denied on the basis that it was untimely
303 | filed.

304 | (n) The association is not obligated to pay for any
305 | reconstruction or repair expenses due to property casualty loss
306 | to any improvements installed by a current or former owner of
307 | the unit or by the developer if the improvement benefits only
308 | the unit for which it was installed and is not part of the
309 | standard improvements installed by the developer on all units as
310 | part of original construction, whether or not such improvement
311 | is located within the unit. This paragraph does not relieve any
312 | party of its obligations regarding recovery due under any
313 | insurance implemented specifically for any such improvements.

314 | Section 5. Paragraph (h) is added to subsection (1) of
315 | section 718.116, Florida Statutes, and subsection (2) of that
316 | section is amended, to read:

317 | 718.116 Assessments; liability; lien and priority;
318 | interest; collection; rent during foreclosure.-

319 | (1) (a) A unit owner, regardless of how his or her title
320 | has been acquired, including by purchase at a foreclosure sale
321 | or by deed in lieu of foreclosure, is liable for all assessments
322 | which come due while he or she is the unit owner. Additionally,
323 | a unit owner is jointly and severally liable with the previous
324 | owner for all unpaid assessments that came due up to the time of
325 | transfer of title. This liability is without prejudice to any

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326 right the owner may have to recover from the previous owner the
327 amounts paid by the owner.

328 (b) The liability of a first mortgagee or its successor or
329 assignees who acquire title to a unit by foreclosure or by deed
330 in lieu of foreclosure for the unpaid assessments that became
331 due prior to the mortgagee's acquisition of title is limited to
332 the lesser of:

333 1. The unit's unpaid common expenses and regular periodic
334 assessments which accrued or came due during the 6 months
335 immediately preceding the acquisition of title and for which
336 payment in full has not been received by the association; or

337 2. One percent of the original mortgage debt. The
338 provisions of this paragraph apply only if the first mortgagee
339 joined the association as a defendant in the foreclosure action.
340 Joinder of the association is not required if, on the date the
341 complaint is filed, the association was dissolved or did not
342 maintain an office or agent for service of process at a location
343 which was known to or reasonably discoverable by the mortgagee.

344 (h) Where it is anticipated that the assessments owed by a
345 unit will in the near future be limited by paragraph (b), the
346 board of administration may elect to negotiate with, and accept
347 from, the first mortgagee or his or her successor or assignee a
348 payment in full settlement of the future obligation that is less
349 than the sum that will be due in the future as limited by
350 paragraph (b). The settlement shall only limit the obligations
351 owed by the unit should the mortgagee or his or her successor or
352 assignee acquire title to the unit in the foreclosure case
353 pending at the time of the settlement. A settlement or agreement

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354 under this paragraph does not limit the amount due from a unit
355 owner under paragraph (a).

356 (2) The liability for assessments may not be avoided by
357 waiver of the use or enjoyment of any common element, denial of
358 the use or enjoyment of the unit, denial of the use or enjoyment
359 of any common element, or by abandonment of the unit for which
360 the assessments are made.

361 Section 6. This act shall take effect July 1, 2010.
362
363
364

365 -----
366 **T I T L E A M E N D M E N T**

367 Remove the entire title and insert:

368 A bill to be entitled

369 An act relating to condominium associations; amending s.
370 83.46, F.S.; requiring certain condominium unit tenants to
371 pay moneys owed on behalf of the unit to the association;
372 providing liability; providing a tenant's obligations to
373 the association; creating s. 627.714, F.S.; requiring that
374 coverage under a unit owner's policy for certain
375 assessments include at least a minimum amount of loss
376 assessment coverage; requiring that every property
377 insurance policy issued to an individual unit owner
378 contain a specified provision; amending s. 718.106, F.S.;
379 providing condominium associations with certain powers
380 relating to owners and tenants of a unit in foreclosure
381 and more than 90 days delinquent; providing an exception

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Amendment No. 1

382 for a tenant who pays the rent directly to the
383 association; amending s. 718.111, F.S.; requiring that
384 adequate property insurance be based upon the replacement
385 cost of the property to be insured as determined by an
386 independent appraisal or update of a prior appraisal;
387 requiring that such replacement cost be determined at
388 least once within a specified period; providing means by
389 which an association may provide adequate property
390 insurance; providing requirements for such coverage for a
391 group of communities covering their probable maximum loss
392 for a specified windstorm event; authorizing an
393 association to consider deductibles when determining an
394 adequate amount of property insurance; providing that
395 failure to maintain adequate property insurance
396 constitutes a breach of fiduciary duty by the members of
397 the board of directors of an association; revising the
398 procedures for the board to establish the amount of
399 deductibles; requiring that an association controlled by
400 unit owners operating as a residential condominium use its
401 best efforts to obtain and maintain adequate property
402 insurance to protect the association and certain property;
403 requiring that every property insurance policy issued or
404 renewed on or after a specified date provide certain
405 coverage; excluding certain items from such requirement;
406 providing that excluded items and any insurance thereupon
407 are the responsibility of the unit owner; requiring that
408 condominium unit owners' policies conform to certain
409 provisions of state law; deleting provisions relating to

