

Civil Justice & Courts Policy Committee

**Tuesday, March 9, 2010
8:00 AM - 10:45 AM
Reed Hall**

Meeting Packet

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Civil Justice & Courts Policy Committee

Start Date and Time: Tuesday, March 09, 2010 08:00 am
End Date and Time: Tuesday, March 09, 2010 10:45 am
Location: Reed Hall (102 HOB)
Duration: 2.75 hrs

Consideration of the following bill(s):

HB 329 Condominium Foreclosures by Robaina
HB 337 Condominiums by Roberson, Y.
CS/HB 341 H. Lee Moffitt Cancer Center and Research Institute by State Universities & Private Colleges
Policy Committee, Coley
HB 403 Derelict Motor Vehicles and Mobile Homes by Nehr
CS/HB 435 Marketable Record Title by Agriculture & Natural Resources Policy Committee, Abruzzo
HB 887 Adverse Possession by Schultz
HB 907 Spousal and Child Support by Flores
HB 927 Homestead Assessments by Kiar

NOTICE FINALIZED on 03/05/2010 16:16 by Ingram.Michele



The Florida House of Representatives

Criminal & Civil Justice Policy Council

Civil Justice & Courts Policy Committee

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

March 9, 2010

AGENDA

8:00 AM – 10:45 PM

Reed Hall

I. Call Meeting to Order

II. Consideration of Bills

HB 329 Condominium Foreclosures by Robaina

HB 337 Condominiums by Y. Roberson

**CS/HB 341 H. Lee Moffit Cancer Center and Research Institute
by Coley**

HB 403 Derelict Motor Vehicles and Mobile Homes by Nehr

CS/HB 435 Marketable Record Title by Abruzzo

HB 887 Adverse Possession by Schultz

HB 907 Spousal and Child Support by Flores

HB 927 Homestead Assessments by Kiar

III. Adjourn

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

Adopted w/out

as Amended

objection 3-1-10

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

3 Representative Robaina offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

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

8 Florida Statutes, to read:

9 83.46 Rent; duration of tenancies.-

10 (4) (a) If assessments upon a condominium unit subject to a
 11 rental agreement are delinquent for more than 30 days, the
 12 association may require the tenant to pay the association any
 13 moneys the unit owner landlord owes the association, not to
 14 exceed the amount of moneys the tenant owes the unit owner
 15 landlord during the pendency of the rental agreement. Any
 16 payment made by the tenant to the association shall be credited
 17 to the unit owner landlord's account with the condominium
 18 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.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

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.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

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~~

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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

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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

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

366 Remove the entire title and insert:

367 A bill to be entitled

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

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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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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.

Amendment No. 2

COUNCIL/COMMITTEE ACTION

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

*Adopted
w/out objection
3-1-10*

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

Representative Robaina offered the following:

Amendment to Amendment (1) by Representative Robaina

Remove lines 10-56 and insert:

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

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Bill No. HB 329 (2010)

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.

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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.

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Bill No. HB 329 (2010)

Amendment No. 3

COUNCIL/COMMITTEE ACTION

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

*Adopted w/out
objection
3-1-10*

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).

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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) Robaina offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

8 Florida Statutes, to read:

9 83.46 Rent; duration of tenancies.—

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

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20 condominium associations to provide a means by which a
21 condominium association may directly collect assessments from a
22 tenant when a landlord fails to pay such assessments.

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

36 (b) The condominium association shall mail written notice
37 to the unit owner of the association's demand that the tenant
38 make payments to the association.

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

44 (d) No tenant shall be required to pay more to the landlord
45 and the association combined than the tenant owes in rent for
46 the periods that the tenant is in actual possession of the
47 condominium unit. The tenant's landlord shall provide the

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48 tenant a credit against rent due to the unit owner in the amount
49 of moneys paid by the tenant to the association under this
50 subsection.

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

55 Section 2. Section 627.714, Florida Statutes, is created
56 to read:

57 627.714 Residential condominium unit owner coverage; loss
58 assessment coverage required; excess coverage provision
59 required.-For policies issued or renewed on or after July 1,
60 2010, coverage under a unit owner's residential property policy
61 shall include property loss assessment coverage of at least
62 \$2,000 for all assessments made as a result of the same direct
63 loss to the property, regardless of the number of assessments,
64 owned by all members of the association collectively when such
65 loss is of the type of loss covered by the unit owner's
66 residential property insurance policy, to which a deductible
67 shall apply of no more than \$250 per direct property loss. If a
68 deductible was or will be applied to other property loss
69 sustained by the unit owner resulting from the same direct loss
70 to the property, no deductible shall apply to the loss
71 assessment coverage. Every individual unit owner's residential
72 property policy must contain a provision stating that the
73 coverage afforded by such policy is excess coverage over the
74 amount recoverable under any other policy covering the same
75 property.

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

78 718.106 Condominium parcels; appurtenances; possession and
79 enjoyment.-

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

85 (a) The action an association may take are to:

86 1. Deny any owner or tenant the right to occupy the
87 condominium unit.

88 2. Deny any owner or tenant of the unit use of
89 recreational facilities.

90 3. Deny any owner or tenant of the unit the use of a
91 marina space, which may be enforced by towing of the vessel at
92 the expense of the owner.

93 4. Deny any owner of his or her voting rights.

94 (b) The provisions of sub-paragraph (a)1. may only be
95 enforced as provided in this paragraph. An association applying
96 for denial of access and removal of an owner or tenant shall
97 file in the county court of the county where the condominium is
98 situated a complaint describing the condominium unit and stating
99 the facts that authorize denial of occupancy under this section.
100 The association is entitled to the summary procedure provided in
101 s. 51.011, and the court shall advance the cause on the
102 calendar. However, no court action shall be required if the
103 condominium unit has been abandoned. In the absence of actual

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104 knowledge of abandonment, it shall be presumed that the owner or
105 tenant has abandoned the condominium unit if he or she is absent
106 from premises for more than 15 days. This presumption shall not
107 apply if the owner or tenant has notified the association, in
108 writing, of an intended absence.

109 (c) Notwithstanding any provision of this subsection, the
110 association may not deny a tenant the right to occupy the unit,
111 the use of common areas, the use of recreational facilities, or
112 the use of parking areas unless the association has made a
113 demand for payment under s. 83.46(4) and the tenant is more than
114 30 days delinquent in payments required under that subsection.
115 Any monies paid by a tenant to the association shall be credited
116 to the landlord's account with the condominium association and
117 shall be credited against rent, pursuant to s. 83.46(4).

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

121 718.111 The association.—

122 (11) INSURANCE.—In order to protect the safety, health,
123 and welfare of the people of the State of Florida and to ensure
124 consistency in the provision of insurance coverage to
125 condominiums and their unit owners, this subsection applies to
126 every residential condominium in the state, regardless of the
127 date of its declaration of condominium. It is the intent of the
128 Legislature to encourage lower or stable insurance premiums for
129 associations described in this subsection.

130 (a) Adequate property hazard insurance, regardless of any
131 requirement in the declaration of condominium for coverage by

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132 the association for full insurable value, replacement cost, or
133 similar coverage, shall be based upon the replacement cost of
134 the property to be insured as determined by an independent
135 insurance appraisal or update of a prior appraisal. The
136 replacement cost ~~full insurable value~~ shall be determined at
137 least once every 36 months.

138 1. An association or group of associations may provide
139 adequate property ~~hazard~~ insurance through a self-insurance fund
140 that complies with the requirements of ss. 624.460-624.488.

141 2. The association may also provide adequate property
142 ~~hazard~~ insurance coverage for a group of no fewer than three
143 communities created and operating under this chapter, chapter
144 719, chapter 720, or chapter 721 by obtaining and maintaining
145 for such communities insurance coverage sufficient to cover an
146 amount equal to the probable maximum loss for the communities
147 for a 250-year windstorm event. Such probable maximum loss must
148 be determined through the use of a competent model that has been
149 accepted by the Florida Commission on Hurricane Loss Projection
150 Methodology. No policy or program providing such coverage shall
151 be issued or renewed after July 1, 2008, unless it has been
152 reviewed and approved by the Office of Insurance Regulation. The
153 review and approval shall include approval of the policy and
154 related forms pursuant to ss. 627.410 and 627.411, approval of
155 the rates pursuant to s. 627.062, a determination that the loss
156 model approved by the commission was accurately and
157 appropriately applied to the insured structures to determine the
158 250-year probable maximum loss, and a determination that
159 complete and accurate disclosure of all material provisions is

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160 provided to condominium unit owners prior to execution of the
161 agreement by a condominium association.

162 3. When determining the adequate amount of property hazard
163 insurance coverage, the association may consider deductibles as
164 determined by this subsection.

165 (b) If an association is a developer-controlled
166 association, the association shall exercise its best efforts to
167 obtain and maintain insurance as described in paragraph (a).
168 Failure to obtain and maintain adequate property hazard
169 insurance during any period of developer control constitutes a
170 breach of fiduciary responsibility by the developer-appointed
171 members of the board of directors of the association, unless the
172 members can show that despite such failure, they have made their
173 best efforts to maintain the required coverage.

174 (c) Policies may include deductibles as determined by the
175 board.

176 1. The deductibles shall be consistent with industry
177 standards and prevailing practice for communities of similar
178 size and age, and having similar construction and facilities in
179 the locale where the condominium property is situated.

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

183 3. The board shall establish the amount of deductibles
184 based upon the level of available funds and predetermined
185 assessment authority at a meeting of the board. ~~Such meeting~~
186 ~~shall be open to all unit owners in the manner set forth in s.~~
187 ~~718.112(2)(e). The notice of such meeting must state the~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

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188 ~~proposed deductible and the available funds and the assessment~~
189 ~~authority relied upon by the board and estimate any potential~~
190 ~~assessment amount against each unit, if any. The meeting~~
191 ~~described in this paragraph may be held in conjunction with a~~
192 ~~meeting to consider the proposed budget or an amendment thereto.~~

193 (d) An association controlled by unit owners operating as
194 a residential condominium shall use its best efforts to obtain
195 and maintain adequate property insurance to protect the
196 association, the association property, the common elements, and
197 the condominium property that is required to be insured by the
198 association pursuant to this subsection.

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

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

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

207 3. The coverage shall exclude all personal property within
208 the unit or limited common elements, and floor, wall, and
209 ceiling coverings, electrical fixtures, appliances, water
210 heaters, water filters, built-in cabinets and countertops, and
211 window treatments, including curtains, drapes, blinds, hardware,
212 and similar window treatment components, or replacements of any
213 of the foregoing which are located within the boundaries of the
214 unit and serve only such unit. Such property and any insurance
215 thereupon shall be the responsibility of the unit owner.

Amendment No. 4

216 (g) A condominium unit owner's policy shall conform to the
217 requirements of s. 627.714. Every hazard insurance policy issued
218 or renewed on or after January 1, 2009, to an individual unit
219 owner must contain a provision stating that the coverage
220 afforded by such policy is excess coverage over the amount
221 recoverable under any other policy covering the same property.
222 Such policies must include special assessment coverage of no
223 less than \$2,000 per occurrence. An insurance policy issued to
224 an individual unit owner providing such coverage does not
225 provide rights of subrogation against the condominium
226 association operating the condominium in which such individual's
227 unit is located.

228 1. All improvements or additions to the condominium
229 property that benefit fewer than all unit owners shall be
230 insured by the unit owner or owners having the use thereof, or
231 may be insured by the association at the cost and expense of the
232 unit owners having the use thereof.

233 2. The association shall require each owner to provide
234 evidence of a currently effective policy of hazard and liability
235 insurance upon request, but not more than once per year. Upon
236 the failure of an owner to provide a certificate of insurance
237 issued by an insurer approved to write such insurance in this
238 state within 30 days after the date on which a written request
239 is delivered, the association may purchase a policy of insurance
240 on behalf of an owner. The cost of such a policy, together with
241 reconstruction costs undertaken by the association but which are
242 the responsibility of the unit owner, may be collected in the
243 manner provided for the collection of assessments in s. 718.116.

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244 ~~1.3.~~ All reconstruction work after a property casualty
245 loss shall be undertaken by the association except as otherwise
246 authorized in this section. A unit owner may undertake
247 reconstruction work on portions of the unit with the prior
248 written consent of the board of administration. However, such
249 work may be conditioned upon the approval of the repair methods,
250 the qualifications of the proposed contractor, or the contract
251 that is used for that purpose. A unit owner shall obtain all
252 required governmental permits and approvals prior to commencing
253 reconstruction.

254 ~~2.4.~~ Unit owners are responsible for the cost of
255 reconstruction of any portions of the condominium property for
256 which the unit owner is required to carry property casualty
257 insurance, and any such reconstruction work undertaken by the
258 association shall be chargeable to the unit owner and
259 enforceable as an assessment pursuant to s. 718.116. ~~The~~
260 ~~association must be an additional named insured and loss payee~~
261 ~~on all casualty insurance policies issued to unit owners in the~~
262 ~~condominium operated by the association.~~

263 ~~3.5.~~ A multicondominium association may elect, by a
264 majority vote of the collective members of the condominiums
265 operated by the association, to operate such condominiums as a
266 single condominium for purposes of insurance matters, including,
267 but not limited to, the purchase of the property hazard
268 insurance required by this section and the apportionment of
269 deductibles and damages in excess of coverage. The election to
270 aggregate the treatment of insurance premiums, deductibles, and
271 excess damages constitutes an amendment to the declaration of

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272 all condominiums operated by the association, and the costs of
273 insurance shall be stated in the association budget. The
274 amendments shall be recorded as required by s. 718.110.

275 (j) Any portion of the condominium property required to be
276 insured by the association against property casualty loss
277 pursuant to paragraph (f) which is damaged by ~~casualty~~ shall be
278 reconstructed, repaired, or replaced as necessary by the
279 association as a common expense. All property hazard insurance
280 deductibles, uninsured losses, and other damages in excess of
281 property hazard insurance coverage under the property hazard
282 insurance policies maintained by the association are a common
283 expense of the condominium, except that:

284 1. A unit owner is responsible for the costs of repair or
285 replacement of any portion of the condominium property not paid
286 by insurance proceeds, if such damage is caused by intentional
287 conduct, negligence, or failure to comply with the terms of the
288 declaration or the rules of the association by a unit owner, the
289 members of his or her family, unit occupants, tenants, guests,
290 or invitees, without compromise of the subrogation rights of any
291 insurer ~~as set forth in paragraph (g)~~.

292 2. The provisions of subparagraph 1. regarding the
293 financial responsibility of a unit owner for the costs of
294 repairing or replacing other portions of the condominium
295 property also apply to the costs of repair or replacement of
296 personal property of other unit owners or the association, as
297 well as other property, whether real or personal, which the unit
298 owners are required to insure ~~under paragraph (g)~~.

Amendment No. 4

299 3. To the extent the cost of repair or reconstruction for
300 which the unit owner is responsible under this paragraph is
301 reimbursed to the association by insurance proceeds, and, to the
302 extent the association has collected the cost of such repair or
303 reconstruction from the unit owner, the association shall
304 reimburse the unit owner without the waiver of any rights of
305 subrogation.

306 4. The association is not obligated to pay for
307 reconstruction or repairs of property casualty losses as a
308 common expense if the property casualty losses were known or
309 should have been known to a unit owner and were not reported to
310 the association until after the insurance claim of the
311 association for that property casualty was settled or resolved
312 with finality, or denied on the basis that it was untimely
313 filed.

314 (n) The association is not obligated to pay for any
315 reconstruction or repair expenses due to property casualty loss
316 to any improvements installed by a current or former owner of
317 the unit or by the developer if the improvement benefits only
318 the unit for which it was installed and is not part of the
319 standard improvements installed by the developer on all units as
320 part of original construction, whether or not such improvement
321 is located within the unit. This paragraph does not relieve any
322 party of its obligations regarding recovery due under any
323 insurance implemented specifically for any such improvements.

324 Section 5. Paragraph (h) is added to subsection (1) of
325 section 718.116, Florida Statutes, and subsection (2) of that
326 section is amended, to read:

Amendment No. 4

327 718.116 Assessments; liability; lien and priority;
328 interest; collection; rent during foreclosure.—

329 (1) (a) A unit owner, regardless of how his or her title
330 has been acquired, including by purchase at a foreclosure sale
331 or by deed in lieu of foreclosure, is liable for all assessments
332 which come due while he or she is the unit owner. Additionally,
333 a unit owner is jointly and severally liable with the previous
334 owner for all unpaid assessments that came due up to the time of
335 transfer of title. This liability is without prejudice to any
336 right the owner may have to recover from the previous owner the
337 amounts paid by the owner.

338 (b) The liability of a first mortgagee or its successor or
339 assignees who acquire title to a unit by foreclosure or by deed
340 in lieu of foreclosure for the unpaid assessments that became
341 due prior to the mortgagee's acquisition of title is limited to
342 the lesser of:

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

347 2. One percent of the original mortgage debt. The
348 provisions of this paragraph apply only if the first mortgagee
349 joined the association as a defendant in the foreclosure action.
350 Joinder of the association is not required if, on the date the
351 complaint is filed, the association was dissolved or did not
352 maintain an office or agent for service of process at a location
353 which was known to or reasonably discoverable by the mortgagee.

Amendment No. 4

354 (h) Where it is anticipated that the assessments owed by a
355 unit will in the near future be limited by paragraph (b), the
356 board of administration may elect to negotiate with, and accept
357 from, the first mortgagee or his or her successor or assignee a
358 payment in full settlement of the future obligation that is less
359 than the sum that will be due in the future as limited by
360 paragraph (b). The settlement shall only limit the obligations
361 owed by the unit should the mortgagee or his or her successor or
362 assignee acquire title to the unit in the foreclosure case
363 pending at the time of the settlement. A settlement or agreement
364 under this paragraph does not limit the amount due from a unit
365 owner under paragraph (a).

366 (2) The liability for assessments may not be avoided by
367 waiver of the use or enjoyment of any common element, denial of
368 the use or enjoyment of the unit, denial of the use or enjoyment
369 of any common element, or by abandonment of the unit for which
370 the assessments are made.

371 Section 6. 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

376

Remove the entire title and insert:

377

An act relating to condominium associations; amending s. 83.46,

378

F.S.; requiring certain condominium unit tenants to pay moneys

379

owed on behalf of the unit to the association; providing

380

liability; providing a tenant's obligations to the association;

381

creating s. 627.714, F.S.; requiring that coverage under a unit

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 4

382 owner's policy for certain assessments include at least a
383 minimum amount of loss assessment coverage; requiring that every
384 property insurance policy issued to an individual unit owner
385 contain a specified provision; amending s. 718.106, F.S.;

386 providing condominium associations with certain powers relating
387 to owners and tenants of a unit in foreclosure and more than 90
388 days delinquent; providing an exception for a tenant who pays
389 the rent directly to the association; amending s. 718.111, F.S.;

390 requiring that adequate property insurance be based upon the
391 replacement cost of the property to be insured as determined by
392 an independent appraisal or update of a prior appraisal;

393 requiring that such replacement cost be determined at least once
394 within a specified period; providing means by which an
395 association may provide adequate property insurance; providing
396 requirements for such coverage for a group of communities
397 covering their probable maximum loss for a specified windstorm
398 event; authorizing an association to consider deductibles when
399 determining an adequate amount of property insurance; providing
400 that failure to maintain adequate property insurance constitutes
401 a breach of fiduciary duty by the members of the board of
402 directors of an association; revising the procedures for the
403 board to establish the amount of deductibles; requiring that an
404 association controlled by unit owners operating as a residential
405 condominium use its best efforts to obtain and maintain adequate
406 property insurance to protect the association and certain
407 property; requiring that every property insurance policy issued
408 or renewed on or after a specified date provide certain
409 coverage; excluding certain items from such requirement;

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 329 (2010)

Amendment No. 4

410 providing that excluded items and any insurance thereupon are
411 the responsibility of the unit owner; requiring that condominium
412 unit owners' policies conform to certain provisions of state
413 law; deleting provisions relating to certain hazard and casualty
414 insurance policies; conforming provisions to changes made by the
415 act; amending s. 718.116, F.S.; authorizing the board of
416 administration to settle the future obligation of a lender to
417 pay prior assessments owed; specifying that such settlement does
418 not limit the personal liability of the unit owner; specifying
419 additional circumstances for which liability for assessments may
420 not be avoided; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 337 Condominiums
SPONSOR(S): Roberson
TIED BILLS: None IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond MB	De La Paz
2) Insurance, Business & Financial Affairs Policy Committee			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

A condominium association requires unit owners to pay assessments to fund the operations of the association. Current law, and the governing documents of a condominium association, imposes certain penalties or restrictions upon a unit owner who is delinquent in payment of assessments necessary to operate the association.

This bill requires a condominium association to provide a detailed notice of delinquency to a delinquent unit owner. No restriction on a unit owner goes into effect until at least 20 days after the unit owner has received notice; and, if the owner objects to the assessment, no restriction may go into effect until the objection is resolved.

This bill does not appear to have a fiscal effect 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:

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.

The governing documents of a condominium association may impose certain penalties or restrictions upon a unit owner who is delinquent in payment of assessments. Condominium law provides that a unit owner may not file to run for a seat on the board of directors if the unit owner is delinquent, s. 718.112(2)(d), F.S., and an officer or director who falls 90 days delinquent is removed from office, s. 718.112(2)(n), F.S.

This bill amends s. 718.116, to require that a notice of delinquency must provide a unit owner with the date, principal balance, affiliated late fees or collection charges, and total of all assessments due.

This bill also provides that no restriction or condition upon a unit owner may go into effect until 20 days after the unit owner receives the detailed notice of delinquency. If the unit owner objects to the claim within the 20 day period, the restriction or condition may not go into effect until the objection is "resolved."

B. SECTION DIRECTORY:

Section 1 amends s. 718.116, F.S., regarding notice of delinquency for unpaid assessments.

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:

None.

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:

This bill does not make corresponding changes to the similar laws on cooperatives and homeowners associations.

The 20 day notice period in the bill starts upon unit owner receipt of the notice of delinquency. This may cause difficulty in practice where a unit owner refuses mail and evades service of process.

The bill provides that, should the unit owner timely object to a notice of delinquency, any condition or restriction upon a unit owner related to delinquency may not go into effect until the objection is "resolved." The bill does not define "resolved", nor is it clear what the term means.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to condominiums; amending s. 718.116,
 3 F.S.; providing requirements for a notice of delinquency;
 4 prohibiting a condominium association from imposing
 5 certain penalties for delinquency during a notice period
 6 or while an objection made within such notice period is
 7 unresolved; providing an effective date.

8

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

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11 Section 1. Subsection (11) is added to section 718.116,
 12 Florida Statutes, to read:

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13 718.116 Assessments; liability; lien and priority;
 14 interest; collection.--

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15 (11) (a) A notice of delinquency sent to a unit owner shall
 16 provide an overall total of assessments claimed and shall
 17 specify each assessment or charge that is claimed by the
 18 association, listing for each assessment or charge the date of
 19 the assessment or charge, the principal balance owed for the
 20 assessment or charge, and affiliated late fees or collection
 21 charges.

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22 (b) As to any statute or any provision in the governing
 23 documents that creates a restriction or condition upon a unit
 24 owner related to delinquency in the payment of moneys owed to
 25 the association, no such restriction or condition shall be in
 26 effect until 20 days after receipt of the delinquency notice by
 27 the unit owner. If the unit owner objects to the amount claimed
 28 within the 20-day period, no restriction or condition shall be

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29 | enforced until the objection is resolved. For purposes of this
30 | paragraph, a "restriction or condition" includes any restriction
31 | on running for office, holding office, serving on a committee,
32 | leasing the unit, or using common areas.

33 | 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	_____	

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

Representative(s) Roberson offered the following:

Amendment (with title amendment)

Remove lines 28-33 and insert:

within the 20-day period, and the unit owner provides proof of
payment of the amounts assessed as listed in the notice provided
in paragraph (a), no restriction or condition shall be enforced
until the objection is resolved. For purposes of this paragraph,
a "restriction or condition" includes any restriction on running
for office, holding office, serving on a committee, leasing the
unit, or using common areas.

Section 2. This act shall take effect January 1, 2011.

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

Remove line 7 and insert:

COUNCIL/COMMITTEE AMENDMENT

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Amendment No. 1

20 | unresolved; requiring payments pursuant to notice; providing an
21 | effective date.

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 H. Lee Moffitt Cancer Center and Research Institute

The H. Lee Moffitt Cancer Center and Research Institute is a leading cancer research, education, and treatment center in Tampa that is affiliated with the University of South Florida (USF) as well as other universities nationwide.¹

History of the H. Lee Moffitt Cancer Center and Research Institute

The 1982 Legislature provided for the transfer of \$45 million from the Cigarette Tax Collection Fund to complete a Cancer and Chronic Disease Research and Treatment Center (Cancer Center) at the University of South Florida (USF) College of Medicine.² The Board of Regents (BOR) and USF created a not-for-profit corporation to operate the Cancer Center medical facility.³ State corporate records show that the H. Lee Moffitt Cancer Center and Research Institute, Inc., was incorporated as a not-for-profit corporation in 1984.⁴ The not-for-profit corporation was considered a direct support organization of USF and operated under a contract with the BOR. The Cancer Center was completed and officially opened in October 1986. The medical staff of the center was comprised of the faculty of the USF College of Medicine. The corporation had additional staff of approximately 500, who were not state employees but were paid from the corporation's state appropriated budget.⁵

Ch. 87-121, L.O.F., codified in law the relationship between the BOR and the not-for-profit organization created to operate the Cancer Center by establishing the H. Lee Moffitt Cancer Institute and Research Institute at USF and requiring the BOR to enter into an agreement for the utilization of the facilities on the USF campus known as the H. Lee Moffitt Cancer Center and Research Institute with a not-for-profit organization that was certified by the BOR as a direct support organization. The not-for-profit corporation, acting as an instrumentality of the state, was required to govern and operate the H. Lee Moffitt Cancer Center and Research Institute in accordance with the terms of the agreement between the BOR and the not-for-profit corporation. The agreement was required to provide for the following:

- Approval of the articles of incorporation of the not-for-profit corporation by the BOR.
- Certification of the not-for-profit corporation by the BOR as a university direct support organization.

¹ Moffitt Cancer Center analysis of HB 341 (January 27, 2010).

² Ch. 82-240, L.O.F.

³ Staff analysis of HB 790 (April 21, 1987).

⁴ State Corporation Records <http://www.sunbiz.org> (last visited February 10, 2010).

⁵ Staff analysis of CS/SB 757 (May 22, 1987).

- Utilization of hospital facilities and personnel for mutually approved teaching and research programs conducted by USF.

The 1990 Legislature enacted specific provisions regarding the membership of the board of directors of the not-for-profit corporation; expanded the teaching and research programs for which the facilities could be used to include other accredited medical schools or research institutes; provided for the center to be administered by a director who served at the pleasure of the board of directors of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; and prescribed the powers and duties of the center director.⁶

In 1993, the Legislature granted the not-for-profit corporation the ability to create not-for-profit subsidiaries to provide it the flexibility necessary to compete in the health care industry.⁷ The legislative intent section of Ch. 93-167, L.O.F., includes the following statement:

“Whereas, the Legislature considers the not-for-profit corporation that governs and operates the H. Lee Moffitt Cancer Center and Research Institute to be performing a statewide function and to be a corporation primarily acting as an instrumentality of the state, and, therefore, considers any subsidiaries created by virtue of this act to be corporations acting primarily as instrumentalities of the state...”

The 2002 School Code Rewrite replaced references to the Board of Regents with references to the State Board of Education (SBE).⁸

In 2004, the Legislature authorized the not-for-profit corporation, with prior approval of the SBE, to create for-profit corporate subsidiaries as well as not-for-profit corporate subsidiaries.⁹

The responsibilities of the SBE with regard to the H. Lee Moffitt Cancer Center and Research Institute, including the agreement between the SBE and the not-for-profit corporation, were transferred to the Board of Governors in 2007.¹⁰

Current status of the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Cancer Center)

Today, the Moffitt Cancer Center is an NCI Comprehensive Cancer Center that employs over 3,800 people and its facilities cover over 1.6 million square feet. The Moffitt Cancer Center currently admits approximately 7,500 patients per year and treats approximately 272,500 outpatients per year. The Moffitt Cancer Center also receives approximately \$59.7 million in grant funding per year. The Moffitt Cancer Center is licensed to operate 206 inpatient beds, plus a 36-bed blood and marrow transplant unit. The Moffitt Cancer Center also has 12 operating rooms; a diagnostic radiology department with MRI, PET/CT, digital mammography, and other imaging capabilities; and a radiation therapy with seven linear accelerators.¹¹

The not-for-profit corporation has created three not-for-profit subsidiaries which were approved by the Board of Regents and two for-profit subsidiaries which were approved by the Board of Governors.¹²

State corporation records identify three not-for-profit corporations that were formed in 1994: the H. Lee Moffitt Cancer Center and Research Hospital, Inc.; the H. Lee Moffitt Cancer Center and Research Institute Lifetime Cancer Screening Center, Inc.; and the H. Lee Moffitt Cancer Center and Research Institute Foundation, Inc.¹³ In 2006, the center announced that it was forming M2GEN, a for-profit

⁶ Ch. 90-56, L.O.F.

⁷ Ch. 93-167, L. O. F.

⁸ Ch. 2002-387, L.O.F.

⁹ Ch. 2004-2, L.O.F.

¹⁰ Ch. 2007-217, L.O.F.

¹¹ Moffitt Cancer Center's analysis of HB 341 (January 27, 2010).

¹² The Florida Senate, *Open Government Sunset Review of Section 1004.43(8)10. and 12., F.S., H. Lee Moffitt Cancer Center and Research Institute Trade Secrets and Information Exempt or Confidential Under the Laws of Another State, National or the Federal Government*, 3, Interim Report 2010-221, September 2009.

¹³ State Corporation Records <http://www.sunbiz.org> (last visited February 10, 2010). The search was limited to a search of the name "H. Lee Moffitt." The apparent related corporations are: H. Lee Moffitt Cancer Center and Research

subsidiary with drug manufacturer Merck & Co., to develop personalized cancer treatments for patients using molecular technology.¹⁴ The Moffitt Technologies Corporation is a for-profit corporation formed in 2005 to develop biotechnology.¹⁵

Current Role of the Board of Governors

The Board of Governors must provide for the following in the agreement with the not-for-profit corporation:¹⁶

- Approval of the articles of incorporation of the not-for-profit corporation and any not-for-profit subsidiary;
- Use of lands, facilities, and personnel by the not-for-profit corporation and its subsidiaries for mutually approved teaching and research programs conducted by the University of South Florida or other accredited medical schools or research institutes;
- Preparation of an annual financial audit of the accounts and records of the not-for-profit corporation and all subsidiaries and submittal of the annual audit report and a management letter to the Auditor General and the Board of Governors for review. The Board of Governors, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are authorized to require and receive any detail or supplemental data relative to the operation of the not-for-profit corporation or subsidiary; and
- Provision by the not-for-profit corporation and its subsidiaries of equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

The Board of Governors is authorized to secure comprehensive general liability protection, including professional liability protection, for the not-for-profit corporation and its subsidiaries pursuant to s. 1004.24, F.S.¹⁷

In the event that the agreement between the not-for-profit corporation and the Board of Governors terminates, the Board of Governors resumes governance and operation of the facilities.¹⁸

Administration of the Moffitt Cancer Center

A not-for-profit corporation governs and operates the Moffitt Cancer Center in accordance with the terms of the agreement between the BOG and the not-for-profit corporation.¹⁹ The not-for-profit corporation is managed by a board of directors consisting of the President of the University of South Florida, the chair of the Board of Governors or his/her designee, 5 representatives of the state universities, and between 10-14 additional directors who are not medical doctors or state employees.²⁰

The Moffitt Cancer Center is administered by a chief executive officer who serves at the pleasure of the board of directors of the not-for-profit corporation.²¹ The duties of the chief executive officer include control over the budget and the dollars appropriated or donated to the institute from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the institute. Professional income generated by university faculty from practice activities at the institute must be shared between the institute and the university as determined by the chief executive officer and the appropriate university dean or vice president.²²

Hospital, Inc.; H. Lee Moffitt Cancer Center and Research Institute Lifetime Cancer Screening Center, Inc.; and H. Lee Moffitt Cancer Center and Research Institute Foundation, Inc.

¹⁴ <http://www.moffitt.org/Site.aspx?spid=C54AF116F69244D49BACE202F69BC2A6> (last visited February 10, 2010).

¹⁵ State Corporation Records <http://www.sunbiz.org> (last visited February 10, 2010) and Moffitt Cancer Center 2005 Annual Report 5, <http://www.moffitt.org/Site.aspx?spid=CD60BED02BAC4E9299664B0F4AE463F1> (last visited February 10, 2010).

¹⁶ Section 1004.43(2), F.S.

¹⁷ Section 1004.43(3), F.S.

¹⁸ Section 1004.43(4), F.S.

¹⁹ Section 1004.43(1), F.S.

²⁰ Section 1004.43(1), F.S.

²¹ Section 1004.43(5), F.S.

²² Section 1004.43(5)(b), F.S.

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The chief executive officer also appoints members to carry out the research, patient care, and educational activities of the institute and determines compensation, benefits, and terms of service. Members of the institute are eligible to hold concurrent appointments at affiliated academic institutions. University faculty are eligible to hold concurrent appointments at the institute.

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the government or its political subdivisions for the torts of officers or agents of such governments unless such immunity is expressly waived.

Article X, s. 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Subsection (5) limits the recovery of any one person to \$100,000 for one incidence and limits all recovery related to one incidence to a total of \$200,000. Where the state's sovereign immunity applies, subsection (9) provides that the officers, employees and agents of the state that were involved in the commission of the tort are not personally liable to an injured party.

The term "state agencies or subdivisions" includes the executive departments, the Legislature, the judicial branch, and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities.²³

It is common for the state to create corporations and the authority to create subsidiary corporations. Whether such corporations are instrumentalities of the state is dependent upon the degree of control over the corporation or subsidiary. Where the subsidiary corporation is significantly controlled by government, it is an instrumentality of the state²⁴, but where the subsidiary acts with significant autonomy, it is not.²⁵

One circuit court in Hillsborough County has ruled that the "H. Lee Moffitt Cancer Center and Research Institute of Tampa, Inc.", is an instrumentality of the State of Florida and therefore the corporation is "entitled to the protections of sovereign immunity and the limited waiver set forth in Section 768.28, Florida Statutes."²⁶ The ruling did not consider whether any subsidiary corporation of the Moffitt Cancer Institute would similarly be considered an instrumentality of the state.

An entity that is an "instrumentality of the state" falls within the state's sovereign immunity. Section 1004.43(1), F.S., provides the H. Lee Moffitt Cancer Center and Research Institute is an instrumentality of the state, and thus it is clear that it is covered by sovereign immunity. The legislative intent of the bill allowing non-profit subsidiaries stated that any non-profit entity is an instrumentality of the state.²⁷ Such intent language is not law, but will be considered by any court that would be called upon to determine whether the non-profits are covered by sovereign immunity. On the issue of control, all of

²³ Section 768.28(2), F.S.

²⁴ *Pagan v. Sarasota County Hospital Board*, 884 So.2d 257 (Fla. 2nd DCA 2004); *Prison Rehabilitative Industries & Diversified Enterprises v. Betterson*, 648 So.2d 778 (Fla. 1st DCA 1994).

²⁵ In *Shands Teaching Hospital & Clinics, Inc. v. Lee*, 478 So.2d 77, 79 (Fla. 1st DCA 1985), the court concluded that the nonprofit corporation to which the State Board of Education leased the Shands Teaching Hospital was not entitled to the benefit of sovereign immunity because the corporate entity was determined to be "an autonomous and self-sufficient entity, one not primarily acting as an instrumentality on behalf of the state."

²⁶ *McBride v. H. Lee Moffitt Cancer Center & Research Institute of Tampa, Inc.*, Case No. 95-CA-007231 (13th Judicial Circuit, February 2, 1996), at paragraph 1.b., recorded in OR Book 8039, Page 927, of the Public Records of Hillsborough County, Florida; *affirmed without opinion*, 683 So. 2d 122 (Fla. 2nd DCA 1996).

²⁷ Chapter 93-167, L.O.F., provided in part: "Whereas, the Legislature considers the not-for-profit corporation that governs and operates the H. Lee Moffitt Cancer Center and Research Institute to be performing a statewide function and to be a corporation primarily acting as an instrumentality of the state, and, therefore, considers any subsidiaries created by virtue of this act to be corporations acting primarily as instrumentalities of the state..."

the subsidiaries appear to be providing medical care and services for cancer research and treatment, operate out of the same campus next the University of South Florida, share corporate officers, and are controlled by the H. Lee Moffitt Cancer Center and Research Institute, Inc. It appears that the current subsidiaries are protected by sovereign immunity, although this is not specifically provided for in statute.

Effect of Proposed Changes

CS/HB 341 recognizes the expansion of the Moffitt Cancer Center's teaching and research programs to other state universities, including USF. The bill also notes the Moffitt Cancer Center's statewide mission by removing the initial reference to USF and providing that the Moffitt Cancer Center is a "statewide resource for basic and clinical research and multidisciplinary approaches to patient care"

The bill replaces the remaining reference to the State Board of Education with "Board of Governors" to conform to other references in s. 1004.43, F.S.

The bill specifically provides that the H. Lee Moffitt Cancer Center and Research Institute, Inc., and any authorized and approved subsidiary of the H. Lee Moffitt Cancer Center and Research Institute, Inc., whether not-for-profit or for-profit, are corporations primarily acting as an instrumentality of the state, and thus entitled to the sovereign immunity protection of s. 768.28, F.S.

The bill requires that the agreement between the Board of Governors and the not-for-profit corporation provide for the utilization of lands, facilities and personnel by the not-for-profit corporation and its subsidiaries for mutually approved teaching and research programs conducted by state universities, not just USF. The Moffitt Cancer Center indicates that this will allow for greater flexibility in creating programs statewide that will benefit institutions and attract high quality professionals and students to Florida in furtherance of the Moffitt Cancer Center's mission.²⁸

The bill provides that the chief executive officer will have control over income generated or derived from practice activities of the "not-for-profit corporation" rather than the "institute." Technical and professional income generated from practice activities may be shared between the not-for-profit corporation and its subsidiaries as determined by the chief executive officer. However, professional income generated by state university employees from practice activities at the not-for-profit corporation and its subsidiaries must be shared between the university and the not-for-profit corporation and its subsidiaries only as determined by the chief executive officer and the appropriate university dean or vice president. Representatives of the Moffitt Cancer Center indicate that these changes clarify the permissibility of sharing professional income generated between the not-for-profit corporation and its subsidiaries. Historically, the vast majority of the physicians on the medical staff at the Moffitt Center were employees of USF. On January 1, 2008, as part of the realignment of the affiliation between the Institute and USF, a majority of these physicians previously employed by USF transferred employment to the Moffitt Cancer Center. The changes proposed in the bill recognize the change in the employment status of these physicians.²⁹

The bill permits all state university faculty, rather than just USF faculty, to hold concurrent appointments at the Moffitt Cancer Center in recognition of the Moffitt Center's state-wide role and function. Representatives of the Moffitt Cancer Center indicate that this change will permit more meaningful affiliations between the Moffitt Center and other state universities as well as with USF³⁰

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.43, F.S., revising provisions relating to the establishment of the institute and specifying primary responsibilities of the institute; conforming provisions relating to the agreement by the Board of Governors and the not-for-profit corporation for the use of facilities on the campus of the University of South Florida, specifying that the not-for-

²⁸ Moffitt Cancer Center analysis of HB 341 (January 27, 2010).

²⁹ *Id.*

³⁰ *Id.*

profit corporation and its not-for-profit subsidiaries shall conclusively act as instrumentalities of the state for purposes of sovereign immunity; authorizing the use of land, facilities, and personnel for teaching and research program conducted by state universities; revising provisions relating to the control and sharing of certain income.

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:

None.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate. According to the Board of Governors, there appears to be minimal potential fiscal impact to the State University System resulting from this legislation. There is the potential for increased revenues for the State University System from the pool of state university employees who may contribute to the professional income earned from practice activities. The potential revenue amount cannot be determined at this time.³¹

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.

³¹ Board of Governors analysis of CS/HB 341 (February 18, 2010).
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C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the State Universities & Private Colleges Policy Committee adopted an amendment to HB 341 and reported the bill favorably as a Committee Substitute (CS). The amendment clarifies how technical and professional income from practice activities will be shared. The amendment:

- Allows technical and professional income generated from practice activities to be shared between the not-for-profit corporation and its subsidiaries as determined by the chief executive officer; and
- Requires professional income generated by state university employees from practice activities at the not-for-profit corporation and its subsidiaries to be shared between the university and the not-for-profit corporation and its subsidiaries only as determined by the chief executive officer and the appropriate university dean or vice president.

The bill was then reported favorably as a committee substitute.

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1 A bill to be entitled
 2 An act relating to the H. Lee Moffitt Cancer Center and
 3 Research Institute; amending s. 1004.43, F.S.; revising
 4 provisions relating to the establishment of the institute
 5 and specifying primary responsibilities of the institute;
 6 conforming provisions relating to the agreement by the
 7 Board of Governors and the not-for-profit corporation for
 8 the use of facilities on the campus of the University of
 9 South Florida; specifying that the not-for-profit
 10 corporation and its not-for-profit subsidiaries shall
 11 conclusively act as instrumentalities of the state for
 12 purposes of sovereign immunity; authorizing the use of
 13 land, facilities, and personnel for teaching and research
 14 programs conducted by state universities; revising
 15 provisions relating to the control and sharing of certain
 16 income; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 1004.43, Florida Statutes, is amended
 21 to read:

22 1004.43 H. Lee Moffitt Cancer Center and Research
 23 Institute.—There is established the H. Lee Moffitt Cancer Center
 24 and Research Institute, a statewide resource for basic and
 25 clinical research and multidisciplinary approaches to patient
 26 care ~~at the University of South Florida.~~

27 (1) The Board of Governors ~~State Board of Education~~ shall
 28 enter into an agreement for the utilization of the facilities on

29 the campus of the University of South Florida to be known as the
30 H. Lee Moffitt Cancer Center and Research Institute, including
31 all furnishings, equipment, and other chattels used in the
32 operation of such ~~said~~ facilities, with a Florida not-for-profit
33 corporation organized solely for the purpose of governing and
34 operating the H. Lee Moffitt Cancer Center and Research
35 Institute. ~~This not-for-profit corporation, acting as an~~
36 ~~instrumentality of the State of Florida, shall govern and~~
37 ~~operate the H. Lee Moffitt Cancer Center and Research Institute~~
38 ~~in accordance with the terms of the agreement between the Board~~
39 ~~of Governors and the not-for-profit corporation.~~ The not-for-
40 profit corporation may, with the prior approval of the Board of
41 Governors, create either for-profit or not-for-profit corporate
42 subsidiaries, or both, to fulfill its mission. The not-for-
43 profit corporation and any approved not-for-profit subsidiary
44 shall be conclusively deemed corporations primarily acting as
45 instrumentalities of the state, pursuant to s. 768.28(2), for
46 purposes of sovereign immunity. For-profit subsidiaries of the
47 not-for-profit corporation may not compete with for-profit
48 health care providers in the delivery of radiation therapy
49 services to patients. The not-for-profit corporation and its
50 subsidiaries are authorized to receive, hold, invest, and
51 administer property and any moneys received from private, local,
52 state, and federal sources, as well as technical and
53 professional income generated or derived from practice
54 activities of the institute, for the benefit of the institute
55 and the fulfillment of its mission. The affairs of the
56 corporation shall be managed by a board of directors who shall

57 | serve without compensation. The President of the University of
 58 | South Florida and the chair of the Board of Governors, or his or
 59 | her designee, shall be directors of the not-for-profit
 60 | corporation, together with 5 representatives of the state
 61 | universities and no more than 14 nor fewer than 10 directors who
 62 | are not medical doctors or state employees. Each director shall
 63 | have only one vote, shall serve a term of 3 years, and may be
 64 | reelected to the board. Other than the President of the
 65 | University of South Florida and the chair of the Board of
 66 | Governors, directors shall be elected by a majority vote of the
 67 | board. The chair of the board of directors shall be selected by
 68 | majority vote of the directors.