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Bill No. HB 329 (2010)

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410 certain hazard and casualty insurance policies; conforming
411 provisions to changes made by the act; amending s.
412 718.116, F.S.; authorizing the board of administration to
413 settle the future obligation of a lender to pay prior
414 assessments owed; specifying that such settlement does not
415 limit the personal liability of the unit owner; specifying
416 additional circumstances for which liability for
417 assessments may not be avoided; providing an effective
418 date.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (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 _____

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

3 Representative Robaina offered the following:

4
5 **Amendment to Amendment (1) by Representative Robaina**

6 Remove lines 10-56 and insert:

7 (4) The legislature finds that, where a tenant is leasing a
8 condominium unit, some typical duties of a landlord are provided
9 by the condominium association. The legislature finds that a
10 portion of the rent paid by a tenant in a condominium unit
11 equitably belongs to the condominium association to pay for
12 services provided by the association. The legislature further
13 finds that it is inequitable for a unit owner to receive the
14 full rent from leasing a condominium unit while not paying
15 assessments to the condominium association. The legislature
16 finds that it is necessary to the financial well-being of
17 condominium associations to provide a means by which a
18 condominium association may directly collect assessments from a
19 tenant when a landlord fails to pay such assessments.

Amendment No. 2

20 (a) If a condominium unit is subject to a rental
21 agreement, is occupied by a tenant, and the unit owner is 30
22 days or more delinquent in the payment of any monetary
23 obligation due to the condominium association, the association
24 may demand that the tenant pay future rents to the association
25 in lieu of payment to the unit owner. The tenant shall
26 thereafter pay the periodic rents to the association until the
27 delinquency is satisfied, and after the delinquency is satisfied
28 the tenant shall pay the regular condominium association
29 assessment to the association and deduct the same from the
30 periodic rent paid to the landlord unit owner, until such time
31 as the association releases the tenant from the demand or the
32 tenant discontinues tenancy in the unit.

33 (b) The condominium association shall mail written notice
34 to the unit owner of the association's demand that the tenant
35 make payments to the association.

36 (c) Where the tenant is paying the regular assessments, the
37 tenant is not liable for increases in the amount of the monetary
38 obligations due unless the tenant was reasonably notified of the
39 increase before the day on which the rent is due to the unit
40 owner.

41 (d) No tenant shall be required to pay more to the landlord
42 and the association combined than the tenant owes in rent for
43 the periods that the tenant is in actual possession of the
44 condominium unit. The tenant's landlord shall provide the
45 tenant a credit against rent due to the unit owner in the amount
46 of moneys paid by the tenant to the association under this
47 subsection.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 2

48 (e) The condominium association shall, upon request,
49 provide the tenant with written receipts for payments made
50 pursuant to this subsection; however, the association is not
51 otherwise considered a landlord under this chapter.

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	_____	

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

3 Representative Robaina offered the following:

4
 5 **Amendment to Amendment (1) by Representative Robaina**

6 Remove lines 99-107 and insert:

7 Notwithstanding any provision of this subsection, the
 8 association may not deny a tenant the right to occupy the unit,
 9 the use of common areas, the use of recreational facilities, or
 10 the use of parking areas unless the association has made a
 11 demand for payment under s. 83.46(4) and the tenant is more than
 12 30 days delinquent in payments required under that subsection.
 13 Any monies paid by a tenant to the association shall be credited
 14 to the landlord's account with the condominium association and
 15 shall be credited against rent, pursuant to s. 83.46(4).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 513
SPONSOR(S): Horner and others
TIED BILLS: None

Mobile Home Park Tenancies

IDEN./SIM. BILLS: CS/CS/SB 1016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond NB	De La Paz
2) Military & Local Affairs Policy Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Mobile home parks are regulated by the state. Because of the cost and difficulty of moving mobile homes, current law requires a mobile home park owner to give tenants at least 6 months notice before eviction on a change of land use (that is, where the land the park is on will be redeveloped into something other than a mobile home park).

This bill requires that, at the beginning of the 6 months eviction period, and if the tenants have created an association, the park owner must offer to sell the park to the association. This bill also requires the Florida Housing Finance Corporation to develop a program to assist such associations with financing.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. Chapter 723, F.S, governs the relationship between mobile home park owners and mobile home owners. Section 723.004(1), F.S, provides:

The Legislature finds that there are factors unique to the relationship between a mobile home owner and a mobile home park owner. Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.

The Florida Supreme Court, in addressing mobile home park issues, has stated that

a hybrid type of property relationship exists between the mobile home owner and the park owner and that the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved.¹

Before the current downturn in real estate values, escalating property values, especially in the coastal areas, prompted a number of mobile home park owners to close their parks so that the land can be used for a different purpose (such as retail, office, apartments or condominiums). As the economy recovers, mobile home parks will likely again be slated for redevelopment.

¹ *Stewart v. Green*, 300 So.2d 889, 892 (Fla. 1974).

Florida Housing Finance Corporation

The Florida Housing Finance Corporation was created in 1980 to manage various programs providing financing and assistance for affordable housing projects. The corporation is public corporation owned by the state. The goal of the corporation is to "help our fellow Floridians obtain safe, decent affordable housing that might otherwise be unavailable to them." The corporation today operates a number of programs, including²:

- Multifamily development programs (or rental housing program) include Multifamily Mortgage Revenue Bonds (MMRB), Florida Affordable Housing Guarantee (Guarantee Program), HOME Investment Partnerships, Elderly Housing Community Loan (EHCL) and Low Income Housing Tax Credit (LIHTC) program.
- Florida Housing's special programs include the State Housing Initiatives Partnership (SHIP), Predevelopment Loan Program (PLP), Demonstration Loans, and the Affordable Housing Catalyst Program (Catalyst).
- In 2006 and 2007, the state Legislature passed housing bills focused on addressing some of the affordable housing challenges the state faced during that timeframe. An affordable housing pilot program was established called the Rep. Mike Davis Community Workforce Housing Innovation Pilot (CWHIP) Program to promote the creation of public-private partnerships to finance, build and manage workforce housing. CWHIP was funded for two years (2006 and 2007).
- Florida Housing's homeownership programs include the First Time Homebuyer (FTHB) Program, down payment assistance programs and the Homeownership Pool (HOP) Program.
- Florida Housing provides a Web-based rental housing locator that allows the public to search for affordable rental housing 24 hours a day, seven days a week. In addition, a toll-free, bilingual call center is available Monday – Friday for those without access to the Internet. Click here for a summary.

This bill amends the legislative intent provisions regarding the Florida Housing Finance Corporation to add that: "Mobile home parks are an essential element of providing affordable housing in the state."

This bill further requires the Florida Housing Finance Corporation to use its programs and to issue revenue bonds to provide opportunities and develop incentives for mobile home owners to purchase their mobile home park.

Purchase of Mobile Home Park by Tenants

Section 723.061, F.S., provides the grounds for eviction of a mobile home park resident. One ground for eviction is an eviction of all tenants upon a change in land use. Tenants evicted under this provision must be given at least 6 months' notice.

Section 723.071, F.S., requires a mobile home park owner that offers a mobile home park for sale to the general public must notify the homeowners' association (tenant's association) of the price, terms and conditions of sale. The requirement only applies if the tenants have organized a homeowners association under ch. 723, F.S. The mobile home owners, by and through the homeowners association, may purchase the park at the price, terms and conditions in the notice if the owners execute a purchase contract within 45 days after mailing of the notice. If the park owner later elects to offer the park at a lower price, the home owners have an additional 10 days to meet the price and terms and conditions of the park owner by executing a contract.

² Information from the corporation's website, on January 19, 2020, at:
http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0001

This bill amends the eviction provisions of s. 723.061(1)(d), F.S., to provide mobile home owners with a process for purchase of the mobile home park from which they are to be evicted due to a change in land use. The purchase terms are similar to those in current law related to a park owner offering the park for sale. The park owner may not evict the homeowners from the park due to a change of land use unless the park owner first follows the process set forth in the bill.

If the homeowners have formed a homeowners' association pursuant to ss. 723.075-723.079, F.S., the bill requires the park owner to give written notice to the homeowners' association of the homeowners' right to purchase the mobile home park at the price, terms, and conditions set forth in the notice.

The written notice must be provided to the officers of the homeowners' association. The bill gives the homeowners association the right to execute and deliver a contract for purchase of the park to the park owner within 45 days after the mailing of the written notice. The contract must be for the same price and terms and conditions set forth in the written notice. The park owner may not sell to another if the association agrees to a contract.

This bill further provides that, if the park owner and the homeowners' association do not execute a contract within the 45 day period, the park owner may proceed with the eviction. If during the 6 month notice period prior to eviction the park owner elects to offer or sell the park at a price lower than in the initial notice, the park owner must notify the homeowners association and the association has an additional 10 days to agree to the revised offer terms.

This bill also provides that, at the conclusion of the 6 month notice period, the park owner has no further obligation under the amended s. 723.061(1)(d), F.S., or under s. 723.071, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 420.0003, F.S., regarding the state housing strategy, as implemented by the Florida Housing Finance Corporation.