69 | (2) The Board of Governors shall provide in the agreement
 70 | with the not-for-profit corporation for the following:

71 | (a) Approval of the articles of incorporation of the not-
 72 | for-profit corporation by the Board of Governors.

73 | (b) Approval of the articles of incorporation of any not-
 74 | for-profit corporate subsidiary created by the not-for-profit
 75 | corporation.

76 | (c) Utilization of lands, facilities, and personnel by the
 77 | not-for-profit corporation and its subsidiaries for research,
 78 | education, treatment, prevention, and the early detection of
 79 | cancer and for mutually approved teaching and research programs
 80 | conducted by the state universities ~~University of South Florida~~
 81 | or other accredited medical schools or research institutes.

82 | (d) Preparation of an annual financial audit of the not-
 83 | for-profit corporation's accounts and records and the accounts
 84 | and records of any subsidiaries to be conducted by an

85 independent certified public accountant. The annual audit report
 86 shall include a management letter, as defined in s. 11.45, and
 87 shall be submitted to the Auditor General and the Board of
 88 Governors. The Board of Governors, the Auditor General, and the
 89 Office of Program Policy Analysis and Government Accountability
 90 shall have the authority to require and receive from the not-
 91 for-profit corporation and any subsidiaries or from their
 92 independent auditor any detail or supplemental data relative to
 93 the operation of the not-for-profit corporation or subsidiary.

94 (e) Provision by the not-for-profit corporation and its
 95 subsidiaries of equal employment opportunities to all persons
 96 regardless of race, color, religion, sex, age, or national
 97 origin.

98 (3) The Board of Governors is authorized to secure
 99 comprehensive general liability protection, including
 100 professional liability protection, for the not-for-profit
 101 corporation and its subsidiaries pursuant to s. 1004.24. The
 102 not-for-profit corporation and its subsidiaries shall be exempt
 103 from any participation in any property insurance trust fund
 104 established by law, including any property insurance trust fund
 105 established pursuant to chapter 284, so long as the not-for-
 106 profit corporation and its subsidiaries maintain property
 107 insurance protection with comparable or greater coverage limits.

108 (4) In the event that the agreement between the not-for-
 109 profit corporation and the Board of Governors is terminated for
 110 any reason, the Board of Governors shall resume governance and
 111 operation of such facilities.

112 (5) The institute shall be administered by a chief
 113 executive officer who shall serve at the pleasure of the board
 114 of directors of the not-for-profit corporation and who shall
 115 have the following powers and duties subject to the approval of
 116 the board of directors:

117 (a) The chief executive officer shall establish programs
 118 which fulfill the mission of the institute in research,
 119 education, treatment, prevention, and the early detection of
 120 cancer; however, the chief executive officer shall not establish
 121 academic programs for which academic credit is awarded and which
 122 terminate in the conference of a degree without prior approval
 123 of the Board of Governors.

124 (b) The chief executive officer shall have control over
 125 the budget and the dollars appropriated or donated to the
 126 institute from private, local, state, and federal sources, as
 127 well as technical and professional income generated or derived
 128 from practice activities of the not-for-profit corporation and
 129 its subsidiaries ~~institute~~. Technical and professional income
 130 generated from practice activities may be shared between the
 131 not-for-profit corporation and its subsidiaries as determined by
 132 the chief executive officer. However, professional income
 133 generated by state university employees ~~faculty~~ from practice
 134 activities at the not-for-profit corporation and its
 135 subsidiaries ~~institute~~ shall be shared between the ~~institute and~~
 136 ~~the university~~ and the not-for-profit corporation and its
 137 subsidiaries only as determined by the chief executive officer
 138 and the appropriate university dean or vice president.

139 (c) The chief executive officer shall appoint members to
 140 carry out the research, patient care, and educational activities
 141 of the institute and determine compensation, benefits, and terms
 142 of service. Members of the institute shall be eligible to hold
 143 concurrent appointments at affiliated academic institutions.
 144 State university faculty shall be eligible to hold concurrent
 145 appointments at the institute.

146 (d) The chief executive officer shall have control over
 147 the use and assignment of space and equipment within the
 148 facilities.

149 (e) The chief executive officer shall have the power to
 150 create the administrative structure necessary to carry out the
 151 mission of the institute.

152 (f) The chief executive officer shall have a reporting
 153 relationship to the Board of Governors or its designee.

154 (g) The chief executive officer shall provide a copy of
 155 the institute's annual report to the Governor and Cabinet, the
 156 President of the Senate, the Speaker of the House of
 157 Representatives, and the chair of the Board of Governors.

158 (6) The board of directors of the not-for-profit
 159 corporation shall create a council of scientific advisers to the
 160 chief executive officer comprised of leading researchers,
 161 physicians, and scientists. This council shall review programs
 162 and recommend research priorities and initiatives so as to
 163 maximize the state's investment in the institute. The council
 164 shall be appointed by the board of directors of the not-for-
 165 profit corporation. Each member of the council shall be

166 appointed to serve a 2-year term and may be reappointed to the
 167 council.

168 (7) In carrying out the provisions of this section, the
 169 not-for-profit corporation and its subsidiaries are not
 170 "agencies" within the meaning of s. 20.03(11).

171 (8)(a) Records of the not-for-profit corporation and of
 172 its subsidiaries are public records unless made confidential or
 173 exempt by law.

174 (b) Proprietary confidential business information is
 175 confidential and exempt from the provisions of s. 119.07(1) and
 176 s. 24(a), Art. I of the State Constitution. However, the Auditor
 177 General, the Office of Program Policy Analysis and Government
 178 Accountability, and the Board of Governors, pursuant to their
 179 oversight and auditing functions, must be given access to all
 180 proprietary confidential business information upon request and
 181 without subpoena and must maintain the confidentiality of
 182 information so received. As used in this paragraph, the term
 183 "proprietary confidential business information" means
 184 information, regardless of its form or characteristics, which is
 185 owned or controlled by the not-for-profit corporation or its
 186 subsidiaries; is intended to be and is treated by the not-for-
 187 profit corporation or its subsidiaries as private and the
 188 disclosure of which would harm the business operations of the
 189 not-for-profit corporation or its subsidiaries; has not been
 190 intentionally disclosed by the corporation or its subsidiaries
 191 unless pursuant to law, an order of a court or administrative
 192 body, a legislative proceeding pursuant to s. 5, Art. III of the
 193 State Constitution, or a private agreement that provides that

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194 | the information may be released to the public; and which is
 195 | information concerning:
 196 | 1. Internal auditing controls and reports of internal
 197 | auditors;
 198 | 2. Matters reasonably encompassed in privileged attorney-
 199 | client communications;
 200 | 3. Contracts for managed-care arrangements, including
 201 | preferred provider organization contracts, health maintenance
 202 | organization contracts, and exclusive provider organization
 203 | contracts, and any documents directly relating to the
 204 | negotiation, performance, and implementation of any such
 205 | contracts for managed-care arrangements;
 206 | 4. Bids or other contractual data, banking records, and
 207 | credit agreements the disclosure of which would impair the
 208 | efforts of the not-for-profit corporation or its subsidiaries to
 209 | contract for goods or services on favorable terms;
 210 | 5. Information relating to private contractual data, the
 211 | disclosure of which would impair the competitive interest of the
 212 | provider of the information;
 213 | 6. Corporate officer and employee personnel information;
 214 | 7. Information relating to the proceedings and records of
 215 | credentialing panels and committees and of the governing board
 216 | of the not-for-profit corporation or its subsidiaries relating
 217 | to credentialing;
 218 | 8. Minutes of meetings of the governing board of the not-
 219 | for-profit corporation and its subsidiaries, except minutes of
 220 | meetings open to the public pursuant to subsection (9);

221 9. Information that reveals plans for marketing services
 222 that the corporation or its subsidiaries reasonably expect to be
 223 provided by competitors;

224 10. Trade secrets as defined in s. 688.002, including:

225 a. Information relating to methods of manufacture or
 226 production, potential trade secrets, potentially patentable
 227 materials, or proprietary information received, generated,
 228 ascertained, or discovered during the course of research
 229 conducted by the not-for-profit corporation or its subsidiaries;
 230 and

231 b. Reimbursement methodologies or rates;

232 11. The identity of donors or prospective donors of
 233 property who wish to remain anonymous or any information
 234 identifying such donors or prospective donors. The anonymity of
 235 these donors or prospective donors must be maintained in the
 236 auditor's report; or

237 12. Any information received by the not-for-profit
 238 corporation or its subsidiaries from an agency in this or
 239 another state or nation or the Federal Government which is
 240 otherwise exempt or confidential pursuant to the laws of this or
 241 another state or nation or pursuant to federal law.

242
 243 As used in this paragraph, the term "managed care" means systems
 244 or techniques generally used by third-party payors or their
 245 agents to affect access to and control payment for health care
 246 services. Managed-care techniques most often include one or more
 247 of the following: prior, concurrent, and retrospective review of
 248 the medical necessity and appropriateness of services or site of

249 | services; contracts with selected health care providers;
 250 | financial incentives or disincentives related to the use of
 251 | specific providers, services, or service sites; controlled
 252 | access to and coordination of services by a case manager; and
 253 | payor efforts to identify treatment alternatives and modify
 254 | benefit restrictions for high-cost patient care.

255 | (c) Subparagraphs 10. and 12. of paragraph (b) are subject
 256 | to the Open Government Sunset Review Act in accordance with s.
 257 | 119.15 and shall stand repealed on October 2, 2010, unless
 258 | reviewed and saved from repeal through reenactment by the
 259 | Legislature.

260 | (9) Meetings of the governing board of the not-for-profit
 261 | corporation and meetings of the subsidiaries of the not-for-
 262 | profit corporation at which the expenditure of dollars
 263 | appropriated to the not-for-profit corporation by the state are
 264 | discussed or reported must remain open to the public in
 265 | accordance with s. 286.011 and s. 24(b), Art. I of the State
 266 | Constitution, unless made confidential or exempt by law. Other
 267 | meetings of the governing board of the not-for-profit
 268 | corporation and of the subsidiaries of the not-for-profit
 269 | corporation are exempt from s. 286.011 and s. 24(b), Art. I of
 270 | the State Constitution.

271 | (10) In addition to the continuing appropriation to the
 272 | institute provided in s. 210.20(2), any appropriation to the
 273 | institute provided in a general appropriations act shall be paid
 274 | directly to the board of directors of the not-for-profit
 275 | corporation by warrant drawn by the Chief Financial Officer from
 276 | the State Treasury.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 403 Derelict Motor Vehicles and Mobile Homes
SPONSOR(S): Nehr and others
TIED BILLS: IDEN./SIM. BILLS: SB 792

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Roads, Bridges & Ports Policy Committee, 14 Y, 0 N, Brown, Miller. Row 2: Civil Justice & Courts Policy Committee, Thomas, De La Paz.

SUMMARY ANALYSIS

HB 403 amends s. 319.30, F.S., regarding derelict vehicles and mobile homes. The bill clarifies the requirements for destroying or dismantling motor vehicle or mobile homes; expands the definition of "certificate of title" to include titles from other states; and clarifies that a 10-year provision to determine whether a vehicle is derelict begins with the model year of the vehicle.

The bill makes allowances for a "seller" to apply for a derelict motor vehicle certificate in cases where the owner is not able to apply and requires applications to include a personal identification number.

The bill creates new prohibitions for persons engaged in the business of recovering, storing, or towing vehicles. Entities in this industry may not (i) claim a lien for labor or services on a motor vehicle, (ii) claim that a motor vehicle has remained on their premises after a tenancy has terminated, or (iii) use a derelict motor vehicle certificate application in order to transport a vehicle without obtaining the title, or a certificate of destruction, for that vehicle.

The Criminal Justice Impact Conference has determined that the fiscal impact on the new criminal penalty created by the bill is insignificant. The Department of Highway Safety and Motor Vehicles reports that the bill has no fiscal impact on its operations.

The bill has an effective date of July 1, 2010.

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

Section 319.30, F.S., requires that when a motor vehicle or mobile home is to be dismantled, destroyed, or altered so significantly as to no longer be the motor vehicle or mobile home described in the certificate of title, the owner must surrender the title to the Department of Highway Safety and Motor Vehicles (DHSMV) for cancellation. Violation of the requirement constitutes a second degree misdemeanor.

Currently, when a vehicle is sold to a salvage dealer, the statute requires that a vehicle must be accompanied by the:

- certificate of title,
- salvage certificate of title, or a
- vehicle certificate of destruction issued by DHSMV.

Alternatively, if the title has been surrendered to DHSMV, a "derelict motor vehicle certificate" from the vehicle owner attesting to the surrender of the title must accompany the vehicle.¹ Salvage motor vehicle dealers are required to record the name, address, and personal identification card number of any person delivering motor vehicles, derelicts and major parts.² Similarly, when a motor vehicle,

¹ Section 319.30(2)(c)2., F.S.

² Section 319.30 (6), F.S.

derelict, or major part is purchased by a secondary metals recycler,³ the recycler must record the name, address, and personal identification card number of any person delivering the vehicle, derelict or part, and must obtain from the seller:

- valid certificate of title,
- valid certificate of destruction issued by DHSMV, or
- if neither of the above is available, a derelict motor vehicle certificate signed by the seller stating that the certificate of title was returned to DHSMV.

Existing law provides a process for towing and storage companies to dispose of or dismantle vehicles they lawfully possess, after a certain period of time. Section 713.78(11)(a), F.S., provides that any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who legally possesses a vehicle may apply for a certificate of destruction from the county tax collector. The company must first attempt to identify the owner through the methods contained in s. 713.78(6), F.S., and wait a specified period of time, depending on the age of the vehicle.

Section 713.78(11), F.S., also provides that a certificate of destruction is re-assignable a maximum of two times before dismantling or destruction of the vehicle is required, and the certificate must accompany the vehicle when sold, in lieu of a certificate of title. The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements and, if the vehicle is not registered in Florida, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen.

Section 713.78(2), F.S., provides that a company may claim a lien on the vehicle for reasonable towing and storage services, but may not charge storing fees if the storage lasts less than 6 hours. Subsection (3) provides that companies may not claim a lien for fees or charges related to merely immobilizing a vehicle with a boot or similar device.

Proposed Changes

HB 403 amends s. 319.30, F.S., to clarify and expand several derelict and salvage vehicle issues.

Specifically, the bill amends s. 319.30(1)(c), F.S., revising the definition of "certificate of title" to include a title issued by an authorized motor vehicle department from a state other than Florida. This provision clarifies that DHSMV accepts out-of-state titles as legitimate certificates of title. The bill also amends s. 319.30(1)(e), F.S., to clarify that the model year of the vehicle counts as "year one" when defining a derelict motor vehicle.

HB 403 defines the term "seller," and applies the term throughout s. 319.30, F.S., so that, in addition to the owner of record of a derelict motor vehicle, a person who has "physical possession and responsibility for a derelict motor vehicle" may also apply for a derelict motor vehicle certificate. The bill also amends s. 319.30(1)(f), F.S., to clarify that a "derelict motor vehicle certificate" is the document issued by DHSMV after an owner or seller completes a derelict motor vehicle certificate application.

HB 403 clarifies several sections of the statute regarding title transfers, by explicitly requiring certificates of title transferred in accordance with this statute also conform to the endorsement provisions in s. 319.22, F.S.⁴

³ Section 538.18 (8) F.S., defines "secondary metals recycler" as an individual who is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

⁴ Section 319.22, F.S., contains the general endorsement requirements for all title transfers.

The bill amends portions of s. 319.30(2) and (7), F.S., to require that a derelict motor vehicle certificate application must be completed by the seller or owner if the title certificate, salvage title certificate, or certificate of destruction is not available. It further details the information that is required on the application, which includes a copy of the seller's or owner's personal identification card, when that identification card is something other than a Florida driver license or Florida identification card. Failure to obtain this personal identification information is penalized as a third-degree felony.

HB 403 creates a new paragraph 319.30(8)(f), F.S., prohibiting any person engaged in the business of recovering, towing or storing vehicles pursuant to s. 713.78, F.S., from:

- claiming a lien for performing labor or services pursuant to s. 713.58, F.S.⁵;
- claiming that a motor vehicle or mobile home has remained on the premises after tenancy has terminated pursuant to s. 715.104, F.S.⁶; or
- using a derelict motor vehicle certificate application to transport, sell, or dispose of a motor vehicle at a salvage motor vehicle dealer or a metal recycler without obtaining the title or certificate of destruction required under ss. 713.58, 715.104, or 713.78, F.S.

Violations of these prohibitions are third-degree felonies.

B. SECTION DIRECTORY:

Section 1 Amends s. 319.30, F.S., relating to definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

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:

The Criminal Justice Impact Conference has determined that the fiscal impact on the new criminal penalty created by the bill is insignificant. DHSMV reports that the bill has no fiscal impact on its operations.⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁵ Section 713.58, F.S., generally allows for liens on personal property by persons who have provide labor or services on the property.

⁶ Section 715.104, F.S., provides a notification process for landlords in possession of former tenants' personal property, after the tenant's occupancy has terminated.

⁷ *Agency Bill Analysis – HB 403*, Department of Highway Safety and Motor Vehicles, December 7, 2009.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in cost-avoidance for those motor vehicle owners protected by the bill's criminal prohibition against vehicle liens levied improperly by certain vehicle transporters.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

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 derelict motor vehicles and mobile
3 homes; amending s. 319.30, F.S.; defining the term
4 "seller" and revising the definitions of the terms
5 "certificate of title," "derelict motor vehicle," and
6 "derelict motor vehicle certificate"; revising
7 requirements for disposition of a motor vehicle,
8 recreational vehicle, or mobile home that is sold,
9 transported, or delivered to a salvage motor vehicle
10 dealer or a secondary metals recycler; requiring
11 certificates of title to conform to specified provisions;
12 providing for the dealer or recycler to apply to the
13 Department of Highway Safety and Motor Vehicles for a
14 derelict motor vehicle certificate if the certificate of
15 title, salvage certificate of title, or certificate of
16 destruction is not available; requiring the derelict motor
17 vehicle certificate application to be completed by the
18 seller or owner of the motor vehicle or mobile home, the
19 seller's or owner's authorized transporter, and the dealer
20 or recycler; requiring certain identification information
21 be included with the application; revising the types of
22 documentation that a secondary metals recycler must
23 obtain; permitting recyclers to obtain salvage
24 certificates of title from sellers or owners as a valid
25 method of documentation; providing that a person engaged
26 in the business of recovering, towing, or storing vehicles
27 may not claim certain liens, claim that certain vehicles
28 have remained on any premises after tenancy has

29 terminated, or use the derelict motor vehicle certificate
 30 application to transport, sell, or dispose of a motor
 31 vehicle at a salvage motor vehicle dealer or metal
 32 recycler without otherwise obtaining title to the vehicle
 33 or a certificate of destruction; providing penalties;
 34 providing an effective date.

35

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

37

38 Section 1. Paragraphs (c), (e), and (f) of subsection (1),
 39 paragraphs (b) and (c) of subsection (2), and subsection (7) of
 40 section 319.30, Florida Statutes, are amended, paragraph (v) is
 41 added to subsection (1), paragraphs (f) and (g) of subsection
 42 (8) are redesignated as paragraphs (g) and (h), respectively,
 43 and a new paragraph (f) is added to that subsection, to read:

44 319.30 Definitions; dismantling, destruction, change of
 45 identity of motor vehicle or mobile home; salvage.-

46 (1) As used in this section, the term:

47 (c) "Certificate of title" means a record that serves as
 48 evidence of ownership of a vehicle, whether such record is a
 49 paper certificate authorized by the department or by a motor
 50 vehicle department authorized to issue titles in another state
 51 or a certificate consisting of information stored in electronic
 52 form in the department's database.

53 (e) "Derelict motor vehicle" means any motor vehicle as
 54 defined in s. 320.01(1) or mobile home as defined in s.
 55 320.01(2), with or without all parts, major parts, or major
 56 component parts, which is valued under \$1,000, is at least 10

57 | model years old, beginning with the model year of the vehicle as
 58 | year one, and is in such condition that its highest or primary
 59 | value is for sale, transport, or delivery to a licensed salvage
 60 | motor vehicle dealer or registered secondary metals recycler for
 61 | dismantling its component parts or conversion to scrap metal.

62 | (f) "Derelict motor vehicle certificate" means a
 63 | certificate issued by the department which serves as evidence
 64 | that a derelict motor vehicle will be dismantled or converted to
 65 | scrap metal. The certificate is obtained by completing a
 66 | derelict motor vehicle certificate application authorized by the
 67 | department ~~completed by the derelict motor vehicle owner, the~~
 68 | ~~owner's authorized transporter when different from the owner,~~
 69 | ~~and the licensed salvage motor vehicle dealer or the registered~~
 70 | ~~secondary metals recycler and submitted to the department for~~
 71 | ~~cancellation of the title record of the derelict motor vehicle.~~
 72 | A derelict motor vehicle certificate may be reassigned only one
 73 | time if the derelict motor vehicle certificate was completed by
 74 | a licensed salvage motor vehicle dealer and the derelict motor
 75 | vehicle was sold to a secondary metals recycler.

76 | (v) "Seller" means the owner of record or a person who has
 77 | physical possession and responsibility for a derelict motor
 78 | vehicle and attests that possession of the vehicle and all
 79 | ownership rights were obtained through lawful means. A seller
 80 | does not include a towing company, repair shop, or landlord
 81 | unless the towing company, repair shop, or landlord has obtained
 82 | title, salvage title, or a certificate of destruction in the
 83 | name of the towing company, repair shop, or landlord.

84 | (2)

85 (b)1. When a motor vehicle, recreational vehicle, or
 86 mobile home is sold, transported, or delivered to a salvage
 87 motor vehicle dealer, it shall be accompanied by:

88 a. A valid certificate of title issued in the name of the
 89 seller or properly endorsed, as required in s. 319.22, over to
 90 the seller;

91 b. A valid salvage certificate of title issued in the name
 92 of the seller or properly endorsed, as required in s. 319.22,
 93 over to the seller; or

94 c. A valid certificate of destruction issued in the name
 95 of the seller or properly endorsed over to the seller.

96 2. Any person who willfully and deliberately violates this
 97 paragraph by selling, transporting, delivering, purchasing, or
 98 receiving a motor vehicle, recreational vehicle, or mobile home
 99 without obtaining a properly endorsed certificate of title,
 100 salvage certificate of title, or certificate of destruction from
 101 the owner commits a felony of the third degree, punishable as
 102 provided in s. 775.082, s. 775.083, or s. 775.084.

103 (c)1. When a derelict motor vehicle is sold, transported,
 104 or delivered to a licensed salvage motor vehicle dealer, the
 105 purchaser shall record the date of purchase and the name,
 106 address, and personal identification card number of the person
 107 selling the derelict motor vehicle, and it shall be accompanied
 108 by:

109 a. A valid certificate of title issued in the name of the
 110 seller or properly endorsed, as required in s. 319.22, over to
 111 the seller;

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112 b. A valid salvage certificate of title issued in the name
113 of the seller or properly endorsed, as required in s. 319.22,
114 over to the seller; or

115 c. A valid certificate of destruction issued in the name
116 of the seller or properly endorsed over to the seller.

117 2. If the certificate of title, salvage certificate of
118 title, or certificate of destruction is not available, a
119 derelict motor vehicle certificate application shall be
120 completed by the seller or owner of the motor vehicle or mobile
121 home, the seller's or owner's authorized transporter, and the
122 licensed salvage motor vehicle dealer at the time of sale,
123 transport, or delivery to the licensed salvage motor vehicle
124 dealer. The derelict motor vehicle certificate application shall
125 be used by the seller or owner, the seller's or owner's
126 authorized transporter, and the licensed salvage motor vehicle
127 dealer to obtain a derelict motor vehicle certificate from the
128 department. The identifying number on the personal
129 identification card of the seller or owner must be recorded on
130 the derelict motor vehicle certificate application. The derelict
131 motor vehicle certificate application must be accompanied by a
132 copy of the seller's or owner's personal identification card
133 when the personal identification card is something other than a
134 Florida driver's license or Florida identification card. The
135 licensed salvage motor vehicle dealer shall secure the motor
136 vehicle or mobile home for 3 full business days, excluding
137 weekends and holidays, before destroying or dismantling the
138 derelict motor vehicle and shall follow all reporting procedures
139 established by the department, including electronic notification

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140 | to the department or delivery of the original derelict motor
 141 | vehicle certificate application to an agent of the department
 142 | within 24 hours after receiving the derelict motor vehicle.

143 | 3. Any person who willfully and deliberately violates this
 144 | paragraph by selling, transporting, delivering, purchasing, or
 145 | receiving a derelict motor vehicle without obtaining a
 146 | certificate of title, salvage certificate of title, certificate
 147 | of destruction, or derelict motor vehicle certificate
 148 | application; enters false or fictitious information on a
 149 | derelict motor vehicle certificate application; does not
 150 | complete the derelict motor vehicle certificate application as
 151 | required; does not obtain a copy of the seller's or owner's
 152 | personal identification card when required; ~~or~~ does not make the
 153 | required notification to the department; or destroys or
 154 | dismantles a derelict motor vehicle without waiting the required
 155 | 3 full business days commits a felony of the third degree,
 156 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

157 | (7)(a) In the event of a purchase by a secondary metals
 158 | recycler, that has been issued a certificate of registration
 159 | number, of:

160 | 1. Materials, prepared materials, or parts from any seller
 161 | for purposes other than the processing of such materials,
 162 | prepared materials, or parts, the purchaser shall obtain such
 163 | documentation as may be required by this section and shall
 164 | record the seller's name and address, date of purchase, and the
 165 | personal identification card number of the person delivering
 166 | such items.

167 2. Parts or prepared materials from any seller for
 168 purposes of the processing of such parts or prepared materials,
 169 the purchaser shall record the seller's name and address and
 170 date of purchase and, in the event of a purchase transaction
 171 consisting primarily of parts or prepared materials, the
 172 personal identification card number of the person delivering
 173 such items.

174 3. Materials from another secondary metals recycler for
 175 purposes of the processing of such materials, the purchaser
 176 shall record the seller's name and address and date of purchase.

177 4.a. Motor vehicles, recreational vehicles, mobile homes,
 178 or derelict motor vehicles from other than a secondary metals
 179 recycler for purposes of the processing of such motor vehicles,
 180 recreational vehicles, mobile homes, or derelict motor vehicles,
 181 the purchaser shall record the date of purchase and the name,
 182 address, and personal identification card number of the person
 183 selling such items and shall obtain the following documentation
 184 from the seller with respect to each item purchased:

185 (I) A valid certificate of title issued in the name of the
 186 seller or properly endorsed, as required in s. 319.22, over to
 187 the seller;

188 (II) A valid salvage certificate of title issued in the
 189 name of the seller or properly endorsed, as required in s.
 190 319.22, over to the seller;

191 ~~(III)-(II)~~ A valid certificate of destruction issued in the
 192 name of the seller or properly endorsed over to the seller; or

193 ~~(IV)-(III)~~ A valid derelict motor vehicle certificate
 194 obtained from the department ~~completed~~ by a licensed salvage

195 | motor vehicle dealer and properly reassigned to the secondary
 196 | metals recycler.

197 | b. If a valid certificate of title, salvage certificate of
 198 | title, certificate of destruction, or derelict motor vehicle
 199 | certificate is not available and the motor vehicle or mobile
 200 | home is a derelict motor vehicle, a derelict motor vehicle
 201 | certificate application shall be completed by the seller or
 202 | owner of the motor vehicle or mobile home, the seller's or
 203 | owner's authorized transporter, and the registered secondary
 204 | metals recycler at the time of sale, transport, or delivery to
 205 | the registered secondary metals recycler. The derelict motor
 206 | vehicle certificate application shall be used by the seller or
 207 | owner, the seller's or owner's authorized transporter, and the
 208 | registered secondary metals recycler to obtain a derelict motor
 209 | vehicle certificate from the department. The identifying number
 210 | on the personal identification card of the seller or owner must
 211 | be recorded on the derelict motor vehicle certificate
 212 | application. The derelict motor vehicle certificate application
 213 | must be accompanied by a copy of the seller's or owner's
 214 | personal identification card when the personal identification
 215 | card is something other than a Florida driver's license or
 216 | Florida identification card. The registered secondary metals
 217 | recycler shall secure the derelict motor vehicle for 3 full
 218 | business days, excluding weekends and holidays, before
 219 | destroying or dismantling the derelict motor vehicle and shall
 220 | follow all reporting procedures established by the department,
 221 | including electronic notification to the department or delivery
 222 | of the original derelict motor vehicle certificate application

223 to an agent of the department within 24 hours after receiving
 224 the derelict motor vehicle.

225 c. Any person who willfully and deliberately violates this
 226 subparagraph by selling, transporting, delivering, purchasing,
 227 or receiving a motor vehicle, recreational motor vehicle, mobile
 228 home, or derelict motor vehicle without obtaining a certificate
 229 of title, salvage certificate of title, certificate of
 230 destruction, ~~or~~ derelict motor vehicle certificate, or derelict
 231 motor vehicle certificate application; enters false or
 232 fictitious information on a derelict motor vehicle certificate
 233 application; does not complete the derelict motor vehicle
 234 certificate application as required; does not obtain a copy of
 235 the seller's or owner's personal identification card when
 236 required; ~~or~~ does not make the required notification to the
 237 department; or destroys or dismantles a derelict motor vehicle
 238 without waiting the required 3 full business days commits a
 239 felony of the third degree, punishable as provided in s.
 240 775.082, s. 775.083, or s. 775.084.

241 5. Major parts from other than a secondary metals recycler
 242 for purposes of the processing of such major parts, the
 243 purchaser shall record the seller's name, address, date of
 244 purchase, and the personal identification card number of the
 245 person delivering such items, as well as the vehicle
 246 identification number, if available, of each major part
 247 purchased.

248 (b) Any person who violates this subsection commits a
 249 felony of the third degree, punishable as provided in s.
 250 775.082, s. 775.083, or s. 775.084.

251 (8)
 252 (f) This section does not authorize any person that is
 253 engaged in the business of recovering, towing, or storing
 254 vehicles pursuant to s. 713.78 to claim a lien for performing
 255 labor or services on a motor vehicle or mobile home pursuant to
 256 s. 713.58, to claim that a motor vehicle or mobile home has
 257 remained on any premises after tenancy has terminated pursuant
 258 to s. 715.104, or to use a derelict motor vehicle certificate
 259 application for the purpose of transporting, selling, or
 260 disposing of a motor vehicle at a salvage motor vehicle dealer
 261 or metal recycler without obtaining the title or certificate of
 262 destruction required under s. 713.58, s. 713.78, or s. 715.104.
 263 Any person who transports, sells, or disposes of any motor
 264 vehicle or mobile home that was recovered, towed, or stored
 265 pursuant to s. 713.78, who claims a lien for performing labor or
 266 services on a motor vehicle or mobile home pursuant to s.
 267 713.58, or who claims that a motor vehicle or mobile home has
 268 remained on any premises after tenancy has terminated pursuant
 269 to s. 715.104 with respect to a derelict motor vehicle
 270 certificate application commits a felony of the third degree,
 271 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 435 Marketable Record Title
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Abruzzo
TIED BILLS: none IDEN./SIM. BILLS: SB 518

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Agriculture & Natural Resources Policy Committee, 13 Y, 0 N, As CS, Blalock, Reese. Row 2: Civil Justice & Courts Policy Committee, Thomas, De La Paz.

SUMMARY ANALYSIS

The Marketable Record Title Act (MRTA) provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title that are not referenced in the root of title.

This bill creates an exception to the applicability of MRTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government.

This bill appears to decrease state government expenditures related to the effect of MRTA on the state's real property interests.

This bill has an effective date of July 1, 2010.

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

The Florida Marketable Record Title Act (MRTA) provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title¹ that are not referenced in the root of title. Due to the vast holdings of each of the water management districts (districts) and the Board of Trustees of the Internal Improvement Trust Fund (Board), it is a burden for the districts and the Board to expend significant resources in monitoring the status of title of all district land holdings, filing notices to protect district interests, and defending its interest in land holdings where they may be challenged based on MRTA.

Section 712.03, F.S., identifies those interests in property that are not extinguished by marketable record title. Currently, only sovereignty submerged lands and covenants recorded under the provisions of chapter 376, F.S., or chapter 403, F.S., expressly exempt governmental interests from extinguishment. Another provision of s. 712.03, F.S., exempts easements from extinguishment when any parts of the easement are in use. The easement exception implicates governmental entities who acquire conservation easements and land protection agreements. The "easement in use" exception was originally intended to apply to visible use on the ground, by which an owner would have notice that someone else might be using the land. Conservation easements and land protection agreements, however, are not necessarily visible on the ground, so uncertainty surrounds whether the "easement in use" exception protects those interests from extinguishment by the MRTA.

Effect of the Bill

This bill creates s. 712.03(9), F.S., and amends s. 712.04, F.S., respectively, to create an exception to the applicability of MRTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government. These amendments also resolve the confusion over whether conservation easements and land protection agreements were "easements in use" and prevent rights and interests acquired with public funds for public benefit from being extinguished.

¹ "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. Stated differently, the "root of title" for purposes of the Marketable Record Title Act is the most recent deed or other title transaction recorded in the unbroken chain of title at least 30 years in the past.

B. SECTION DIRECTORY:

Section 1. Creates s. 712.03(9), F.S., related to exceptions to the Marketable Record Title Act.

Section 2. Amends s. 712.04, F.S., providing conforming language.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Board of Trustees of the Internal Improvement Trust Fund and water management districts may see reduced litigation costs from the clarification of titles to lands vested in the state. However, these litigation savings, if any, are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Agriculture and Natural Resources Committee passed one amendment that made only non-substantive changes to conform to the Senate bill.

1 A bill to be entitled
 2 An act relating to marketable record title; amending s.
 3 712.03, F.S.; revising the exceptions to marketability by
 4 including any right, title, or interest held by the Board
 5 of Trustees of the Internal Improvement Trust Fund, any
 6 water management district, or the United States; amending
 7 s. 712.04, F.S.; conforming provisions to changes made by
 8 the act; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (9) is added to section 712.03,
 13 Florida Statutes, to read:
 14 712.03 Exceptions to marketability.—Such marketable record
 15 title shall not affect or extinguish the following rights:
 16 (9) Any right, title, or interest held by the Board of
 17 Trustees of the Internal Improvement Trust Fund, any water
 18 management district created under chapter 373, or the United
 19 States.

20 Section 2. Section 712.04, Florida Statutes, is amended to
 21 read:
 22 712.04 Interests extinguished by marketable record title.—
 23 Subject to ~~the matters stated in s. 712.03, a such~~ marketable
 24 record title is ~~shall be~~ free and clear of all estates,
 25 interests, claims, or charges ~~whatsoever~~, the existence of which
 26 depends upon any act, title transaction, event, or omission that
 27 occurred before ~~prior to~~ the effective date of the root of
 28 title. Except as provided in s. 712.03, all such estates,

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29 | interests, claims, or charges, however denominated, whether they
 30 | ~~such estates, interests, claims, or charges~~ are or appear to be
 31 | held or asserted by a person sui juris or under a disability,
 32 | whether such person is within or without the state, ~~whether such~~
 33 | ~~person is~~ natural or corporate, or ~~is~~ private or governmental,
 34 | are ~~hereby~~ declared to be null and void. However, except that
 35 | this chapter does ~~shall not be deemed to~~ affect any right,
 36 | title, or interest of the United States, Florida, or any of its
 37 | officers, boards, commissions, or other agencies reserved in the
 38 | patent or deed by which the United States, Florida, or any of
 39 | its agencies parted with title.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 887

Adverse Possession

SPONSOR(S): Schultz

TIED BILLS: None

IDEN./SIM. BILLS: SB 292; SB 2234

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

SUMMARY ANALYSIS

Adverse possession is a method of acquiring title to real property by possession for a period of time. To acquire title by adverse possession without color of title (without having a deed or other recorded document), a claimant must openly possess the real property, must pay all taxes for a period of seven years, and must have filed a return of the land for taxes during the first year of occupation. Current law does not require any notice to the owner who previously paid the taxes.

This bill adds a requirement related to adverse possession without color of title. The bill requires that a person who files a return for taxes with the intent of claiming the property by adverse possession must give notice to the property owner within 15 days of filing the return.

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:

Adverse possession is a method of acquiring title to real property by possession for a period of time. There are several means by which adverse possession of real property can lead to title to real property. To acquire title by adverse possession without color of title (without having a deed or other recorded document), section 95.18, F.S., provides that a claimant must:

- Show open, continuous, and hostile possession;
- Pay all taxes for a period of seven years; and
- Must file a return of the land for taxes during the first year of occupation.

Origins of Adverse Possession

The doctrine of adverse possession "dates back at least to sixteenth century England and has been an element of American law since the country's founding."¹ The first adverse possession statute appeared in the United States in North Carolina in 1715.²

Adverse possession is defined as "[a] method of acquisition of title to real property by possession for a statutory period under certain conditions."³ An adverse possessor must generally establish five elements in relationship to possession. The possession must be:

- Open;
- Continuous for the statutory period;
- For the entirety of the area;
- Adverse to the record owner's interests; and
- Notorious.⁴

In most jurisdictions, state statutory law prescribes the limitations period – the period in which the record owner must act to preserve his or her interests in the property – while the state's body of common law governs the nature of use and possession necessary to trigger the running of the statutory

¹ Alexandra B. Klass, *Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession*, 77 U. COLO. L. REV. 283, 286 (Spring 2006).

² Brian Gardiner, *Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws*, 8 IND. INT'L & COMP. L. REV. 119, 129 (1997).

³ *Id.* at 122 (quoting BLACK'S LAW DICTIONARY 53 (6th ed. 1990)).

⁴ *Id.*

time period.⁵ As legal scholars have noted, “[a]dverse possession decisions are inherently fact-specific.”⁶ Therefore, an adverse possessor must establish “multiple elements whose tests are elastic and provide the trier of fact with flexibility and discretion.”⁷

Adverse Possession in Florida

In Florida, there are two ways to acquire land by adverse possession, which are prescribed by statute.⁸ First, an individual adversely occupying property may claim property under color of title if he or she can demonstrate that the claim to title is the derivative of a recorded written document and that he or she has been in possession of the property for at least seven years.⁹ It is irrelevant whether the recorded document is legally valid or is fraudulent or faulty. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.¹⁰ Alternatively, in the event a person occupies land continuously without color of title – i.e., without any legal document to support a claim for title – the person may seek title to the property by filing a return with the county property appraiser’s office within one year of entry onto the property, and paying all property taxes and any assessed liens during the possession of the property for seven consecutive years.¹¹ Similar to claims made with color of title, the adverse possessor may demonstrate possession of the property by showing that he or she:

- Protected the property by a substantial enclosure (typically a fence); or
- Cultivated or improved the property.¹²

Florida courts have noted that “[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession.”¹³ Adverse possession is not favored, and all doubts relating to the adverse possession claim must be resolved in favor of the property owner of record.¹⁴ The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.¹⁵ Therefore, the adverse possession claim cannot be “established by loose, uncertain testimony which necessitates resort to mere conjecture.”¹⁶

Abuse of the Adverse Possession Process

Despite certain policy considerations supporting the application of adverse possession in Florida,¹⁷ abuse of the statute may be occurring in certain contexts because the adverse possessor may acquire

⁵ Klass, *supra* note 1, at 287.

⁶ Geoffrey P. Anderson and David M. Pittinos, *Adverse Possession After House Bill 1148*, 37 COLO. LAW 73, 74 (Nov. 2008).

⁷ *Id.*

⁸ *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So. 2d 1231, 1234 (Fla. 1st DCA 2007). In addition to adverse possession, a party may gain use of adversely possessed property by acquiring a prescriptive easement upon a showing of 20 years of adverse use.

⁹ Section 95.16, F.S. See also *Bonifay v. Dickson*, 459 So. 2d 1089 (Fla. 1st DCA 1984). The Florida Legislature, by acts now embodied in statute, reduced the period of limitations as to adverse possession to seven years but left at 20 years the period for acquisition of easements by prescription. *Crigger v. Florida Power Corp.*, 436 So. 2d 937, 945 (Fla. 5th DCA 1983).

¹⁰ Section 95.16, F.S.

¹¹ Section 95.18(1), F.S. The 1939 Legislature added to what is now s. 95.18(1), F.S., a provision which required that an adverse possessor without color of title must file a tax return and pay the annual taxes on the property during the term of possession. Chapter 19254, s. 1, Laws of Fla. (1939). A 1974 amendment to the statute eliminated the requirement that taxes be paid annually. Chapter 74-382, s. 1, Laws of Fla.

¹² Section 95.18(2), F.S.

¹³ *Candler Holdings Ltd. I*, 947 So. 2d at 1234.

¹⁴ *Id.*

¹⁵ *Id.* (citing *Bailey v. Hagler*, 575 So. 2d 679, 681 (Fla. 1st DCA 1991)).

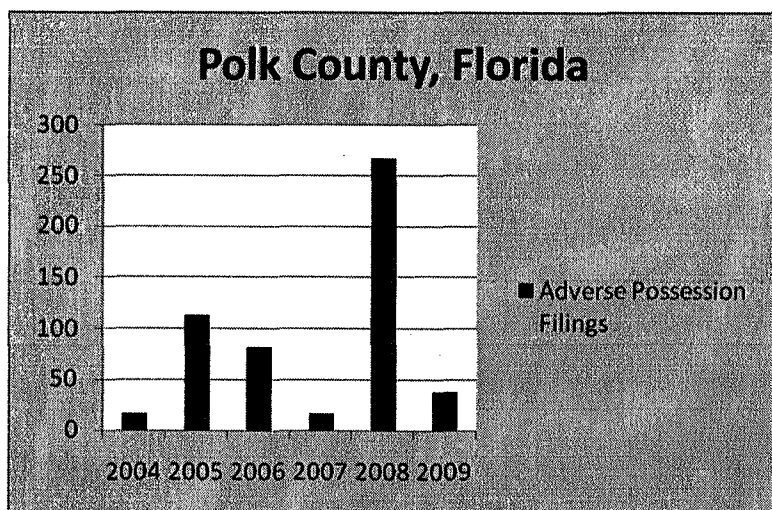
¹⁶ *Id.* (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).

¹⁷ See Comm. on Judiciary, Fla. Senate, *Review of the Requirements for Acquiring Title to Real Property through Adverse Possession* (Interim Report 2010-123) (Oct. 2009), 2, available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-123ju.pdf.

title to property in instances where the record owner attempts to pay taxes and monitors the property. Some landowners in Florida¹⁸ have expressed concern that individuals are capitalizing on the current adverse possession laws to gain title to adjoining properties, and that the burden to overcome these claims unfairly rests with the property owner of record. For example, in some counties, adjoining landowners have filed numerous adverse possession returns on several properties and have paid property taxes on those parcels in an attempt to claim title to the property by adverse possession despite any good faith claim to title. In order to protect the owner's property interests, he or she may be required to initiate litigation to eject the adverse possessor or to receive a judgment declaring his or her rights to the property. Significant legal fees and other costs may be associated with countering adverse possession claims.

Adverse Possession Trends in Florida

Some counties in Florida have experienced an influx of adverse possession claims, while other counties have received very few filings, or none at all, in recent years. For example, the following figure illustrates the number of adverse possession returns submitted to the Polk County Property Appraiser's Office in recent years:¹⁹



Currently, Polk County has more than 500 adverse possession returns on record. In Orange County, there are 51 adverse possession returns on record out of 434,940 total parcels. The Brevard County Property Appraiser's Office has between 100 and 150 adverse possession returns on record. Although the incidence of adverse possession claims appears to be more prevalent in rural areas in Florida, urban areas also experience adverse possession claims.

Effect of Bill

This bill amends s. 95.18, F.S., to require that a person who files a return for taxes with the intent of claiming the property by adverse possession must give notice to the property owner. The claimant must send, by certified mail, a copy of the return for taxes. If the claimant does not file proof of mailing within 15 business days, the property appraiser must cancel the return. This requirement does not apply where the owner of record cannot be determined by reviewing the records of the property appraiser.