Section 2 amends s. 420.502, F.S., amending the legislative findings related to the Florida Housing Finance Corporation Act.

Section 3 amends s. 723.061, F.S., regarding eviction from a mobile home park upon a change in land use.

Section 4 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Florida Housing Finance Corporation provided the following fiscal comment:³

At this time, the fiscal impact of HB 513 is indeterminate. We know that the bill would have an impact on Florida Housing but we don't know how many parks will be eligible, how many of those eligible parks would use the program, which of our programs would oversee the new mobile home program, or what the cost of managing/staffing the new program will be.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill, requiring the Florida Housing Finance Agency to develop programs to assist mobile home park residents in buying their mobile home park, is somewhat vague and non-specific. That section implies that current financing programs are to be used for this purpose, yet none of the agency's current programs appear to provide this sort of financing.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

³ Email from Sean Lacey, January 19, 2010, on file with committee staff.

1 A bill to be entitled
 2 An act relating to mobile home park tenancies; amending s.
 3 420.0003, F.S.; directing the Florida Housing Finance
 4 Corporation to provide opportunities and develop
 5 incentives for mobile home owners to purchase their mobile
 6 home park; amending s. 420.502, F.S.; providing
 7 legislative findings; amending s. 723.061, F.S.; revising
 8 procedures for mobile home owners being provided eviction
 9 notice due to a change in use of the land comprising the
 10 mobile home park; requiring certain notice to the
 11 homeowners' association; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (e) is added to subsection (4) of
 16 section 420.0003, Florida Statutes, to read:

17 420.0003 State housing strategy.—

18 (4) IMPLEMENTATION.—The Department of Community Affairs
 19 and the Florida Housing Finance Corporation in carrying out the
 20 strategy articulated herein shall have the following duties:

21 (e) The Florida Housing Finance Corporation shall use its
 22 programs, including the issuance of revenue bonds, to provide
 23 opportunities and develop incentives for mobile home owners to
 24 purchase their mobile home park.

25 Section 2. Subsection (9) is added to section 420.502,
 26 Florida Statutes, to read:

27 420.502 Legislative findings.—It is hereby found and
 28 declared as follows:

29 | (9) Mobile home parks are an essential element of
 30 | providing affordable housing in the state.

31 | Section 3. Section 723.061, Florida Statutes, is amended
 32 | to read:

33 | 723.061 Eviction; grounds, proceedings.—

34 | (1) A mobile home park owner may evict a mobile home
 35 | owner, a mobile home tenant, a mobile home occupant, or a mobile
 36 | home only on one or more of the grounds provided in this
 37 | section.

38 | (a) Nonpayment of lot rental amount. If a mobile home
 39 | owner or tenant, whichever is responsible, fails to pay the lot
 40 | rental amount when due and if the default continues for 5 days
 41 | after delivery of a written demand by the mobile home park owner
 42 | for payment of the lot rental amount, the park owner may
 43 | terminate the tenancy. However, if the mobile home owner or
 44 | tenant, whichever is responsible, pays the lot rental amount
 45 | due, including any late charges, court costs, and attorney's
 46 | fees, the court may, for good cause, deny the order of eviction,
 47 | provided such nonpayment has not occurred more than twice.

48 | (b) Conviction of a violation of a federal or state law or
 49 | local ordinance, which violation may be deemed detrimental to
 50 | the health, safety, or welfare of other residents of the mobile
 51 | home park. The mobile home owner or mobile home tenant will have
 52 | 7 days from the date that notice to vacate is delivered to
 53 | vacate the premises. This paragraph shall be grounds to deny an
 54 | initial tenancy of a purchaser of a home pursuant to paragraph
 55 | (e) or to evict an unapproved occupant of a home.

56 (c) Violation of a park rule or regulation, the rental
 57 agreement, or this chapter.

58 1. For the first violation of any properly promulgated
 59 rule or regulation, rental agreement provision, or this chapter
 60 which is found by any court having jurisdiction thereof to have
 61 been an act which endangered the life, health, safety, or
 62 property of the park residents or employees or the peaceful
 63 enjoyment of the mobile home park by its residents, the mobile
 64 home park owner may terminate the rental agreement, and the
 65 mobile home owner, tenant, or occupant will have 7 days from the
 66 date that the notice is delivered to vacate the premises.