B. SECTION DIRECTORY:

Section 1 amends s. 95.18, F.S., regarding adverse possession.

¹⁸ Senate professional staff interviewed landowners subject to adverse possession claims, as well as real property practitioners, to gauge their experiences with the process. In some instances the record landowner may reside in another state. This absence from Florida may further impair the landowner's ability to oppose an adverse possession claim.

¹⁹ Data provided by the Polk County Property Appraiser's Office.

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:

None.

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:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to adverse possession; amending s. 95.18,
 3 F.S.; requiring a person seeking property by adverse
 4 possession to send to the property owner of record a copy
 5 of the return filed with the property appraiser; requiring
 6 the property appraiser to cancel the return if the person
 7 does not submit proof of the mailing; providing an
 8 exception; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 95.18, Florida Statutes, is amended to
 13 read:

14 95.18 Real property actions; adverse possession without
 15 color of title.—

16 (1) When the occupant or those under whom the occupant
 17 claims have been in actual continued occupation of real property
 18 for 7 years under a claim of title exclusive of any other right,
 19 but not founded on a written instrument, judgment, or decree,
 20 the property actually occupied shall be held adversely if the
 21 person claiming adverse possession made a return of the property
 22 by proper legal description to the property appraiser of the
 23 county where it is located within 1 year after entering into
 24 possession and has subsequently paid all taxes and matured
 25 installments of special improvement liens levied against the
 26 property by the state, county, and municipality.

27 (2) For the purpose of this section, property shall be
 28 deemed to be possessed in the following cases only:

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29 (a) When it has been protected by substantial enclosure.

30 (b) When it has been usually cultivated or improved.

31 (3) A person claiming adverse possession under this
 32 section must send, via certified mail, to the owner of record of
 33 the property, as identified by the records of the property
 34 appraiser, a copy of the return filed with the property
 35 appraiser and must submit proof of the mailing to the property
 36 appraiser. If the property appraiser does not receive proof of
 37 the mailing within 15 business days after the filing of the
 38 return, the property appraiser shall cancel the return and
 39 remove the person from the tax roll related to the property that
 40 is the subject of the return. This section does not apply if an
 41 owner of record cannot be ascertained in the records of the
 42 property appraiser and located by reasonable means.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


BILL #: HB 907

Spousal and Child Support

SPONSOR(S): Flores

TIED BILLS: None

IDEN./SIM. BILLS: SB 2246

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

SUMMARY ANALYSIS

This bill makes a number of changes to laws on child support and alimony. Significantly, this bill:

- Requires child support awards to end upon majority and, where appropriate, to account for revised child support guidelines based on remaining children owed support.
- Changes the standard for determining the amount of a child support award in cases where parents have a high income.
- Creates a rebuttable presumption that a person can earn minimum wage, and provides additional criteria for the establishment of an imputed income amount.
- Amends the child support formula to account for income tax consequences of children and their financial support.
- Allows a court to consider a situation where a child support award requires a parent to pay an amount that would lead to the parent falling below the poverty line.
- Reduces the 40% time-sharing threshold for a child support award adjustment based on time-sharing to 20%.
- Provides for the application of a partial payment of alimony similar to how partial payment of child support is applied.

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:

Termination of Child Support at Majority

In general, child support ends as the child reaches the age of majority, that is, upon the child reaching 18 years of age. However, s. 743.07(2), F.S., provides that a child support obligation may be extended beyond the 18th birthday in two different circumstances:

- If the child will continue to be dependent upon his or her parents for support beyond his or her 18th birthday because of a physical or mental incapacity that existed prior to the child turning 18.
- If the child is still in high school, performing in good faith and with a reasonable expectation of graduation before the age of 19.

An order establishing child support is a continuing obligation owed by the parent paying support. Many parents paying and receiving child support are surprised to learn that the child support obligation does not automatically end by operation of law. Instead, the parties must obtain a court order modifying the support obligation when a child reaches the age at which support should end. Where one child reaches the age of majority, the parties must return to court and re-litigate child support based on then-current incomes and the number of children remaining to whom child support applies. Obviously, couples often have two or more children of differing ages. One appellate court explained:

It is well established that a trial court may, in its discretion, award lump sum support for two or more children, rather than award a separate amount of support for each child, and that the parent paying such unallocated support "has the duty to petition the court to reduce the amount when one child attains majority." *State v. Segrera*, 661 So.2d 922, 923 (Fla. 3d DCA 1995); *Hammond v. Hammond*, 492 So.2d 837, 838 (Fla. 5th DCA 1986) (confirming that a trial court may award lump sum child support for several children and when it does so, the payor parent must "petition for an order reducing the amount when one child attains majority"). It is equally well settled that because support obligations become the vested rights of the payee and vested obligations of the payor at the time the payments are due, child support payments are not subject to retroactive modification.¹

¹ *State, Dept. of Revenue ex rel. Ortega v. Ortega*, 948 So.2d 855 (Fla.3rd DCA 2007).

This bill amends s. 61.13(1)(a), F.S., to provide that child support orders and income deduction orders entered on or after October 1, 2010, must account for the anticipated time at which the child support obligations related to dependent children should terminate. A child support award must change the support obligation at those times to account for the reduced obligation of the one child reaching the age of majority, together with the changed support obligation owed for the remaining child or children, if applicable.

Application of Alimony Payments

Section 61.14(6)(d), F.S., provides that a partial payment of a past due child support obligation is first applied to current child support due, then is applied to delinquent child support due, and then is applied to interest due on the past due payments. There is no corresponding rule regarding how to apply partial payments of alimony.

This bill amends s. 61.14(6)(d), F.S., to add a parallel rule for application of partial payments of an alimony award. This bill also amends ss. 61.14 and 742.08, F.S., to provide that interest due on past due support obligations may be enforced like any other support award, including by contempt, and to provide that interest is not due on the interest.

Child Support Guidelines Formula -- Imputed Income

In general, a court determines support obligations of the parties based on their income and, in the case of child support, the time-sharing arrangement. In some circumstances, the current income of a party does not give an accurate picture of the party's ability and duty to make support payments. Where this occurs, s. 61.30(2)(b), F.S., allows the court to impute income to that party. Imputed income is an estimate of what the party should be earning. The imputed income is then used in determining child support rather than actual income.

This bill amends s. 61.30(2)(b), F.S., related to imputed income. The bill creates a rebuttable presumption that each party can, at a minimum, earn minimum wage on a full-time basis. This presumption can be overcome by proof that the parent has a disability that makes the parent unemployable in part or in whole, that the parent should stay home to care for a child, or that there is some other circumstance other than incarceration that the parent has no control over.

This bill further provides that, for a court to impute income beyond minimum wage, the court must find that the unemployment or underemployment is voluntary and the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location. Imputed income may not be based on evidence of income over 5 years old. Income may not be imputed at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for. In any determination of imputed income beyond minimum wage, the court must also give due consideration to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

This bill also amends s. 409.2563, F.S., regarding administrative establishment of child support, to provide that the minimum imputed income of a parent is the Florida minimum wage. If the parent lives in another state, that state's minimum wage applies. If no other state's minimum wage applies, the federal minimum wage applies.

Child Support Guidelines Formula -- Income Calculation

The child support guidelines formula is a formula that calculates the net income of the parents, determines a minimum child support need, and splits that need by the shared parenting plan to

calculate a presumptive child support amount owed by one parent to the other. The court may not award child support that varies from the formula by more than 5% except upon limited circumstances.

This first part of the formula is a determination of each parent's net income by subtracting various expenses from the parent's gross income. The first allowable subtraction from gross income, at s. 61.30(3)(a), F.S., is for income tax liabilities. To properly calculate the subtraction, the court is directed to calculate the appropriate income tax deduction that is expected in the immediate future. The formula does not use current income tax deductions as the case outcome typically affects and changes the income tax liabilities of the parents.²

Income tax laws provide for deductions and tax credits. A deduction reduces the gross income that is used in calculating the income tax, a tax credit is a reduction of taxes owed. Federal income tax law in the past generally prohibited tax credits from creating a negative tax situation where the federal government would owe money back to the taxpayer. That is, these tax credits were nonrefundable, they would generally be lost once a person owed no federal income tax. However, the earned income tax credit, a credit given to the working poor, was refundable under previous tax law. One aspect of the 2009 federal stimulus bill is that several tax credits have moved from nonrefundable to refundable. It is possible that a strict reading of s. 61.30(3)(a), F.S., which simply refers to deductions from income, may not allow the court to account for refundable tax credits when calculating income for child support purposes.

This bill amends s. 61.30(3)(a), F.S., to account for, in the child support formula, personal and dependency exemptions, other applicable deductions, the earned income credit, child and dependent care credits, and other allowable tax credits.

Child Support Guidelines Chart

The middle step of a child support guideline determination is reference to the minimum child support need chart at s. 61.30(6), F.S. The net income of the parents is added together to determine the combined monthly net income amount. The chart has \$50 increments starting at \$650 combined net income. The chart also contains separate columns for between one and six children. If the combined monthly net income is less than the lowest level on the chart, the court is directed to determine child support on a "case-by-case" basis. This bill amends s. 61.30(6), F.S., to eliminate the chart rows for combined monthly income at \$650, \$700, and \$750.

The chart ends at \$10,000 monthly income. Where the combined monthly net income is in excess of \$10,000 a month, the minimum child support need is the \$10,000 a month level plus a percentage of the income above \$10,000. This bill amends s. 61.30(6), F.S., to limit the use of the percentages by providing that the result of the percentage calculation may not be used to determine child support that is beyond the reasonable needs of the child or children.

Credit for Child Care Expense

One part of the child support calculation is the apportionment of child care expenses between the parents. Under current law, the parent actually paying the child care expense is only given credit for 75% of the cost of such day care. This 25% subtraction appears to have been put into law to account for the corresponding federal child care tax credit of 25%; however, higher income parents do not qualify for the full 25% credit rate under current federal tax law (some do not qualify at all) and, because the credit was nonrefundable until the 2009 tax year, lower income parents could not utilize the full 25% credit.

This bill amends ss. 61.30(7) and 61.30(10), F.S., to fully apportion child care expense without a 25% deduction. Note that other parts of this bill change s. 61.30(3)(a), F.S., to require the court to fully

² After divorce, the parents will move from married to either single or head of household. A court may award a dependency deduction to one parent or the other.

account for the effect of tax laws, including the child care tax credit actually applicable to the parties based on their financial circumstances.

Child Support Formula Adjustments

The child support formula is set forth in s. 61.30, F.S. The basic formula is provided in subsections (1) through (10), and other changes to that formula are set forth in portions of the analysis above. In short, the formula uses the adjusted incomes of the parents to develop a minimum child support need based on the chart. The minimum child support need is then increased by child care costs and health insurance costs to establish a total child support need. That total need is then multiplied by a parent's percentage share of the joint income to determine that parent's minimum child support obligation.

Section 61.30(11)(a), F.S., provides a list of factors that a court may take into account in adjusting the amount of child support after application of the base formula. Subparagraph (a)9. provides that the court may adjust child support levels when application of the formula requires a person to pay more than 55 percent of his or her gross income for child support in a single child support order. This bill adds that a court may also take into account a situation where application of the child support guidelines (in total) leaves a parent with a net income less than the current federal poverty guidelines.³

Section 61.30(11)(b), F.S., provides a court must adjust the minimum child support need where a parenting plan provides that each child spend a substantial amount of time with each parent. In short, the adjustment of child support requires a recalculation based on the percentage of overnight stays at each parent's home. Subparagraph 8. defines substantial amount of time to be where one parent has 40% or more of the overnights. This bill amends s. 61.30(11)(b)8., F.S., to change the percentage from 40% to 20%.

Petition for Child Support

Section 61.30(14), F.S., requires that every petition for child support or modification of child support must be accompanied by a financial affidavit. The respondent is likewise required to file a financial affidavit. This bill deletes the statutory requirement for financial affidavits. In that court rules require financial affidavits, this change may have no effect.

Child Support Formula -- Effect of the Dependency Exemption

One item that reduces the federal income tax liability of a person supporting a minor child or children is the dependency deduction. In general, the parent with whom the child resided for more than half of the year is entitled to the deduction unless the court orders that the dependency deduction is to be waived in favor of the other parent. For 2009, a legal dependent reduces the gross income of taxpayers entitled to the dependency deduction by \$3,650. In addition, a dependent child also entitles the taxpayer to a child tax credit of up to \$1,000 for a qualifying parent. The dependency deduction is often a greater benefit to a parent with a higher income as that parent will likely be in a higher income tax bracket, provided that the parent does not earn too much.⁴ Similarly, the child tax credit is worth the same to either party below certain income levels, but is also phased out for higher incomes, in which case it is more beneficial to give the credit to the lower income parent.⁵ Section 61.30(11)(a)8., F.S.,

³ The 2009 federal poverty guideline for a single individual is \$10,830 annually (\$902.50 a month). The 2010 guideline has not been established. See <http://aspe.hhs.gov/POVERTY/09poverty.shtml>.

⁴ A deduction reduces a taxpayer's gross income. The value of a deduction increases as income rises, as the actual benefit is reduced to the effective income tax rate of the taxpayer. For instance, a person in the 15% tax bracket only receives a \$547.50 benefit from a single dependency deduction, whereas a person in the 25% tax bracket receives an \$912.50 benefit. On the other hand, the dependency deduction starts to be phased out at an adjusted gross income of \$125,100 and above.

⁵ For the 2009 tax year, the child tax credit starts phasing out for a head of household having an adjusted gross income in excess of \$75,000. See instructions to 2009 Form 1040, at page 43.

provides that the court may adjust a child support award to account for the impact of the dependency exemption, and may order a parent to waive the deduction to the benefit of the other if the other is current in child support payments.

In the changes to s. 61.30(3), F.S. (detailed above), this bill changes the formula for child support calculation to provide that a court must take into account the tax effect of the dependency tax deduction. This bill deletes s. 61.30(11)(a)8., F.S., and creates s. 61.30(18), F.S., to provide that a court may order a parent to waive the dependency tax deduction in favor of the other parent, and removes the requirement that the other parent be current in child support before the court may order a parent to waive.

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., regarding child support.

Section 2 amends s. 61.14, F.S., regarding enforcement of support.

Section 3 amends s. 61.30, F.S., regarding child support guidelines.

Section 4 amends s. 409.2563, F.S., regarding administrative establishment of child support.

Section 5 amends s. 742.031, F.S., to amend a cross-reference.

Section 6 amends s. 742.08, F.S., regarding defaults in support payments.

Section 7 provides an effective date of October 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:

Section 1 of the bill may lessen the number of child support modification cases, lowering legal costs to parents and correspondingly lowering fees earned by lawyers and other professionals.

Any bill amending the child support calculations has the potential to affect the payment and receipt of child support awards to many families. The exact impact will differ from family to family. It is expected the change in the definition of "substantial amount of time" from 40% to 20% may increase the number of families in which the child support award is adjusted for time-sharing.

D. FISCAL COMMENTS:

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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:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

29 deleting provisions relating to adjustment of a minimum
 30 child support award relating to the Internal Revenue
 31 Service dependency exemption; providing for adjustment of
 32 a party's minimum child support award when application of
 33 the child support guidelines leaves the party with a net
 34 income lower than the federal poverty guidelines; revising
 35 the amount of time spent with one parent that is necessary
 36 for consideration as a factor in determining a deviation
 37 in child support; deleting a requirement that every
 38 petition for child support or for a modification of child
 39 support be accompanied by an affidavit showing specified
 40 information; allowing a court to order a party to execute
 41 a waiver of the Internal Revenue Service dependency
 42 exemption for a child for good cause shown; amending s.
 43 409.2563, F.S.; conforming cross-references; revising
 44 provisions relating to a presumption of minimum wage
 45 earning capacity for purposes of administrative support
 46 orders; amending s. 742.031, F.S.; conforming a cross-
 47 reference; amending s. 742.08, F.S.; providing for
 48 enforcement of interest payments on support judgments;
 49 providing that interest shall not accrue on postjudgment
 50 interest; providing an effective date.

51

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

53

54 Section 1. Paragraph (a) of subsection (1) of section
 55 61.13, Florida Statutes, is amended to read:

56 61.13 Support of children; parenting and time-sharing;
 57 powers of court.-

58 (1)(a) In a proceeding under this chapter, the court may
 59 at any time order either or both parents who owe a duty of
 60 support to a child to pay support to the other parent or, in the
 61 case of both parents, to a third party ~~the person~~ with custody
 62 in accordance with the child support guidelines schedule in s.
 63 61.30.

64 1. All child support orders and income deduction orders
 65 entered on or after October 1, 2010, shall provide for the
 66 following:

67 a. The termination of child support upon a child's 18th
 68 birthday, unless the court finds or has previously found that s.
 69 743.07(2) applies or unless otherwise agreed to by the parties.

70 b. A schedule, based upon the record existing at the time
 71 of the order, stating the amount of the monthly child support
 72 obligation for all the minor children at the time of the order
 73 and the amount of child support that will be owed for the
 74 remaining children for whom child support will continue when any
 75 child is no longer entitled to receive child support under this
 76 subparagraph.

77 c. The day, month, and year that the reduction or
 78 termination of child support becomes effective.

79 2. Notwithstanding subparagraph 1., the court initially
 80 entering an order requiring one or both parents to make child
 81 support payments has continuing jurisdiction after the entry of
 82 the initial order to modify the amount and terms and conditions
 83 of the child support payments when the modification is found

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84 | necessary by the court in the best interests of the child, when
 85 | the child reaches majority, when there is a substantial change
 86 | in the circumstances of the parties, when s. 743.07(2) applies,
 87 | or when a child is emancipated, marries, joins the armed
 88 | services, or dies. The court initially entering a child support
 89 | order has continuing jurisdiction to require the obligee to
 90 | report to the court on terms prescribed by the court regarding
 91 | the disposition of the child support payments.

92 | Section 2. Paragraph (d) of subsection (6) and paragraph
 93 | (b) of subsection (11) of section 61.14, Florida Statutes, are
 94 | amended, and subsection (12) is added to that section, to read:

95 | 61.14 Enforcement and modification of support,
 96 | maintenance, or alimony agreements or orders.-

97 | (6)

98 | (d) The court shall hear the obligor's motion to contest
 99 | the impending judgment within 15 days after the date of filing
 100 | of the motion. Upon the court's denial of the obligor's motion,
 101 | the amount of the delinquency and all other amounts that become
 102 | due, together with costs and a service charge of up to \$25,
 103 | become a final judgment by operation of law against the obligor.
 104 | The depository shall charge interest at the rate established in
 105 | s. 55.03 on all judgments for support. Payments on judgments
 106 | shall be applied first to the current child support due, then to
 107 | any delinquent principal, and then to interest on the support
 108 | judgment. Payments on alimony or spousal support judgments shall
 109 | be applied first to the current alimony or spousal support due,
 110 | then to any delinquent principal, and then to interest on the
 111 | alimony or spousal support judgment.

112 (11)

113 (b) The modification of the temporary support order may be
 114 retroactive to the date of the initial entry of the temporary
 115 support order; to the date of filing of the initial petition for
 116 dissolution of marriage, initial petition for support, initial
 117 petition determining paternity, or supplemental petition for
 118 modification; or to a date prescribed in paragraph (1)(a) or s.
 119 61.30(11)(c) or (16)~~(17)~~, as applicable.

120 (12) Interest on child support and alimony or spousal
 121 support judgments shall be enforceable through all of the
 122 methods available to enforce the underlying support order,
 123 including contempt. Interest shall not accrue on postjudgment
 124 interest.

125 Section 3. Section 61.30, Florida Statutes, is amended to
 126 read:

127 61.30 Child support guidelines; retroactive child
 128 support.—

129 (1)(a) The child support guideline amount as determined by
 130 this section presumptively establishes the amount the trier of
 131 fact shall order as child support in an initial proceeding for
 132 such support or in a proceeding for modification of an existing
 133 order for such support, whether the proceeding arises under this
 134 or another chapter. The trier of fact may order payment of child
 135 support which varies, plus or minus 5 percent, from the
 136 guideline amount, after considering all relevant factors,
 137 including the needs of the child or children, age, station in
 138 life, standard of living, and the financial status and ability
 139 of each parent. The trier of fact may order payment of child

140 support in an amount which varies more than 5 percent from such
 141 guideline amount only upon a written finding explaining why
 142 ordering payment of such guideline amount would be unjust or
 143 inappropriate. Notwithstanding the variance limitations of this
 144 section, the trier of fact shall order payment of child support
 145 which varies from the guideline amount as provided in paragraph
 146 (11)(b) whenever any of the children are required by court order
 147 ~~or mediation agreement~~ to spend a substantial amount of time
 148 with either parent as defined by subparagraph (11)(b)8. This
 149 requirement applies to any living arrangement, whether temporary
 150 or permanent.

151 (b) The guidelines may provide the basis for proving a
 152 substantial change in circumstances upon which a modification of
 153 an existing order may be granted. However, the difference
 154 between the existing monthly obligation and the amount provided
 155 for under the guidelines shall be at least 15 percent or \$50,
 156 whichever amount is greater, before the court may find that the
 157 guidelines provide a substantial change in circumstances.

158 (c) For each support order reviewed by the department as
 159 required by s. 409.2564(11), if the amount of the child support
 160 award under the order differs by at least 10 percent but not
 161 less than \$25 from the amount that would be awarded under s.
 162 61.30, the department shall seek to have the order modified and
 163 any modification shall be made without a requirement for proof
 164 or showing of a change in circumstances.