67 2. For a second violation of the same properly promulgated
 68 rule or regulation, rental agreement provision, or this chapter
 69 within 12 months, the mobile home park owner may terminate the
 70 tenancy if she or he has given the mobile home owner, tenant, or
 71 occupant written notice within 30 days of the first violation,
 72 which notice specified the actions of the mobile home owner,
 73 tenant, or occupant which caused the violation and gave the
 74 mobile home owner, tenant, or occupant 7 days to correct the
 75 noncompliance. The mobile home owner, tenant, or occupant must
 76 have received written notice of the ground upon which she or he
 77 is to be evicted at least 30 days prior to the date on which she
 78 or he is required to vacate. A second violation of a properly
 79 promulgated rule or regulation, rental agreement provision, or
 80 this chapter within 12 months of the first violation is
 81 unequivocally a ground for eviction, and it is not a defense to
 82 any eviction proceeding that a violation has been cured after
 83 the second violation. Violation of a rule or regulation, rental

84 agreement provision, or this chapter after the passage of 1 year
 85 from the first violation of the same rule or regulation, rental
 86 agreement provision, or this chapter does not constitute a
 87 ground for eviction under this section.

88

89 No properly promulgated rule or regulation may be arbitrarily
 90 applied and used as a ground for eviction.

91 (d) Change in use of the land comprising the mobile home
 92 park, or the portion thereof from which mobile homes are to be
 93 evicted, from mobile home lot rentals to some other use,
 94 provided:

95 1. The park owner gives written notice to the homeowners'
 96 association formed and operating pursuant to ss. 723.075-723.079
 97 of their right to purchase the mobile home park, if the land
 98 comprising the mobile home park is changing use from mobile home
 99 lot rentals to a different use, at the price and terms and
 100 conditions set forth in such written notice.

101 a. Notice shall be provided to the officers of the
 102 homeowners' association by United States mail. Within 45 days
 103 after the date of mailing the notice, the homeowners'
 104 association shall have the right to execute and deliver a
 105 contract to the park owner to purchase the mobile home park
 106 under the same price and terms and conditions as set forth in
 107 the notice. The conditions in the notice may require the
 108 purchase of other real estate that is contiguous or adjacent to
 109 the mobile home park. If such contract between the park owner
 110 and the homeowners' association is not executed and delivered to
 111 the park owner within the 45-day period, the park owner shall be

112 under no further obligation to the homeowners' association under
 113 this sub-subparagraph, and her or his only obligation shall be
 114 as set forth in sub-subparagraph b.

115 b. If the park owner elects to offer or sell the park at a
 116 price lower than the price specified in her or his initial
 117 notice to the officers of the homeowners' association, the
 118 homeowners' association shall have an additional 10 days to meet
 119 the revised price and terms and conditions of the park owner by
 120 executing and delivering the revised contract to the park owner.

121 c. The park owner shall have no obligation under this
 122 paragraph or s. 723.071 to provide any further notice to or to
 123 negotiate with the homeowners' association for the sale of the
 124 mobile home park to the homeowners' association after 6 months
 125 from the date of mailing the initial notice described in sub-
 126 subparagraph a.

127 2. The park owner provides the affected mobile home owners
 128 with all tenants affected are given at least 6 months' notice of
 129 eviction due to the projected change in ~~of~~ use and of their need
 130 to secure other accommodations.

131 a. The notice of eviction due to a change in use of the
 132 land may be provided to the affected mobile home owners at the
 133 same time as or after the notice of a right to purchase the
 134 mobile home park has been provided to the officers of the
 135 homeowners' association as set forth in subparagraph 1.a.

136 b. The notice of eviction due to a change in use of the
 137 land shall include in a font no smaller than the body of the
 138 notice the following statement: YOU MAY BE ENTITLED TO
 139 COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND,

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140 ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION
141 (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA
142 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

143 c. The park owner may not give a notice of increase in lot
144 rental amount within 90 days before giving notice of a change in
145 use.

146 (e) Failure of the purchaser, prospective tenant, or
147 occupant of a mobile home situated in the mobile home park to be
148 qualified as, and to obtain approval to become, a tenant or
149 occupant of the home, if such approval is required by a properly
150 promulgated rule. If a purchaser or prospective tenant of a
151 mobile home situated in the mobile home park occupies the mobile
152 home before approval is granted, the mobile home owner or mobile
153 home tenant shall have 7 days from the date the notice of the
154 failure to be approved for tenancy is delivered to vacate the
155 premises.

156 (2) In the event of eviction for change in ~~of~~ use,
157 homeowners must object to the change in use by petitioning for
158 administrative or judicial remedies within 90 days of the date
159 of the notice or they will be barred from taking any subsequent
160 action to contest the change in use. This provision shall not be
161 construed to prevent any homeowner from objecting to a zoning
162 change at any time.

163 (3) The provisions of s. 723.083 shall not be applicable
164 to any park where the provisions of paragraph (1)(d) ~~this~~
165 ~~subsection~~ apply.

166 (4) A mobile home park owner applying for the removal of a
167 mobile home owner, tenant, occupant, or a mobile home shall

168 file, in the county court in the county where the mobile home
 169 lot is situated, a complaint describing the lot and stating the
 170 facts that authorize the removal of the mobile home owner,
 171 tenant, occupant, or the mobile home. The park owner is entitled
 172 to the summary procedure provided in s. 51.011, and the court
 173 shall advance the cause on the calendar.