165 (2) Income shall be determined on a monthly basis for each
 166 parent as follows:

167 (a) Gross income shall include, but is not limited to, the

168 following:

- 169 1. Salary or wages.
- 170 2. Bonuses, commissions, allowances, overtime, tips, and
- 171 other similar payments.
- 172 3. Business income from sources such as self-employment,
- 173 partnership, close corporations, and independent contracts.
- 174 "Business income" means gross receipts minus ordinary and
- 175 necessary expenses required to produce income.
- 176 4. Disability benefits.
- 177 5. All workers' compensation benefits and settlements.
- 178 6. Unemployment compensation.
- 179 7. Pension, retirement, or annuity payments.
- 180 8. Social security benefits.
- 181 9. Spousal support received from a previous marriage or
- 182 court ordered in the marriage before the court.
- 183 10. Interest and dividends.
- 184 11. Rental income, which is gross receipts minus ordinary
- 185 and necessary expenses required to produce the income.
- 186 12. Income from royalties, trusts, or estates.
- 187 13. Reimbursed expenses or in kind payments to the extent
- 188 that they reduce living expenses.
- 189 14. Gains derived from dealings in property, unless the
- 190 gain is nonrecurring.
- 191 (b)1. Income on a monthly basis shall be imputed to an
- 192 unemployed or underemployed parent when such employment or
- 193 underemployment is found by the court to be voluntary on that
- 194 parent's part, absent a finding of fact by the court of physical
- 195 or mental incapacity or other circumstances over which the

196 | parent has no control. In the event of such voluntary
 197 | unemployment or underemployment, the employment potential and
 198 | probable earnings level of the parent shall be determined based
 199 | upon his or her recent work history, occupational
 200 | qualifications, and prevailing earnings level in the community
 201 | as provided in this paragraph; however, the court may refuse to
 202 | impute income to a parent if the court finds it necessary for
 203 | the parent to stay home with the child who is the subject of a
 204 | child support calculation.

205 | 2. In order for the court to impute income beyond minimum
 206 | wage under subparagraph 1., the court must make specific
 207 | findings of fact consistent with the requirements of this
 208 | subparagraph. The party seeking to impute income has the burden
 209 | to present competent, substantial evidence showing the
 210 | following:

211 | a. That the unemployment or underemployment is voluntary.

212 | b. The amount and source of the imputed income, through
 213 | evidence of income from available employment for which the party
 214 | is suitably qualified by education, experience, current
 215 | licensure, or geographic location, with due consideration being
 216 | given to the parties' time-sharing schedule and their historical
 217 | exercise of the time-sharing provided in the parenting plan or
 218 | relevant order.

219 | 3. There shall be a rebuttable presumption entitling the
 220 | court to impute Florida minimum wage on a full-time basis to a
 221 | parent, absent a finding by the court that:

222 | a. The parent has a physical or mental incapacity that
 223 | renders the parent unemployable or underemployed;

224 b. The parent needs to stay home to care for a child who
 225 is the subject of the child support calculation, thereby
 226 preventing the parent's employment or rendering the parent
 227 underemployed; or

228 c. There are other circumstances over which the parent has
 229 no control, except for penal incarceration, that prevent the
 230 parent from earning an income.

231

232 If evidence is produced that demonstrates that the parent is a
 233 resident of another state, that state's minimum wage law shall
 234 apply. In the absence of a state minimum wage, the federal
 235 minimum wage as determined by the United States Department of
 236 Labor shall apply.

237 4. Unless the court makes the appropriate findings under
 238 sub-subparagraph 2.b., income may not be imputed beyond the
 239 minimum wage requirements in subparagraph 3. based upon:

240 a. Income records that are more than 5 years old at the
 241 time of the hearing or trial at which imputation is sought; or

242 b. Income at a level that a party has never earned in the
 243 past, unless recently graduated, licensed, certified,
 244 relicensed, or recertified and thus qualified for, subject to
 245 geographic location, with due consideration of the parties'
 246 existing time-sharing schedule and their historical exercise of
 247 the time-sharing provided in the parenting plan or relevant
 248 order.

249 (c) Public assistance as defined in s. 409.2554 shall be
 250 excluded from gross income.

251 (3) Net income is obtained by subtracting allowable
 252 deductions from gross income. Allowable deductions shall
 253 include:

254 (a) Federal, state, and local income tax, which shall be
 255 calculated using gross income deductions, adjusted for actual
 256 filing status, personal and dependency exemptions, applicable
 257 deductions, earned income credits, child and dependent care
 258 credits, and other allowable tax credits ~~and allowable~~
 259 ~~dependents and income tax liabilities.~~

260 (b) Federal insurance contributions or self-employment
 261 tax.

262 (c) Mandatory union dues.

263 (d) Mandatory retirement payments.

264 (e) Health insurance payments, excluding payments for
 265 coverage of the minor child.

266 (f) Court-ordered support for other children which is
 267 actually paid.

268 (g) Spousal support paid pursuant to a court order from a
 269 previous marriage or the marriage before the court.

270 (4) Net income for each parent shall be computed by
 271 subtracting allowable deductions from gross income.

272 (5) Net income for each parent shall be added together for
 273 a combined net income.

274 (6) The following guidelines schedule shall be applied to
 275 the combined net income to determine the minimum child support
 276 need:

277

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	Combined Monthly						
	Net Income			Child or Children			
	One	Two	Three	Four	Five	Six	
278	650.00	74	75	75	76	77	78
279							
280	700.00	119	120	121	123	124	125
281							
282	750.00	164	166	167	169	171	173
283							
284	800.00	190	211	213	216	218	220
285							
286	850.00	202	257	259	262	265	268
287							
288	900.00	213	302	305	309	312	315
289							
290	950.00	224	347	351	355	359	363
291							
	1000.00	235	365	397	402	406	410
	1050.00	246	382	443	448	453	458
	1100.00	258	400	489	495	500	505
	1150.00	269	417	522	541	547	553

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292	1200.00	280	435	544	588	594	600
293	1250.00	290	451	565	634	641	648
294	1300.00	300	467	584	659	688	695
295	1350.00	310	482	603	681	735	743
296	1400.00	320	498	623	702	765	790
297	1450.00	330	513	642	724	789	838
298	1500.00	340	529	662	746	813	869
299	1550.00	350	544	681	768	836	895
300	1600.00	360	560	701	790	860	920
301	1650.00	370	575	720	812	884	945
302	1700.00	380	591	740	833	907	971
303	1750.00	390	606	759	855	931	996
304	1800.00	400	622	779	877	955	1022
305	1850.00	410	638	798	900	979	1048

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306	1900.00	421	654	818		923	1004 1074
	1950.00	431	670	839		946	1029 1101
307							
	2000.00	442	686	859		968	1054 1128
308							
	2050.00	452	702	879		991	1079 1154
309							
	2100.00	463	718	899		1014	1104 1181
310							
	2150.00	473	734	919		1037	1129 1207
311							
	2200.00	484	751	940		1060	1154 1234
312							
	2250.00	494	767	960		1082	1179 1261
313							
	2300.00	505	783	980		1105	1204 1287
314							
	2350.00	515	799	1000		1128	1229 1314
315							
	2400.00	526	815	1020		1151	1254 1340
316							
	2450.00	536	831	1041		1174	1279 1367
317							
	2500.00	547	847	1061		1196	1304 1394
318							
	2550.00	557	864	1081		1219	1329 1420
319							

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320	2600.00	568	880	1101	1242	1354	1447
321	2650.00	578	896	1121	1265	1379	1473
322	2700.00	588	912	1141	1287	1403	1500
323	2750.00	597	927	1160	1308	1426	1524
324	2800.00	607	941	1178	1328	1448	1549
325	2850.00	616	956	1197	1349	1471	1573
326	2900.00	626	971	1215	1370	1494	1598
327	2950.00	635	986	1234	1391	1517	1622
328	3000.00	644	1001	1252	1412	1540	1647
329	3050.00	654	1016	1271	1433	1563	1671
330	3100.00	663	1031	1289	1453	1586	1695
331	3150.00	673	1045	1308	1474	1608	1720
332	3200.00	682	1060	1327	1495	1631	1744
333	3250.00	691	1075	1345	1516	1654	1769

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334	3300.00	701	1090	1364	1537	1677	1793
335	3350.00	710	1105	1382	1558	1700	1818
336	3400.00	720	1120	1401	1579	1723	1842
337	3450.00	729	1135	1419	1599	1745	1867
338	3500.00	738	1149	1438	1620	1768	1891
339	3550.00	748	1164	1456	1641	1791	1915
340	3600.00	757	1179	1475	1662	1814	1940
341	3650.00	767	1194	1493	1683	1837	1964
342	3700.00	776	1208	1503	1702	1857	1987
343	3750.00	784	1221	1520	1721	1878	2009
344	3800.00	793	1234	1536	1740	1899	2031
345	3850.00	802	1248	1553	1759	1920	2053
346	3900.00	811	1261	1570	1778	1940	2075
347	3950.00	819	1275	1587	1797	1961	2097

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348	4000.00	828	1288	1603	1816	1982	2119
349	4050.00	837	1302	1620	1835	2002	2141
350	4100.00	846	1315	1637	1854	2023	2163
351	4150.00	854	1329	1654	1873	2044	2185
352	4200.00	863	1342	1670	1892	2064	2207
353	4250.00	872	1355	1687	1911	2085	2229
354	4300.00	881	1369	1704	1930	2106	2251
355	4350.00	889	1382	1721	1949	2127	2273
356	4400.00	898	1396	1737	1968	2147	2295
357	4450.00	907	1409	1754	1987	2168	2317
358	4500.00	916	1423	1771	2006	2189	2339
359	4550.00	924	1436	1788	2024	2209	2361
360	4600.00	933	1450	1804	2043	2230	2384
361	4650.00	942	1463	1821	2062	2251	2406

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362	4700.00	951	1477	1838		2081	2271 2428
363	4750.00	959	1490	1855		2100	2292 2450
364	4800.00	968	1503	1871		2119	2313 2472
365	4850.00	977	1517	1888		2138	2334 2494
366	4900.00	986	1530	1905		2157	2354 2516
367	4950.00	993	1542	1927		2174	2372 2535
368	5000.00	1000	1551	1939		2188	2387 2551
369	5050.00	1006	1561	1952		2202	2402 2567
370	5100.00	1013	1571	1964		2215	2417 2583
371	5150.00	1019	1580	1976		2229	2432 2599
372	5200.00	1025	1590	1988		2243	2447 2615
373	5250.00	1032	1599	2000		2256	2462 2631
374	5300.00	1038	1609	2012		2270	2477 2647
375	5350.00	1045	1619	2024		2283	2492 2663

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376	5400.00	1051	1628	2037	2297	2507	2679
377	5450.00	1057	1638	2049	2311	2522	2695
378	5500.00	1064	1647	2061	2324	2537	2711
379	5550.00	1070	1657	2073	2338	2552	2727
380	5600.00	1077	1667	2085	2352	2567	2743
381	5650.00	1083	1676	2097	2365	2582	2759
382	5700.00	1089	1686	2109	2379	2597	2775
383	5750.00	1096	1695	2122	2393	2612	2791
384	5800.00	1102	1705	2134	2406	2627	2807
385	5850.00	1107	1713	2144	2418	2639	2820
386	5900.00	1111	1721	2155	2429	2651	2833
387	5950.00	1116	1729	2165	2440	2663	2847
388	6000.00	1121	1737	2175	2451	2676	2860
389	6050.00	1126	1746	2185	2462	2688	2874

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390	6100.00	1131	1754	2196		2473	2700 2887
391	6150.00	1136	1762	2206		2484	2712 2900
392	6200.00	1141	1770	2216		2495	2724 2914
393	6250.00	1145	1778	2227		2506	2737 2927
394	6300.00	1150	1786	2237		2517	2749 2941
395	6350.00	1155	1795	2247		2529	2761 2954
396	6400.00	1160	1803	2258		2540	2773 2967
397	6450.00	1165	1811	2268		2551	2785 2981
398	6500.00	1170	1819	2278		2562	2798 2994
399	6550.00	1175	1827	2288		2573	2810 3008
400	6600.00	1179	1835	2299		2584	2822 3021
401	6650.00	1184	1843	2309		2595	2834 3034
402	6700.00	1189	1850	2317		2604	2845 3045
403	6750.00	1193	1856	2325		2613	2854 3055

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404	6800.00	1196	1862	2332	2621	2863	3064
405	6850.00	1200	1868	2340	2630	2872	3074
406	6900.00	1204	1873	2347	2639	2882	3084
407	6950.00	1208	1879	2355	2647	2891	3094
408	7000.00	1212	1885	2362	2656	2900	3103
409	7050.00	1216	1891	2370	2664	2909	3113
410	7100.00	1220	1897	2378	2673	2919	3123
411	7150.00	1224	1903	2385	2681	2928	3133
412	7200.00	1228	1909	2393	2690	2937	3142
413	7250.00	1232	1915	2400	2698	2946	3152
414	7300.00	1235	1921	2408	2707	2956	3162
415	7350.00	1239	1927	2415	2716	2965	3172
416	7400.00	1243	1933	2423	2724	2974	3181
417	7450.00	1247	1939	2430	2733	2983	3191

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418	7500.00	1251	1945	2438		2741	2993 3201
419	7550.00	1255	1951	2446		2750	3002 3211
420	7600.00	1259	1957	2453		2758	3011 3220
421	7650.00	1263	1963	2461		2767	3020 3230
422	7700.00	1267	1969	2468		2775	3030 3240
423	7750.00	1271	1975	2476		2784	3039 3250
424	7800.00	1274	1981	2483		2792	3048 3259
425	7850.00	1278	1987	2491		2801	3057 3269
426	7900.00	1282	1992	2498		2810	3067 3279
427	7950.00	1286	1998	2506		2818	3076 3289
428	8000.00	1290	2004	2513		2827	3085 3298
429	8050.00	1294	2010	2521		2835	3094 3308
430	8100.00	1298	2016	2529		2844	3104 3318
431	8150.00	1302	2022	2536		2852	3113 3328

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432	8200.00	1306	2028	2544	2861	3122	3337
433	8250.00	1310	2034	2551	2869	3131	3347
434	8300.00	1313	2040	2559	2878	3141	3357
435	8350.00	1317	2046	2566	2887	3150	3367
436	8400.00	1321	2052	2574	2895	3159	3376
437	8450.00	1325	2058	2581	2904	3168	3386
438	8500.00	1329	2064	2589	2912	3178	3396
439	8550.00	1333	2070	2597	2921	3187	3406
440	8600.00	1337	2076	2604	2929	3196	3415
441	8650.00	1341	2082	2612	2938	3205	3425
442	8700.00	1345	2088	2619	2946	3215	3435
443	8750.00	1349	2094	2627	2955	3224	3445
444	8800.00	1352	2100	2634	2963	3233	3454
445	8850.00	1356	2106	2642	2972	3242	3464

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446	8900.00	1360	2111	2649		2981	3252 3474
447	8950.00	1364	2117	2657		2989	3261 3484
448	9000.00	1368	2123	2664		2998	3270 3493
449	9050.00	1372	2129	2672		3006	3279 3503
450	9100.00	1376	2135	2680		3015	3289 3513
451	9150.00	1380	2141	2687		3023	3298 3523
452	9200.00	1384	2147	2695		3032	3307 3532
453	9250.00	1388	2153	2702		3040	3316 3542
454	9300.00	1391	2159	2710		3049	3326 3552
455	9350.00	1395	2165	2717		3058	3335 3562
456	9400.00	1399	2171	2725		3066	3344 3571
457	9450.00	1403	2177	2732		3075	3353 3581
458	9500.00	1407	2183	2740		3083	3363 3591
459	9550.00	1411	2189	2748		3092	3372 3601

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460	9600.00	1415	2195	2755	3100	3381	3610
461	9650.00	1419	2201	2763	3109	3390	3620
462	9700.00	1422	2206	2767	3115	3396	3628
463	9750.00	1425	2210	2772	3121	3402	3634
464	9800.00	1427	2213	2776	3126	3408	3641
465	9850.00	1430	2217	2781	3132	3414	3647
466	9900.00	1432	2221	2786	3137	3420	3653
467	9950.00	1435	2225	2791	3143	3426	3659
468	10000.00	1437	2228	2795	3148	3432	3666

469 For combined monthly net income less than the amount set out on
 470 the above guidelines schedule, the parent should be ordered to
 471 pay a child support amount, determined on a case-by-case basis,
 472 to establish the principle of payment and lay the basis for
 473 increased orders should the parent's income increase in the
 474 future. For combined monthly net income greater than the amount
 475 set out in the above guidelines schedule, the obligation shall
 476 be the minimum amount of support provided by the guidelines
 477 schedule plus the following percentages multiplied by the amount
 478 of income over \$10,000:

479

Child or Children

480

One	Two	Three	Four	Five	Six
-----	-----	-------	------	------	-----

481

5.0%	7.5%	9.5%	11.0%	12.0%	12.5%
------	------	------	-------	-------	-------

482

483 These percentages shall not be used to determine child support
 484 beyond the amount necessary to satisfy the reasonable needs of
 485 the child or children.

486 (7) Child care costs incurred on behalf of the children
 487 due to employment, job search, or education calculated to result
 488 in employment or to enhance income of current employment of
 489 either parent shall be ~~reduced by 25 percent and then shall be~~
 490 added to the basic obligation. After the ~~adjusted~~ child care
 491 costs are added to the basic obligation, any moneys prepaid by a
 492 parent for child care costs for the child or children of this
 493 action shall be deducted from that parent's child support
 494 obligation for that child or those children. Child care costs
 495 shall not exceed the level required to provide quality care from
 496 a licensed source for the children.

497 (8) Health insurance costs resulting from coverage ordered
 498 pursuant to s. 61.13(1)(b), and any noncovered medical, dental,
 499 and prescription medication expenses of the child, shall be
 500 added to the basic obligation unless these expenses have been
 501 ordered to be separately paid on a percentage basis. After the
 502 health insurance costs are added to the basic obligation, any
 503 moneys prepaid by a parent for health-related costs for the

504 | child or children of this action shall be deducted from that
 505 | parent's child support obligation for that child or those
 506 | children.

507 | (9) Each parent's percentage share of the child support
 508 | need shall be determined by dividing each parent's net monthly
 509 | income by the combined net monthly income.

510 | (10) The total minimum child support need shall be
 511 | determined by adding child care costs and health insurance costs
 512 | to the minimum child support need. Each parent's actual dollar
 513 | share of the total minimum child support need shall be
 514 | determined by multiplying the minimum child support need by each
 515 | parent's percentage share of the combined monthly net income.

516 | (11)(a) The court may adjust the total minimum child
 517 | support award, or either or both parents' share of the total
 518 | minimum child support award, based upon the following deviation
 519 | factors:

520 | 1. Extraordinary medical, psychological, educational, or
 521 | dental expenses.

522 | 2. Independent income of the child, not to include moneys
 523 | received by a child from supplemental security income.

524 | 3. The payment of support for a parent which regularly has
 525 | been paid and for which there is a demonstrated need.

526 | 4. Seasonal variations in one or both parents' incomes or
 527 | expenses.

528 | 5. The age of the child, taking into account the greater
 529 | needs of older children.

530 | 6. Special needs, such as costs that may be associated
 531 | with the disability of a child, that have traditionally been met

532 within the family budget even though the fulfilling of those
 533 needs will cause the support to exceed the presumptive amount
 534 established by the guidelines.

535 7. Total available assets of the obligee, obligor, and the
 536 child.

537 ~~8. The impact of the Internal Revenue Service dependency~~
 538 ~~exemption and waiver of that exemption. The court may order a~~
 539 ~~parent to execute a waiver of the Internal Revenue Service~~
 540 ~~dependency exemption if the paying parent is current in support~~
 541 ~~payments.~~

542 8.9. When application of the child support guidelines
 543 schedule requires a person to pay another person more than 55
 544 percent of his or her gross income for a child support
 545 obligation for current support resulting from a single support
 546 order or when the application of the child support guidelines
 547 leaves a party with a net income that is lower than the current
 548 federal poverty guidelines.

549 9.10. The particular parenting plan, such as where the
 550 child spends a significant amount of time, but less than 20 ~~40~~
 551 percent of the overnights, with one parent, thereby reducing the
 552 financial expenditures incurred by the other parent; or the
 553 refusal of a parent to become involved in the activities of the
 554 child.

555 10.11. Any other adjustment which is needed to achieve an
 556 equitable result which may include, but not be limited to, a
 557 reasonable and necessary existing expense or debt. Such expense
 558 or debt may include, but is not limited to, a reasonable and

559 necessary expense or debt which the parties jointly incurred
 560 during the marriage.

561 (b) Whenever a particular parenting plan provides that
 562 each child spend a substantial amount of time with each parent,
 563 the court shall adjust any award of child support, as follows:

564 1. In accordance with subsections (9) and (10), calculate
 565 the amount of support obligation apportioned to each parent
 566 without including day care and health insurance costs in the
 567 calculation and multiply the amount by 1.5.

568 2. Calculate the percentage of overnight stays the child
 569 spends with each parent.

570 3. Multiply each parent's support obligation as calculated
 571 in subparagraph 1. by the percentage of the other parent's
 572 overnight stays with the child as calculated in subparagraph 2.

573 4. The difference between the amounts calculated in
 574 subparagraph 3. shall be the monetary transfer necessary between
 575 the parents for the care of the child, subject to an adjustment
 576 for day care and health insurance expenses.

577 5. Pursuant to subsections (7) and (8), calculate the net
 578 amounts owed by each parent for the expenses incurred for day
 579 care and health insurance coverage for the child. ~~Day care shall~~
 580 ~~be calculated without regard to the 25 percent reduction applied~~
 581 ~~by subsection (7).~~

582 6. Adjust the support obligation owed by each parent
 583 pursuant to subparagraph 4. by crediting or debiting the amount
 584 calculated in subparagraph 5. This amount represents the child
 585 support which must be exchanged between the parents.

586 7. The court may deviate from the child support amount
 587 calculated pursuant to subparagraph 6. based upon the deviation
 588 factors in paragraph (a), as well as the obligee parent's low
 589 income and ability to maintain the basic necessities of the home
 590 for the child, the likelihood that either parent will actually
 591 exercise the time-sharing schedule set forth in the parenting
 592 plan granted by the court, and whether all of the children are
 593 exercising the same time-sharing schedule.

594 8. For purposes of adjusting any award of child support
 595 under this paragraph, "substantial amount of time" means that a
 596 parent exercises time-sharing ~~visitation~~ at least 20 ~~40~~ percent
 597 of the overnights of the year.