174 (5) Except for the notice to the officers of the
 175 homeowners' association as provided in subparagraph (1)(d)1.,
 176 any notice required by this section must be in writing, and must
 177 be posted on the premises and sent to the mobile home owner and
 178 tenant or occupant, as appropriate, by certified or registered
 179 mail, return receipt requested, addressed to the mobile home
 180 owner and tenant or occupant, as appropriate, at her or his last
 181 known address. Delivery of the mailed notice shall be deemed
 182 given 5 days after the date of postmark.

183 Section 4. This act shall take effect July 1, 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	_____	

1 Council/Committee hearing bill: Civil Justice & Courts Policy
 2 Committee
 3 Representative(s) Horner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (e) is added to subsection (4) of section 420.0003, Florida Statutes, to read:

420.0003 State housing strategy.—

(4) IMPLEMENTATION.—The Department of Community Affairs and the Florida Housing Finance Corporation in carrying out the strategy articulated herein shall have the following duties:

(e) The Florida Housing Finance Corporation shall use its expertise to provide technical assistance to mobile home owners, working through their homeowners' association formed and operating pursuant to ss. 723.075-723.079, in purchasing their mobile home park, including, but not limited to, the issuance of bonds through a not-for-profit organization exempt under the provisions of s. 501(c)(3) of the United States Internal Revenue

Amendment No. 1

20 Code. Upon written request of mobile home owners working through
21 their homeowners' association formed and operating pursuant to
22 ss. 723.075-723.079, the Florida Housing Finance Corporation is
23 directed to provide technical assistance in creating the not-
24 for-profit organization to purchase their mobile home park.

25 Section 2. Subsection (9) is added to section 420.502,
26 Florida Statutes, to read:

27 420.502 Legislative findings.—It is hereby found and
28 declared as follows:

29 (9) Mobile home parks are an essential element of
30 providing affordable housing in the state.

31 Section 3. Section 723.061, Florida Statutes, is amended
32 to read:

33 723.061 Eviction; grounds, proceedings.—

34 (1) A mobile home park owner may evict a mobile home
35 owner, a mobile home tenant, a mobile home occupant, or a mobile
36 home only on one or more of the grounds provided in this
37 section.

38 (a) Nonpayment of lot rental amount. If a mobile home
39 owner or tenant, whichever is responsible, fails to pay the lot
40 rental amount when due and if the default continues for 5 days
41 after delivery of a written demand by the mobile home park owner
42 for payment of the lot rental amount, the park owner may
43 terminate the tenancy. However, if the mobile home owner or
44 tenant, whichever is responsible, pays the lot rental amount
45 due, including any late charges, court costs, and attorney's
46 fees, the court may, for good cause, deny the order of eviction,
47 provided such nonpayment has not occurred more than twice.

COUNCIL/COMMITTEE AMENDMENT

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48 (b) Conviction of a violation of a federal or state law or
49 local ordinance, which violation may be deemed detrimental to
50 the health, safety, or welfare of other residents of the mobile
51 home park. The mobile home owner or mobile home tenant will have
52 7 days from the date that notice to vacate is delivered to
53 vacate the premises. This paragraph shall be grounds to deny an
54 initial tenancy of a purchaser of a home pursuant to paragraph
55 (e) or to evict an unapproved occupant of a home.

56 (c) Violation of a park rule or regulation, the rental
57 agreement, or this chapter.

58 1. For the first violation of any properly promulgated
59 rule or regulation, rental agreement provision, or this chapter
60 which is found by any court having jurisdiction thereof to have
61 been an act which endangered the life, health, safety, or
62 property of the park residents or employees or the peaceful
63 enjoyment of the mobile home park by its residents, the mobile
64 home park owner may terminate the rental agreement, and the
65 mobile home owner, tenant, or occupant will have 7 days from the
66 date that the notice is delivered to vacate the premises.

67 2. For a second violation of the same properly promulgated
68 rule or regulation, rental agreement provision, or this chapter
69 within 12 months, the mobile home park owner may terminate the
70 tenancy if she or he has given the mobile home owner, tenant, or
71 occupant written notice within 30 days of the first violation,
72 which notice specified the actions of the mobile home owner,
73 tenant, or occupant which caused the violation and gave the
74 mobile home owner, tenant, or occupant 7 days to correct the
75 noncompliance. The mobile home owner, tenant, or occupant must

Amendment No. 1

76 have received written notice of the ground upon which she or he
77 is to be evicted at least 30 days prior to the date on which she
78 or he is required to vacate. A second violation of a properly
79 promulgated rule or regulation, rental agreement provision, or
80 this chapter within 12 months of the first violation is
81 unequivocally a ground for eviction, and it is not a defense to
82 any eviction proceeding that a violation has been cured after
83 the second violation. Violation of a rule or regulation, rental
84 agreement provision, or this chapter after the passage of 1 year
85 from the first violation of the same rule or regulation, rental
86 agreement provision, or this chapter does not constitute a
87 ground for eviction under this section.

88
89 No properly promulgated rule or regulation may be arbitrarily
90 applied and used as a ground for eviction.

91 (d) Change in use of the land comprising the mobile home
92 park, or the portion thereof from which mobile homes are to be
93 evicted, from mobile home lot rentals to some other use,
94 provided:

95 1. The park owner gives written notice to the homeowners'
96 association formed and operating pursuant to ss. 723.075-723.079
97 of its right to purchase the mobile home park, if the land
98 comprising the mobile home park is changing use from mobile home
99 lot rentals to a different use, at the price and terms and
100 conditions set forth in such written notice.

101 a. Notice shall be given to the officers of the
102 homeowners' association by United States mail. Within 45 days
103 after the date of mailing the notice, the homeowners'

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 513 (2010)

Amendment No. 1

104 association shall have the right to execute and deliver a
105 contract to the park owner to purchase the mobile home park
106 under the same price and terms and conditions as set forth in
107 the notice. The conditions in the notice may require the
108 purchase of other real estate that is contiguous or adjacent to
109 the mobile home park. If such contract between the park owner
110 and the homeowners' association is not executed and delivered to
111 the park owner within the 45-day period, the park owner shall be
112 under no further obligation to the homeowners' association under
113 this sub-subparagraph, and her or his only obligation shall be
114 as set forth in sub-subparagraph b.

115 b. If the park owner elects to offer or sell the park at a
116 price lower than the price specified in her or his initial
117 notice to the officers of the homeowners' association, the
118 homeowners' association shall have an additional 10 days to meet
119 the revised price and terms and conditions of the park owner by
120 executing and delivering the revised contract to the park owner.

121 c. The park owner shall have no obligation under this
122 paragraph or s. 723.071 to give any further notice to or to
123 negotiate with the homeowners' association for the sale of the
124 mobile home park to the homeowners' association after 6 months
125 from the date of mailing the initial notice described in sub-
126 subparagraph a.

127 2. The park owner gives the affected mobile home owners
128 and mobile home tenants with ~~all tenants affected are given~~ at
129 least 6 months' notice of eviction due to the projected change
130 in ~~of~~ use and of their need to secure other accommodations.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 513 (2010)

Amendment No. 1

131 a. The notice of eviction due to a change in use of the
132 land may be given to the affected mobile home owners at the same
133 time as or after the notice of a right to purchase the mobile
134 home park has been given to the officers of the homeowners'
135 association as set forth in subparagraph 1.a.

136 b. The notice of eviction due to a change in use of the
137 land shall include in a font no smaller than the body of the
138 notice the following statement: YOU MAY BE ENTITLED TO
139 COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND,
140 ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION
141 (FMHRC). FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA
142 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

143 c. The park owner may not give a notice of increase in lot
144 rental amount within 90 days before giving notice of a change in
145 use.

146 (e) Failure of the purchaser, prospective tenant, or
147 occupant of a mobile home situated in the mobile home park to be
148 qualified as, and to obtain approval to become, a tenant or
149 occupant of the home, if such approval is required by a properly
150 promulgated rule. If a purchaser or prospective tenant of a
151 mobile home situated in the mobile home park occupies the mobile
152 home before approval is granted, the mobile home owner or mobile
153 home tenant shall have 7 days from the date the notice of the
154 failure to be approved for tenancy is delivered to vacate the
155 premises.

156 (2) In the event of eviction for change in ~~of~~ use,
157 homeowners must object to the change in use by petitioning for
158 administrative or judicial remedies within 90 days of the date

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159 of the notice or they will be barred from taking any subsequent
160 action to contest the change in use. This provision shall not be
161 construed to prevent any homeowner from objecting to a zoning
162 change at any time.

163 (3) The provisions of s. 723.083 shall not be applicable
164 to any park where the provisions of this subsection apply.

165 (4) A mobile home park owner applying for the removal of a
166 mobile home owner, tenant, occupant, or a mobile home shall
167 file, in the county court in the county where the mobile home
168 lot is situated, a complaint describing the lot and stating the
169 facts that authorize the removal of the mobile home owner,
170 tenant, occupant, or the mobile home. The park owner is entitled
171 to the summary procedure provided in s. 51.011, and the court
172 shall advance the cause on the calendar.