598 (c) A parent's failure to regularly exercise the court-
 599 ordered ~~or agreed~~ time-sharing schedule not caused by the other
 600 parent which resulted in the adjustment of the amount of child
 601 support pursuant to subparagraph (a) 9.10 ~~or~~ paragraph (b) shall
 602 be deemed a substantial change of circumstances for purposes of
 603 modifying the child support award. A modification pursuant to
 604 this paragraph shall be retroactive to the date the ~~noncustodial~~
 605 parent first failed to regularly exercise the court-ordered ~~or~~
 606 ~~agreed~~ time-sharing schedule.

607 (12)(a) A parent with a support obligation may have other
 608 children living with him or her who were born or adopted after
 609 the support obligation arose. If such subsequent children exist,
 610 the court, when considering an upward modification of an
 611 existing award, may disregard the income from secondary
 612 employment obtained in addition to the parent's primary
 613 employment if the court determines that the employment was

614 obtained primarily to support the subsequent children.

615 (b) Except as provided in paragraph (a), the existence of
 616 such subsequent children should not as a general rule be
 617 considered by the court as a basis for disregarding the amount
 618 provided in the guidelines schedule. The parent with a support
 619 obligation for subsequent children may raise the existence of
 620 such subsequent children as a justification for deviation from
 621 the guidelines schedule. However, if the existence of such
 622 subsequent children is raised, the income of the other parent of
 623 the subsequent children shall be considered by the court in
 624 determining whether or not there is a basis for deviation from
 625 the guideline amount.

626 (c) The issue of subsequent children under paragraph (a)
 627 or paragraph (b) may only be raised in a proceeding for an
 628 upward modification of an existing award and may not be applied
 629 to justify a decrease in an existing award.

630 (13) If the recurring income is not sufficient to meet the
 631 needs of the child, the court may order child support to be paid
 632 from nonrecurring income or assets.

633 ~~(14) Every petition for child support or for modification~~
 634 ~~of child support shall be accompanied by an affidavit which~~
 635 ~~shows the party's income, allowable deductions, and net income~~
 636 ~~computed in accordance with this section. The affidavit shall be~~
 637 ~~served at the same time that the petition is served. The~~
 638 ~~respondent, whether or not a stipulation is entered, shall make~~
 639 ~~an affidavit which shows the party's income, allowable~~
 640 ~~deductions, and net income computed in accordance with this~~
 641 ~~section. The respondent shall include his or her affidavit with~~

642 | ~~the answer to the petition or as soon thereafter as is~~
 643 | ~~practicable, but in any case at least 72 hours prior to any~~
 644 | ~~hearing on the finances of either party.~~

645 | (14)~~(15)~~ For purposes of establishing an obligation for
 646 | support in accordance with this section, if a person who is
 647 | receiving public assistance is found to be noncooperative as
 648 | defined in s. 409.2572, the IV-D agency is authorized to submit
 649 | to the court an affidavit attesting to the income of that parent
 650 | based upon information available to the IV-D agency.

651 | (15)~~(16)~~ The Legislature shall review the guidelines
 652 | schedule established in this section at least every 4 years
 653 | beginning in 1997.

654 | (16)~~(17)~~ In an initial determination of child support,
 655 | whether in a paternity action, dissolution of marriage action,
 656 | or petition for support during the marriage, the court has
 657 | discretion to award child support retroactive to the date when
 658 | the parents did not reside together in the same household with
 659 | the child, not to exceed a period of 24 months preceding the
 660 | filing of the petition, regardless of whether that date precedes
 661 | the filing of the petition. In determining the retroactive award
 662 | in such cases, the court shall consider the following:

663 | (a) The court shall apply the guidelines schedule in
 664 | effect at the time of the hearing subject to the obligor's
 665 | demonstration of his or her actual income, as defined by
 666 | subsection (2), during the retroactive period. Failure of the
 667 | obligor to so demonstrate shall result in the court using the
 668 | obligor's income at the time of the hearing in computing child
 669 | support for the retroactive period.

670 (b) All actual payments made by a parent to the other
 671 parent or the child or third parties for the benefit of the
 672 child throughout the proposed retroactive period.

673 (c) The court should consider an installment payment plan
 674 for the payment of retroactive child support.

675 (17) The court may, for good cause shown, order the parent
 676 otherwise entitled to the Internal Revenue Service dependency
 677 exemption for a child to execute a waiver of the dependency
 678 exemption.

679 Section 4. Paragraph (g) of subsection (1) and paragraph
 680 (a) of subsection (5) of section 409.2563, Florida Statutes, are
 681 amended to read:

682 409.2563 Administrative establishment of child support
 683 obligations.—

684 (1) DEFINITIONS.—As used in this section, the term:

685 (g) "Retroactive support" means a child support obligation
 686 established pursuant to s. 61.30 (16) ~~(17)~~.

687

688 Other terms used in this section have the meanings ascribed in
 689 ss. 61.046 and 409.2554.

690 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

691 (a) After serving notice upon a parent in accordance with
 692 subsection (4), the department shall calculate that parent's
 693 child support obligation under the child support guidelines
 694 schedule as provided by s. 61.30, based on any timely financial
 695 affidavits received and other information available to the
 696 department. If either parent fails to comply with the
 697 requirement to furnish a financial affidavit, the department may

698 | proceed on the basis of information available from any source,
 699 | if such information is sufficiently reliable and detailed to
 700 | allow calculation of guideline schedule amounts under s. 61.30.
 701 | If a parent receives public assistance and fails to submit a
 702 | financial affidavit, the department may submit a financial
 703 | affidavit for that parent pursuant to s. 61.30~~(14)-(15)~~. If there
 704 | is a lack of sufficient reliable information concerning a
 705 | parent's actual earnings for a current or past period, there
 706 | shall be a rebuttable presumption ~~it shall be presumed~~ for the
 707 | purpose of establishing a support obligation that the parent had
 708 | an earning capacity equal to the Florida federal minimum wage on
 709 | a full-time basis during the applicable period, unless evidence
 710 | is presented that the parent is a resident of another state, in
 711 | which case that state's minimum wage shall apply. In the absence
 712 | of a state minimum wage, the federal minimum wage as determined
 713 | by the United States Department of Labor shall apply.

714 | Section 5. Paragraph (b) of subsection (4) of section
 715 | 742.031, Florida Statutes, is amended to read:

716 | 742.031 Hearings; court orders for support, hospital
 717 | expenses, and attorney's fee.—

718 | (4)

719 | (b) The modification of the temporary support order may be
 720 | retroactive to the date of the initial entry of the temporary
 721 | support order; to the date of filing of the initial petition for
 722 | dissolution of marriage, petition for support, petition
 723 | determining paternity, or supplemental petition for
 724 | modification; or to a date prescribed in s. 61.14(1)(a) or s.
 725 | 61.30(11)(c) or ~~(16)-(17)~~, as applicable.

726 Section 6. Section 742.08, Florida Statutes, is amended to
 727 read:

728 742.08 Default of support payments.—Upon default in
 729 payment of any moneys ordered by the court to be paid, the court
 730 may enter a judgment for the amount in default, plus interest,
 731 administrative costs, filing fees, and other expenses incurred
 732 by the clerk of the circuit court which shall be a lien upon all
 733 property of the defendant both real and personal. Interest on
 734 support judgments shall be enforceable through all of the
 735 methods available to enforce the underlying support order,
 736 including contempt. Interest shall not accrue on postjudgment
 737 interest. Costs and fees shall be assessed only after the court
 738 makes a determination of the nonprevailing party's ability to
 739 pay such costs and fees. In Title IV-D cases, any costs,
 740 including filing fees, recording fees, mediation costs, service
 741 of process fees, and other expenses incurred by the clerk of the
 742 circuit court, shall be assessed only against the nonprevailing
 743 obligor after the court makes a determination of the
 744 nonprevailing obligor's ability to pay such costs and fees. The
 745 Department of Revenue shall not be considered a party for
 746 purposes of this section; however, fees may be assessed against
 747 the department pursuant to s. 57.105(1). Willful failure to
 748 comply with an order of the court shall be deemed a contempt of
 749 the court entering the order and shall be punished as such. The
 750 court may require bond of the defendant for the faithful
 751 performance of his or her obligation under the order of the
 752 court in such amount and upon such conditions as the court shall
 753 direct.

HB 907

2010

754 | Section 7. This act shall take effect October 1, 2010. |

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (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 Flores offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (1) of section
8 61.13, Florida Statutes, is amended to read:

9 61.13 Support of children; parenting and time-sharing;
10 powers of court.—

11 (1)(a) In a proceeding under this chapter, the court may
12 at any time order either or both parents who owe a duty of
13 support to a child to pay support to the other parent or, in the
14 case of both parents, to a third party who has the person with
15 custody in accordance with the child support guidelines schedule
16 in s. 61.30.

17 1. All child support orders and income deduction orders
18 entered on or after October 1, 2010, must provide:

COUNCIL/COMMITTEE AMENDMENT

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Amendment No. 1

19 a. For child support to terminate on a child's 18th
20 birthday unless the court finds or previously found that s.
21 743.07(2) applies, or is otherwise agreed to by the parties;

22 b. A schedule, based on the record existing at the time of
23 the order, stating the amount of the monthly child support
24 obligation for all the minor children at the time of the order
25 and the amount of child support that will be owed for any
26 remaining children after one or more of the children are no
27 longer entitled to receive child support; and

28 c. The month, day, and year that the reduction or
29 termination of child support becomes effective.

30 2. The court initially entering an order requiring one or
31 both parents to make child support payments has continuing
32 jurisdiction after the entry of the initial order to modify the
33 amount and terms and conditions of the child support payments if
34 ~~when~~ the modification is found ~~necessary~~ by the court to be in
35 the best interests of the child; ~~or~~ when the child reaches
36 majority; if, ~~when~~ there is a substantial change in the
37 circumstances of the parties; if, ~~when~~ s. 743.07(2) applies; ~~or~~
38 when a child is emancipated, marries, joins the armed services,
39 or dies. The court initially entering a child support order has
40 continuing jurisdiction to require the obligee to report to the
41 court on terms prescribed by the court regarding the disposition
42 of the child support payments.

43 Section 2. Section 61.29, Florida Statutes, is created to
44 read:

Amendment No. 1

45 61.29 Child support guidelines; principles.—The courts
46 shall adhere to the following principles in implementing the
47 child support guidelines schedule:

48 (1) A parent's first and principal obligation is to
49 support his or her minor child.

50 (2) Both parents are mutually responsible for the support
51 of their children.

52 (3) Each parent should pay for the support of the children
53 according to a parent's ability to pay.

54 (4) Children should share in the standard of living of
55 both parents. Child support may therefore be appropriately used
56 to improve the standard of living of the children's primary
57 residence in order to improve the lives of the children.

58 (5) The guidelines schedule takes into account each
59 parent's actual income and level of responsibility for the
60 children.

61 (6) It is presumed that the parent having primary physical
62 responsibility for the children contributes a significant
63 portion of his or her available resources for the support of the
64 children.

65 (7) The guidelines schedule is based on the parents'
66 combined net income estimated to have been allocated to the
67 child if the parents and children were living in an intact
68 household.

69 (8) The guidelines schedule encourages fair and efficient
70 settlement of conflicts between parents and minimizes the need
71 for litigation.

COUNCIL/COMMITTEE AMENDMENT

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Amendment No. 1

72 Section 3. Paragraph (b) of subsection (2) and subsections
73 (6), (7), and (11) of section 61.30, Florida Statutes, are
74 amended to read:

75 61.30 Child support guidelines; retroactive child
76 support.—

77 (2) Income shall be determined on a monthly basis for each
78 parent as follows:

79 (b) Monthly income on a monthly basis shall be imputed to
80 an unemployed or underemployed parent if when such unemployment
81 employment or underemployment is found by the court to be
82 voluntary on that parent's part, absent a finding of fact by the
83 court of physical or mental incapacity or other circumstances
84 over which the parent has no control. In the event of such
85 voluntary unemployment or underemployment, the employment
86 potential and probable earnings level of the parent shall be
87 determined based upon his or her recent work history,
88 occupational qualifications, and prevailing earnings level in
89 the community if such information is available. If the
90 information is unavailable or the unemployed or underemployed
91 parent fails to supply the required financial information in a
92 child support proceeding, the earnings level shall be based on
93 the median income of year-round full-time workers as derived
94 from current population reports or replacement reports published
95 by the United States Bureau of Census. as provided in this
96 paragraph; However, the court may refuse to impute income to a
97 parent if the court finds it necessary for the parent to stay
98 home with the child who is the subject of a child support
99 calculation.

Amendment No. 1

100 1. To impute income to a party in a child support
 101 proceeding, the court must:

102 a. Conclude that the unemployment or underemployment was
 103 voluntary.

104 b. Determine whether any subsequent underemployment
 105 resulted from the spouse's pursuit of his or her own interests
 106 or through less than diligent and bona fide efforts to find
 107 employment paying income at a level equal to or better than that
 108 formerly received.

109 2. The burden of proof is on the party seeking to impute
 110 income to the other party.

111 (c) Public assistance as defined in s. 409.2554 shall be
 112 excluded from gross income.

113 (6) The following guidelines schedule shall be applied to
 114 the combined net income to determine the minimum child support
 115 need:

Combined Monthly

Net Income	Child or Children					
	One	Two	Three	Four	Five	Six
650.00	74	75	75	76	77	78
700.00	119	120	121	123	124	125
750.00	164	166	167	169	171	173

COUNCIL/COMMITTEE AMENDMENT

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	Amendment No. 1						
122	800.00	190	211	213	216	218	220
	850.00	202	257	259	262	265	268
123							
	900.00	213	302	305	309	312	315
124							
	950.00	224	347	351	355	359	363
125							
	1000.00	235	365	397	402	406	410
126							
	1050.00	246	382	443	448	453	458
127							
	1100.00	258	400	489	495	500	505
128							
	1150.00	269	417	522	541	547	553
129							
	1200.00	280	435	544	588	594	600
130							
	1250.00	290	451	565	634	641	648
131							
	1300.00	300	467	584	659	688	695
132							
	1350.00	310	482	603	681	735	743
133							
	1400.00	320	498	623	702	765	790
134							
	1450.00	330	513	642	724	789	838
135							

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	Amendment No. 1						
136	1500.00	340	529	662	746	813	869
137	1550.00	350	544	681	768	836	895
138	1600.00	360	560	701	790	860	920
139	1650.00	370	575	720	812	884	945
140	1700.00	380	591	740	833	907	971
141	1750.00	390	606	759	855	931	996
142	1800.00	400	622	779	877	955	1022
143	1850.00	410	638	798	900	979	1048
144	1900.00	421	654	818	923	1004	1074
145	1950.00	431	670	839	946	1029	1101
146	2000.00	442	686	859	968	1054	1128
147	2050.00	452	702	879	991	1079	1154
148	2100.00	463	718	899	1014	1104	1181
149	2150.00	473	734	919	1037	1129	1207

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	Amendment No. 1						
150	2200.00	484	751	940	1060	1154	1234
	2250.00	494	767	960	1082	1179	1261
151	2300.00	505	783	980	1105	1204	1287
152	2350.00	515	799	1000	1128	1229	1314
153	2400.00	526	815	1020	1151	1254	1340
154	2450.00	536	831	1041	1174	1279	1367
155	2500.00	547	847	1061	1196	1304	1394
156	2550.00	557	864	1081	1219	1329	1420
157	2600.00	568	880	1101	1242	1354	1447
158	2650.00	578	896	1121	1265	1379	1473
159	2700.00	588	912	1141	1287	1403	1500
160	2750.00	597	927	1160	1308	1426	1524
161	2800.00	607	941	1178	1328	1448	1549
162	2850.00	616	956	1197	1349	1471	1573
163							

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Bill No. HB 907 (2010)

	Amendment No. 1						
164	2900.00	626	971	1215	1370	1494	1598
165	2950.00	635	986	1234	1391	1517	1622
166	3000.00	644	1001	1252	1412	1540	1647
167	3050.00	654	1016	1271	1433	1563	1671
168	3100.00	663	1031	1289	1453	1586	1695
169	3150.00	673	1045	1308	1474	1608	1720
170	3200.00	682	1060	1327	1495	1631	1744
171	3250.00	691	1075	1345	1516	1654	1769
172	3300.00	701	1090	1364	1537	1677	1793
173	3350.00	710	1105	1382	1558	1700	1818
174	3400.00	720	1120	1401	1579	1723	1842
175	3450.00	729	1135	1419	1599	1745	1867
176	3500.00	738	1149	1438	1620	1768	1891
177	3550.00	748	1164	1456	1641	1791	1915

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	Amendment No. 1						
178	3600.00	757	1179	1475	1662	1814	1940
	3650.00	767	1194	1493	1683	1837	1964
179							
	3700.00	776	1208	1503	1702	1857	1987
180							
	3750.00	784	1221	1520	1721	1878	2009
181							
	3800.00	793	1234	1536	1740	1899	2031
182							
	3850.00	802	1248	1553	1759	1920	2053
183							
	3900.00	811	1261	1570	1778	1940	2075
184							
	3950.00	819	1275	1587	1797	1961	2097
185							
	4000.00	828	1288	1603	1816	1982	2119
186							
	4050.00	837	1302	1620	1835	2002	2141
187							
	4100.00	846	1315	1637	1854	2023	2163
188							
	4150.00	854	1329	1654	1873	2044	2185
189							
	4200.00	863	1342	1670	1892	2064	2207
190							
	4250.00	872	1355	1687	1911	2085	2229
191							

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	Amendment No. 1						
192	4300.00	881	1369	1704	1930	2106	2251
	4350.00	889	1382	1721	1949	2127	2273
193	4400.00	898	1396	1737	1968	2147	2295
194	4450.00	907	1409	1754	1987	2168	2317
195	4500.00	916	1423	1771	2006	2189	2339
196	4550.00	924	1436	1788	2024	2209	2361
197	4600.00	933	1450	1804	2043	2230	2384
198	4650.00	942	1463	1821	2062	2251	2406
199	4700.00	951	1477	1838	2081	2271	2428
200	4750.00	959	1490	1855	2100	2292	2450
201	4800.00	968	1503	1871	2119	2313	2472
202	4850.00	977	1517	1888	2138	2334	2494
203	4900.00	986	1530	1905	2157	2354	2516
204	4950.00	993	1542	1927	2174	2372	2535
205							

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	Amendment No. 1						
206	5000.00	1000	1551	1939	2188	2387	2551
207	5050.00	1006	1561	1952	2202	2402	2567
208	5100.00	1013	1571	1964	2215	2417	2583
209	5150.00	1019	1580	1976	2229	2432	2599
210	5200.00	1025	1590	1988	2243	2447	2615
211	5250.00	1032	1599	2000	2256	2462	2631
212	5300.00	1038	1609	2012	2270	2477	2647
213	5350.00	1045	1619	2024	2283	2492	2663
214	5400.00	1051	1628	2037	2297	2507	2679
215	5450.00	1057	1638	2049	2311	2522	2695
216	5500.00	1064	1647	2061	2324	2537	2711
217	5550.00	1070	1657	2073	2338	2552	2727
218	5600.00	1077	1667	2085	2352	2567	2743
219	5650.00	1083	1676	2097	2365	2582	2759

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

	Amendment No. 1						
220	5700.00	1089	1686	2109	2379	2597	2775
221	5750.00	1096	1695	2122	2393	2612	2791
222	5800.00	1102	1705	2134	2406	2627	2807
223	5850.00	1107	1713	2144	2418	2639	2820
224	5900.00	1111	1721	2155	2429	2651	2833
225	5950.00	1116	1729	2165	2440	2663	2847
226	6000.00	1121	1737	2175	2451	2676	2860
227	6050.00	1126	1746	2185	2462	2688	2874
228	6100.00	1131	1754	2196	2473	2700	2887
229	6150.00	1136	1762	2206	2484	2712	2900
230	6200.00	1141	1770	2216	2495	2724	2914
231	6250.00	1145	1778	2227	2506	2737	2927
232	6300.00	1150	1786	2237	2517	2749	2941
233	6350.00	1155	1795	2247	2529	2761	2954

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

	Amendment No. 1						
234	6400.00	1160	1803	2258	2540	2773	2967
235	6450.00	1165	1811	2268	2551	2785	2981
236	6500.00	1170	1819	2278	2562	2798	2994
237	6550.00	1175	1827	2288	2573	2810	3008
238	6600.00	1179	1835	2299	2584	2822	3021
239	6650.00	1184	1843	2309	2595	2834	3034
240	6700.00	1189	1850	2317	2604	2845	3045
241	6750.00	1193	1856	2325	2613	2854	3055
242	6800.00	1196	1862	2332	2621	2863	3064
243	6850.00	1200	1868	2340	2630	2872	3074
244	6900.00	1204	1873	2347	2639	2882	3084
245	6950.00	1208	1879	2355	2647	2891	3094
246	7000.00	1212	1885	2362	2656	2900	3103
247	7050.00	1216	1891	2370	2664	2909	3113

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

	Amendment No. 1						
248	7100.00	1220	1897	2378	2673	2919	3123
249	7150.00	1224	1903	2385	2681	2928	3133
250	7200.00	1228	1909	2393	2690	2937	3142
251	7250.00	1232	1915	2400	2698	2946	3152
252	7300.00	1235	1921	2408	2707	2956	3162
253	7350.00	1239	1927	2415	2716	2965	3172
254	7400.00	1243	1933	2423	2724	2974	3181
255	7450.00	1247	1939	2430	2733	2983	3191
256	7500.00	1251	1945	2438	2741	2993	3201
257	7550.00	1255	1951	2446	2750	3002	3211
258	7600.00	1259	1957	2453	2758	3011	3220
259	7650.00	1263	1963	2461	2767	3020	3230
260	7700.00	1267	1969	2468	2775	3030	3240
261	7750.00	1271	1975	2476	2784	3039	3250

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

	Amendment No. 1						
262	7800.00	1274	1981	2483	2792	3048	3259
263	7850.00	1278	1987	2491	2801	3057	3269
264	7900.00	1282	1992	2498	2810	3067	3279
265	7950.00	1286	1998	2506	2818	3076	3289
266	8000.00	1290	2004	2513	2827	3085	3298
267	8050.00	1294	2010	2521	2835	3094	3308
268	8100.00	1298	2016	2529	2844	3104	3318
269	8150.00	1302	2022	2536	2852	3113	3328
270	8200.00	1306	2028	2544	2861	3122	3337
271	8250.00	1310	2034	2551	2869	3131	3347
272	8300.00	1313	2040	2559	2878	3141	3357
273	8350.00	1317	2046	2566	2887	3150	3367
274	8400.00	1321	2052	2574	2895	3159	3376
275	8450.00	1325	2058	2581	2904	3168	3386

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

	Amendment No. 1						
276	8500.00	1329	2064	2589	2912	3178	3396
277	8550.00	1333	2070	2597	2921	3187	3406
278	8600.00	1337	2076	2604	2929	3196	3415
279	8650.00	1341	2082	2612	2938	3205	3425
280	8700.00	1345	2088	2619	2946	3215	3435
281	8750.00	1349	2094	2627	2955	3224	3445
282	8800.00	1352	2100	2634	2963	3233	3454
283	8850.00	1356	2106	2642	2972	3242	3464
284	8900.00	1360	2111	2649	2981	3252	3474
285	8950.00	1364	2117	2657	2989	3261	3484
286	9000.00	1368	2123	2664	2998	3270	3493
287	9050.00	1372	2129	2672	3006	3279	3503
288	9100.00	1376	2135	2680	3015	3289	3513
289	9150.00	1380	2141	2687	3023	3298	3523

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

	Amendment No. 1						
290	9200.00	1384	2147	2695	3032	3307	3532
291	9250.00	1388	2153	2702	3040	3316	3542
292	9300.00	1391	2159	2710	3049	3326	3552
293	9350.00	1395	2165	2717	3058	3335	3562
294	9400.00	1399	2171	2725	3066	3344	3571
295	9450.00	1403	2177	2732	3075	3353	3581
296	9500.00	1407	2183	2740	3083	3363	3591
297	9550.00	1411	2189	2748	3092	3372	3601
298	9600.00	1415	2195	2755	3100	3381	3610
299	9650.00	1419	2201	2763	3109	3390	3620
300	9700.00	1422	2206	2767	3115	3396	3628
301	9750.00	1425	2210	2772	3121	3402	3634
302	9800.00	1427	2213	2776	3126	3408	3641
303	9850.00	1430	2217	2781	3132	3414	3647

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

Amendment No. 1

9900.00 1432 2221 2786 3137 3420 3653

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9950.00 1435 2225 2791 3143 3426 3659

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10000.00 1437 2228 2795 3148 3432 3666

306

307 (a) If the obligor parent's ~~For combined monthly net~~
 308 income is less than the amount in ~~set out on the above~~
 309 guidelines schedule:7

310 1. The parent should be ordered to pay a child support
 311 amount, determined on a case-by-case basis, to establish the
 312 principle of payment and lay the basis for increased support
 313 orders should the parent's income increase in the future.