173 (5) Except for the notice to the officers of the
174 homeowners' association as provided in subparagraph (1)(d)1.,
175 any notice required by this section must be in writing, and must
176 be posted on the premises and sent to the mobile home owner and
177 tenant or occupant, as appropriate, by certified or registered
178 mail, return receipt requested, addressed to the mobile home
179 owner and tenant or occupant, as appropriate, at her or his last
180 known address. Delivery of the mailed notice shall be deemed
181 given 5 days after the date of postmark.

182 Section 4. This act shall take effect July 1, 2010.

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Amendment No. 1

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

Remove the entire title and insert:
An act relating to mobile home park tenancies; amending s.
420.0003, F.S.; directing the Florida Housing Finance
Corporation to provide technical assistance to mobile home
owners in purchasing their mobile home park; amending s.
420.502, F.S.; providing legislative findings; amending s.
723.061, F.S.; revising procedures for mobile home owners
being provided eviction notice due to a change in use of
the land comprising the mobile home park; requiring
certain notice to the homeowners' association; providing
an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689
SPONSOR(S): Aubuchon
TIED BILLS:

Negligence

IDEN./SIM. BILLS: SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2) Criminal & Civil Justice Policy Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 689 repeals s. 768.0710, F.S. and approximates the law with respect to slip and fall law suits as it existed before 2001.

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Business owners owe a duty to their customers to use reasonable care in maintaining their premises in a safe condition. Prior to 2001, when a person slipped and fell on a transitory foreign substance, the injured person had to prove that the business had actual or constructive knowledge of the dangerous condition and "that the condition existed for such a length of time that in the exercise of ordinary care, the premises owner should have known of it and taken action to remedy it." Constructive knowledge could be established by circumstantial evidence showing that: (1) the dangerous condition existed for such a length of time that in the exercise of ordinary care, the premises owner should have known of the condition; or (2) the condition occurred with regularity and was therefore foreseeable.

In Owens v. Publix Supermarkets, Inc., decided in 2001, the Florida Supreme Court changed the standard of proof in slip-and-fall cases. The Court concluded that "premises liability cases involving transitory foreign substances are appropriate cases for shifting the burden to the premises owner or operator to establish that it exercised reasonable care under the circumstances, eliminating the specific requirement that the customer establish that the store had constructive knowledge of its existence in order for the case to be presented to the jury." The new standard adopted by the Court was that "the existence of a foreign substance on the floor of a business premises that causes a customer to fall and be injured is not a safe condition, and the existence of that unsafe condition creates a rebuttable presumption that the premises owner did not maintain the premises in a reasonably safe condition."

In 2002, the Legislature adopted s. 768.0710, F.S., in response to the Owens decision. This statute recognizes that a business owes a duty of reasonable care to its customers to maintain "the premises free from transitory foreign objects or substances that might foreseeably give rise to loss, injury, or damage." However, the statute requires a claimant to prove:

- The business owed a duty to the claimant;
- The business acted negligently by failing to exercise reasonable care (but the claimant does not have to show the business had actual or constructive notice of the object); and
- The failure to exercise reasonable care by the business was the cause of the loss, injury, or damage.

Proposed Changes

HB 689 repeals s. 768.0710, F.S. and approximates the law with respect to slip and fall suits as it existed before 2001.

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

B. SECTION DIRECTORY:

Section 1. Creates 768.0755, F.S., relating to premises liability for transitory foreign substances in a business establishment.

Section 2. Repeals s. 768.0710, F.S., relating to the duty to maintain premises in a reasonably safe condition for the safety of business invitees.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may affect the outcome of litigation in slip and fall suits in a manner that is more frequently favorable to business establishments than under the current law.

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 counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

N/A.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to negligence; creating s. 768.0755, F.S.;
 3 providing that if a person slips and falls on a transitory
 4 foreign substance in a business establishment, the injured
 5 person must prove that the business establishment had
 6 actual or constructive knowledge of the condition and
 7 should have taken action to remedy it; providing that
 8 constructive knowledge may be proven by circumstantial
 9 evidence; repealing s. 768.0710, F.S., relating to the
 10 duty to maintain premises and the burden of proof in
 11 claims of negligence involving transitory foreign objects
 12 or substances; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 768.0755, Florida Statutes, is created
 17 to read:

18 768.0755 Premises liability for transitory foreign
 19 substances in a business establishment.—If a person slips and
 20 falls on a transitory foreign substance in a business
 21 establishment, the injured person must prove that the business
 22 establishment had actual or constructive knowledge of the
 23 dangerous condition and should have taken action to remedy it.
 24 Constructive knowledge may be proven by circumstantial evidence
 25 showing that:

26 (1) The dangerous condition existed for such a length of
 27 time that, in the exercise of ordinary care, the business
 28 establishment should have known of the condition; or

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29 (2) The condition occurred with regularity and was
30 therefore foreseeable.

31 Section 2. Section 768.0710, Florida Statutes, is
32 repealed.

33 Section 3. This act shall take effect July 1, 2010.