314 2. The obligor parent's child support payment shall be the
 315 lesser of the obligor parent's actual dollar share of the total
 316 minimum child support amount, as determined in subparagraph 1.,
 317 and 90 percent of the difference between the obligor parent's
 318 monthly net income and the current poverty guidelines as
 319 periodically updated in the Federal Register by the United
 320 States Department of Health and Human Services pursuant to 42
 321 U.S.C. s. 9902(2) for a single individual living alone.

322 (b) For combined monthly net income greater than the
 323 amount set out in the above guidelines schedule, the obligation
 324 is shall be the minimum amount of support provided by the
 325 guidelines schedule plus the following percentages multiplied by
 326 the amount of income over \$10,000:

327

Amendment No. 1

Child or Children

328

One	Two	Three	Four	Five	Six
5.0%	7.5%	9.5%	11.0%	12.0%	12.5%

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(7) Child care costs incurred ~~on behalf of the children~~ due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent ~~shall be reduced by 25 percent and then~~ shall be added to the basic obligation. After the ~~adjusted~~ child care costs are added ~~to the basic obligation~~, any moneys prepaid by a parent for child care costs for the child or children of this action shall be deducted from that parent's child support obligation for that child or those children. Child care costs may ~~shall~~ not exceed the level required to provide quality care from a licensed source ~~for the children~~.

(11) (a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.
2. Independent income of the child, not to include moneys received by a child from supplemental security income.
3. The payment of support for a parent which ~~regularly~~ has been regularly paid and for which there is a demonstrated need.

Amendment No. 1

- 352 4. Seasonal variations in one or both parents' incomes or
353 expenses.
- 354 5. The age of the child, taking into account the greater
355 needs of older children.
- 356 6. Special needs, such as costs that may be associated
357 with the disability of a child, that have traditionally been met
358 within the family budget even though the fulfilling of those
359 needs will cause the support to exceed the presumptive amount
360 established by the guidelines.
- 361 7. Total available assets of the obligee, obligor, and the
362 child.
- 363 8. The impact of the Internal Revenue Service Child &
364 Dependent Care Tax Credit, Earned Income Tax Credit, and
365 dependency exemption and waiver of that exemption. The court may
366 order a parent to execute a waiver of the Internal Revenue
367 Service dependency exemption if the paying parent is current in
368 support payments.
- 369 9. An ~~When~~ application of the child support guidelines
370 schedule that requires a person to pay another person more than
371 55 percent of his or her gross income for a child support
372 obligation for current support resulting from a single support
373 order.
- 374 10. The particular parenting plan, ~~such as where the child~~
375 ~~spends a significant amount of time, but less than 40 percent of~~
376 ~~the overnights, with one parent, thereby reducing the financial~~
377 ~~expenditures incurred by the other parent;~~ or the refusal of a
378 parent to become involved in the activities of the child.

Amendment No. 1

379 11. Any other adjustment that ~~which~~ is needed to achieve
380 an equitable result which may include, but not be limited to, a
381 reasonable and necessary existing expense or debt. Such expense
382 or debt may include, but is not limited to, a reasonable and
383 necessary expense or debt that ~~which~~ the parties jointly
384 incurred during the marriage.

385 (b) If ~~Whenever~~ a particular parenting plan provides that
386 each child spend ~~a substantial amount of~~ time with each parent,
387 the court shall adjust any award of child support, as follows:

388 1. In accordance with subsections (9) and (10), calculate
389 the amount of support obligation apportioned to each parent
390 without including day care and health insurance costs in the
391 calculation ~~and multiply the amount by 1.5.~~

392 2. Calculate the percentage of overnight stays the child
393 spends with each parent.

394 3. Multiply each parent's support obligation as calculated
395 in subparagraph 1. by the sum of one and the smaller percentage
396 calculated in subparagraph 2.

397 4.3. Multiply each parent's support obligation as
398 calculated in subparagraph 3. 1. by the percentage of the other
399 parent's overnight stays with the child as calculated in
400 subparagraph 2.

401 5.4. The difference between the amounts calculated in
402 subparagraph 4. is 3. ~~shall be~~ the monetary transfer necessary
403 between the parents for the care of the child, subject to an
404 adjustment for day care and health insurance expenses.

405 6.5. Pursuant to subsections (7) and (8), calculate the
406 net amounts owed by each parent for the expenses incurred for

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 907 (2010)

Amendment No. 1

407 day care and health insurance coverage for the child. ~~Day care~~
408 ~~shall be calculated without regard to the 25-percent reduction~~
409 ~~applied by subsection (7).~~

410 7.6. Adjust the support obligation owed by each parent
411 pursuant to subparagraph 5. 4. by crediting or debiting the
412 amount calculated in subparagraph 6. 5. This amount represents
413 the child support which must be exchanged between the parents.

414 8.7. The court may deviate from the child support amount
415 calculated pursuant to subparagraph 7. 6. based upon the
416 deviation factors in paragraph (a), as well as the obligee
417 parent's low income and ability to maintain the basic
418 necessities of the home for the child, the likelihood that
419 either parent will actually exercise the time-sharing schedule
420 set forth in the parenting plan granted by the court, and
421 whether all of the children are exercising the same time-sharing
422 schedule.

423 ~~8. For purposes of adjusting any award of child support~~
424 ~~under this paragraph, "substantial amount of time" means that a~~
425 ~~parent exercises visitation at least 40 percent of the~~
426 ~~overnights of the year.~~

427 (c) A parent's failure to regularly exercise the court-
428 ordered or agreed time-sharing schedule not caused by the other
429 parent which resulted in the adjustment of the amount of child
430 support pursuant to subparagraph (a)10. or paragraph (b) shall
431 be deemed a substantial change of circumstances for purposes of
432 modifying the child support award. A modification pursuant to
433 this paragraph is ~~shall be~~ retroactive to the date the

Amendment No. 1

434 noncustodial parent first failed to regularly exercise the
435 court-ordered or agreed time-sharing schedule.

436 Section 4. This act shall take effect January 1, 2011.
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T I T L E A M E N D M E N T

440

Remove the entire title and insert:

441

A bill to be entitled

442

An act relating to child support guidelines; amending s.

443

61.13, F.S.; requiring all child support orders after a

444

certain date to contain certain provisions; creating s.

445

61.29, F.S.; providing principles for implementing the

446

support guidelines schedule; amending s. 61.30, F.S.;

447

requiring that census information be used if information

448

about earnings level in the community is not available;

449

providing that the burden of proof is on the party seeking

450

to impute income to the other party; providing for the

451

calculation of the obligor parent's child support payment

452

under certain circumstances; revising the deviation

453

factors that a court may consider when adjusting a

454

parent's share of the child support award; providing an

455

effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 927

Homestead Assessments

SPONSOR(S): Kiar

TIED BILLS: None

IDEN./SIM. BILLS: SB 1884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond <i>MB</i>	De La Paz <i>[Signature]</i>
2) Military & Local Affairs Policy Committee			
3) Finance & Tax Council			
4)			
5)			

SUMMARY ANALYSIS

The voters enacted a limit on property valuation used in assessing local ad valorem property taxes known as Save Our Homes. Under that provision, annual increases in valuation for tax purposes on homestead property are limited during the period that a person maintains the homestead exemption. Upon a change in ownership, however, the valuation must be increased to full value for tax purposes. Current law provides that certain types of real property transfers, including transfers between legal and equitable title, are not considered a change in ownership that would require an increased valuation. Individuals commonly transfer their homestead from legal (individual) ownership to various forms of equitable ownership as part of their estate planning.

This bill provides that transfers between different forms of equitable title similarly are not considered a change in ownership, provided that the same individual continues to qualify for the homestead tax exemption. Additionally, a transfer to a certain form of long-term leasehold interest used for estate tax purposes will also not be considered a change in ownership.

This bill appears to have an indeterminate fiscal impact on local government revenues. This bill does not appear to have a fiscal impact on state government.

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

Local governments are authorized to impose ad valorem taxes, which are taxes charged as a percentage of the value of the property, by art. VII, s. 9 of the state constitution. The valuation of real property for purposes of ad valorem taxation is subject to several limitations and deductions. One limitation is popularly known as the Save Our Homes amendment, at art. VII, s. 4(c).

The Save Our Homes amendment was enacted at the 1992 general election as a petition initiative. As to homestead property, the amendment limits any annual increase in valuation for property tax purposes to the lesser of 3% of the assessment for the prior year or the percent change in the consumer price index, whichever is less. Upon any change of ownership, however, any Save Our Homes savings on that property no longer apply, and the property must be assessed at just value as of January 1 of the following year. This bill addresses changes in ownership.

Section 193.155, F.S., implements the Save Our Homes amendment. Subsection 193.155(3), F.S., provides that there is no change in ownership when, following a change or transfer, the same person is entitled to the homestead exemption as was previously entitled and the transfer is between legal and equitable title.¹ Under current law at s. 193.155(3), F.S., the following types of real property transfers are not considered a change of ownership that triggers an increased assessment at just value:

- Any transfer in which the person who receives the homestead exemption is the same person who was entitled to receive homestead exemption on that property before the transfer, and
 - The transfer of title is to correct an error;
 - The transfer is between legal and equitable title; or
 - Where owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee (unless one of the other individuals applies for a homestead exemption on the property).

¹ Legal title refers to the duties and responsibilities of maintaining and controlling some property, while equitable title refers to the benefits and enjoyment of that property. The essence of a trust is splitting the legal title and equitable title in property such that one or more people (the trustees) have the legal title and control the property while others (the beneficiaries) own the equitable title and get the use and enjoyment of the property.

- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage, provided that the transferee applies for and receives the homestead exemption;
- The transfer, upon the death of the owner, is between the owner and a legal or natural dependent who permanently resides on the property; or
- The transfer occurs by operation of law under s. 732.4015, F.S., which section details the inheritance rights of surviving spouses and children.

The provisions by which a transfer between legal and equitable title are not considered a change in ownership under Save Our Homes recognizes that individuals commonly transfer their home to some legal entity, usually a trust, as part of common estate planning activities. So long as such individuals continue to reside in the home and claim the homestead exemption, such transfer is not in effect the type of change of ownership that was intended as one that would trigger a loss of the Save Our Homes benefit.

Qualified Personal Residence Trust

A type of equitable title permitted under the Internal Revenue Code is a Qualified Personal Residence Trust (QPRT). A QPRT is an estate planning device whereby the settler creates an irrevocable trust funded by the transfer of a personal residence to the trustee while retaining in the transferor a right to reside on the property for a term of years.² This strategy is part of the federal income tax code which allows homeowners to transfer property to their children while avoiding future estate taxes.³ This transfer from legal to equitable ownership is not a change in ownership that leads to loss of the Save Our Homes savings.

The transfer of the personal residence allows the individual to retain the right to use the residence rent-free for a specified period of time (also called the "retained term interest"). In these cases, the tax savings occur only if the grantor of the trust survives the period of his or her retained interest. Two district courts of appeal in Florida have held that the individual continues to be eligible to receive the homestead ad valorem tax exemption during the retained term interest.⁴

At the conclusion of the retained term interest, legal title is transferred to the beneficiary. However, it is not uncommon for the settlor of the trust, who has been living in the property and enjoying the Save Our Homes limitation, to wish to remain in their home. Under these circumstances, some advisers have recommended that the individual enter into a lease for a term of at least 98 years (leasehold interest⁵), which they believe should enable the individual to continue to receive the homestead ad valorem tax exemption.⁶

However, it is reported that at least one property appraiser's office has taken the position that that this second change of ownership, a change or transfer of ownership between two equitable titles, will result in the homestead real property being reassessed for purposes of determining ad valorem taxes subsequent to the transfer. Thus, under the reasoning of at least one property appraiser's office, an individual who creates a new revocable inter vivos trust and transfers ownership of his or her homestead real property from the old trust to the new trust would be subject to having his or her homestead real property reassessed and would lose the benefit of the SOH cap that had been in effect prior to the transfer. In other words, this "change in ownership" is not protected under the provisions of

² Jeffrey A. Baskies, *Understanding Estate Planning with Qualified Personal Residence Trusts*, 73 Fla. B.J. 72 (1999).

³ I.R.C. § 2702; Peter A. Borrok, *Four Estate Planning Devices to Get Excited About*, N.Y.St.B.J., Jan. 1995, at 32; David C. Humphreys, Jr., *Qualified Personal Residence Trusts: "Have Your Grits and Eat Them, Too!"*, S.C.Law., Nov.-Dec. 1994, at 45.

⁴ *Robbins v. Welbaum*, 664 So.2d 1 (Fla. 3rd DCA 1995), and *Nolte v. White*, 784 So.2d 493 (Fla. 4th DCA 2001).

⁵ A leasehold interest is a claim or right to enjoy the exclusive possession and use of an asset or property for a stated definite period, as created by a written lease.

⁶ See s. 196.041, F.S., and *Higgs v. Warrick*, 2008 WL 4866310 (Fla.App. 3 Dist.).

s. 193.155(3), F.S., and the homestead property must be reassessed when transferred from one inter vivos trust to another, even if the equitable owner remains the same.

Effect of Bill

This bill amends s. 193.155(3), F.S., to provide that certain transfers between certain equitable interests will not be considered a change in ownership and therefore will not trigger an increased property tax assessment under the Save Our Homes provisions of the state constitution. The following transactions are added to the list of transactions that are not a change of ownership:

- A transfer from one form of equitable title to another form, provided that no additional person applies for a homestead exemption on the property and provided that the same person is entitled to the homestead exemption as was previously entitled.
- Equitable title is changed or transferred between husband and wife.

This bill also corrects a cross-reference error in s. 193.155(3)(c), F.S. That section references s. 732.4015, F.S., which refers to a devise⁷ of property by operation of law. However, a devise is a direction to transfer property through a will, a devise is not an actual transfer of property and a devise is not "operation of law". The bill amends the cross-reference to refer to intestate descent of the homestead under s. 732.401, F.S., which section provides for a transfer of property by operation of law.

This bill also provides that any leasehold interest that qualifies one for the homestead exemption is to be treated as an equitable interest. Thus, a transfer involving a qualified personal residence trust may qualify as a transfer that does not trigger an increased assessment.

B. SECTION DIRECTORY:

Section 1 amends s. 193.155(3), F.S., regarding homestead assessments.

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:

The Revenue Estimating Conference has not reviewed this bill for this legislative session. Last year, the conference determined that a similar bill would have an indeterminate impact on local ad valorem tax revenues.

⁸ Section 731.201, F.S., addresses the general provisions of the probate code and defines "devise" as follows: when used as a noun, "devise" refers to a testamentary disposition of real or personal property. When used as a verb, "devise" refers to disposing of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in the probate code, the will, or the trust. "Devise" is expanded upon in s. 732.4015, F.S., to include a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. However, even though this bill would have a negative indeterminate fiscal impact on local governments, an exemption applies because this impact is not expected to exceed \$1.9 million. Therefore, the mandates provision does not apply because the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue may have to make minor changes to Rule 12D-8.0061 as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

HB 927

2010

1 A bill to be entitled
 2 An act relating to homestead assessments; amending s.
 3 193.155, F.S.; revising criteria under which transfer of
 4 homestead property is not considered a change of
 5 ownership; providing construction; providing an effective
 6 date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (3) of section 193.155, Florida
 11 Statutes, is amended to read:

12 193.155 Homestead assessments.—Homestead property shall be
 13 assessed at just value as of January 1, 1994. Property receiving
 14 the homestead exemption after January 1, 1994, shall be assessed
 15 at just value as of January 1 of the year in which the property
 16 receives the exemption unless the provisions of subsection (8)
 17 apply.

18 (3) (a) Except as provided in this subsection or subsection
 19 (8), property assessed under this section shall be assessed at
 20 just value as of January 1 of the year following a change of
 21 ownership. Thereafter, the annual changes in the assessed value
 22 of the property are subject to the limitations in subsections
 23 (1) and (2). For the purpose of this section, a change of
 24 ownership means any sale, foreclosure, or transfer of legal
 25 title or beneficial title in equity to any person, except as
 26 provided in this subsection. There is no change of ownership if:

27 1.(a) Subsequent to the change or transfer, the same
 28 person is entitled to the homestead exemption as was previously
 29 entitled and:

30 a.1. The transfer of title is to correct an error;

31 b.2. The transfer is between legal and equitable title or
 32 equitable and equitable title and no additional person applies
 33 for a homestead exemption on the property; or

34 c.3. The change or transfer is by means of an instrument
 35 in which the owner is listed as both grantor and grantee of the
 36 real property and one or more other individuals are additionally
 37 named as grantee. However, if any individual who is additionally
 38 named as a grantee applies for a homestead exemption on the
 39 property, the application shall be considered a change of
 40 ownership;

41 2.(b) Legal or equitable title is changed or transferred
 42 ~~The transfer is~~ between husband and wife, including a change or
 43 transfer to a surviving spouse or a transfer due to a
 44 dissolution of marriage;

45 3.(e) The transfer occurs by operation of law to the
 46 surviving spouse or minor child or children under s. 732.401
 47 ~~732.4015~~; or

48 4.(d) Upon the death of the owner, the transfer is between
 49 the owner and another who is a permanent resident and is legally
 50 or naturally dependent upon the owner.

51 (b) For purposes of this subsection, a leasehold interest
 52 that qualifies for the homestead exemption under s. 196.031 or
 53 s. 196.041 shall be treated as an equitable interest in the
 54 property.

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55

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

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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) Kiar offered the following:
4

5 **Amendment (with title amendment)**

6 Between lines 54 and 55, insert:

7 Section 2. Section 193.1556, Florida Statutes, is amended
8 to read:

9 193.1556 Notice of change of ownership or control
10 required.-

11 (1) Any person or entity that owns property assessed under
12 s. 193.1554 or s. 193.1555 must notify the property appraiser
13 promptly of any change of ownership or control as defined in ss.
14 193.1554(5) and 193.1555(5). If any property owner fails to so
15 notify the property appraiser and the property appraiser
16 determines that for any year within the prior 10 years the
17 owner's property was not entitled to assessment under s.
18 193.1554 or s. 193.1555, the owner of the property is subject to
19 the taxes avoided as a result of such failure plus 15 percent

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20 interest per annum and a penalty of 50 percent of the taxes
21 avoided. It is the duty of the property appraiser making such
22 determination to record in the public records of the county a
23 notice of tax lien against any property owned by that person or
24 entity in the county, and such property must be identified in
25 the notice of tax lien. Such property is subject to the payment
26 of all taxes and penalties. Such lien when filed shall attach to
27 any property, identified in the notice of tax lien, owned by the
28 person or entity that illegally or improperly was assessed under
29 s. 193.1554 or s. 193.1555. If such person or entity no longer
30 owns property in that county, but owns property in some other
31 county or counties in the state, it shall be the duty of the
32 property appraiser to record a notice of tax lien in such other
33 county or counties, identifying the property owned by such
34 person or entity in such county or counties, and it becomes a
35 lien against such property in such county or counties.

36 (2) If the transfer of the real property was made pursuant
37 to the provisions of 12 U.S.C. s.215a(e) conducted under the
38 receivership of the Federal Deposit Insurance Corporation,
39 authorized and made pursuant to 12 U.S.C. s. 191, the
40 notification requirement in subsection (1) shall not apply for
41 transfers between December 31, 2007 and December 31, 2011.

42
43
44
45
46

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

Remove line 5 and insert:

COUNCIL/COMMITTEE AMENDMENT

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47 ownership; providing construction; amending s. 193.1556, F.S.;

48 providing that notice to a property appraiser is not required

49 when transfer of real property is made as part of a federal

50 receivership proceeding related to failed banks; providing an

51 effective