



Judiciary Committee

February 5, 2013

9:00 AM

404 HOB

Meeting Packet

**Will Weatherford
Speaker**

**Dennis Baxley
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Tuesday, February 05, 2013 09:00 am
End Date and Time: Tuesday, February 05, 2013 10:00 am
Location: 404 HOB
Duration: 1.00 hrs

Consideration of the following bill(s):

CS/HB 5 Open Parties by Criminal Justice Subcommittee, Pilon
HB 15 Protest Activities by Rooney
HB 77 Landlords and Tenants by Porter

NOTICE FINALIZED on 01/29/2013 16:06 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 5 Open Parties
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|---------------------|----------------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N, As CS | Cox | Cunningham |
| 2) Judiciary Committee | | Cox <i>McC</i> | Havlicak <i>RH</i> |

SUMMARY ANALYSIS

Section 856.015, F.S., makes it a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

The term "open house party" is defined as "a social gathering at a residence", and the term "residence" is defined as a "home, apartment, condominium, or other dwelling unit." The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

The bill amends s. 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on "property" and defines this term as a "residence, vacant structure, or open acreage with or without a structure."

The bill creates a new exception specifying that criminal penalties do not apply to the "use of alcoholic beverages on property where a minor child is accompanied by his or her parent or legal guardian who allows such use by the child."

The bill expands the application of s. 856.015, F.S., to include vacant structures and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the misdemeanor penalties of s. 856.015, F.S., the bill may have a negative jail bed impact on local governments.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 856.015, F.S., makes it a second degree misdemeanor¹ for a person² who has control³ of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor⁴ and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.⁵

The term "open house party" is defined as "a social gathering at a residence," and the term "residence" is defined as a "home, apartment, condominium, or other dwelling unit."⁶

The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

There are other statutes currently in effect that relate to consumption or possession of alcohol by a minor. For example, s. 827.04, F.S., entitled "Contributing to the delinquency or dependency of a child", makes it a first degree misdemeanor for "a person to commit an act which causes or tends to cause, encourage, or contribute to a child becoming a delinquent or dependent child or a child in need of services." Case law related to this statute has held that providing alcohol or drugs to a minor does trigger criminal liability under this statute.⁷

Effect of the Bill

The bill amends s. 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on property other than a residence. Specifically, the bill prohibits a person who has control of a property to allow an open party to take place at such property if any alcoholic beverage or drug is possessed or consumed by a minor and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property; and
- The person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

The bill defines the term "property" as a "residence, vacant structure, or open acreage with or without a structure." The bill replaces references to "open house party" with "open party" and defines "open party" as "a social gathering at any property."

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

² Section 856.015(1), F.S., defines the term "person" as an individual 18 years of age or older.

³ Section 856.015(1), F.S., defines the term "control" as the authority or ability to regulate, direct, or dominate.

⁴ Section 856.015(1), F.S., defines the term "minor" as an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562, F.S.

⁵ Second or subsequent violations of the statute are first degree misdemeanors. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S. It is also a first degree misdemeanor if a violation causes or contributes to causing serious bodily injury, as defined in s. 316.1933, F.S., or death to the minor, or if the minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party. Section 856.015(4) and (5), F.S.

⁶ Section 856.015(1), F.S.

⁷ See *Kito v. State*, 888 So.2d 114 (Fla. 4th DCA 2004). While the evidence was insufficient to uphold the conviction in this case, the Court was clear that a conviction for contributing to the delinquency of a minor can be sustained for an adult who knowingly allows a minor in their presence to possess or consume alcohol and/or drugs.

The bill creates a new exception specifying that criminal penalties do not apply to the "use of alcoholic beverages on property where a minor child is accompanied by his or her parent or legal guardian who allows such use by the child."

The penalties remain unchanged.

B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill expands the application of s. 856.015, F.S., to include vacant structures and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the misdemeanor penalties of s. 856.015, F.S., the bill may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who have control of vacant structures or open acreage with or without structures are now subject to criminal penalties for violations of s. 856.015, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

“Control” is defined as “the authority or ability to regulate, direct, or dominate.” To date, this term has not been challenged. However, the bill expands the application of s. 856.015, F.S., to a vacant structure and open acreage with or without a structure. The element of “control” is an issue of fact. Proving that a person had the “authority or ability to regulate or dominate” a vacant structure or open acreage in a criminal trial may be factually challenging.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified the definition of “property” by modifying the language to a “residence, vacant structure, or open acreage with or without a structure;” and
- Deleted the exception relating to restaurants and bars and created a new exception which states that s. 856.015, F.S., does not apply to the “use of alcoholic beverages on property where a minor child is accompanied by his or her parent or legal guardian who allows such use by the child.”

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to open parties; amending s. 856.015,
 3 F.S.; revising definitions to apply the restrictions
 4 formerly applicable to open house parties to all open
 5 parties and not solely those parties occurring in a
 6 residence; prohibiting a person from allowing an open
 7 party to take place; providing criminal penalties;
 8 revising an exemption; conforming provisions;
 9 providing an effective date.

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

12
 13 Section 1. Section 856.015, Florida Statutes, is amended
 14 to read:

15 856.015 Open ~~house~~ parties.—

16 (1) Definitions.—As used in this section:

17 (a) "Alcoholic beverage" means distilled spirits and any
 18 beverage containing 0.5 percent or more alcohol by volume. The
 19 percentage of alcohol by volume shall be determined in
 20 accordance with ~~the provisions of~~ s. 561.01(4)(b).

21 (b) "Control" means the authority or ability to regulate,
 22 direct, or dominate.

23 (c) "Drug" means a controlled substance, ~~as that term is~~
 24 defined in ss. 893.02(4) and 893.03.

25 (d) "Minor" means an individual not legally permitted by
 26 reason of age to possess alcoholic beverages pursuant to chapter
 27 562.

28 (e) "Open ~~house~~ party" means a social gathering at any

29 property a residence.

30 (f) "Person" means an individual 18 years of age or older.

31 (g) "Property" means a residence, vacant structure, or
 32 open acreage with or without a structure.

33 (h)~~(g)~~ "Residence" means a home, apartment, condominium,
 34 or other dwelling unit.

35 (2) A person having control of any property ~~residence~~ may
 36 not allow an open ~~house~~ party to take place at the property
 37 ~~residence~~ if any alcoholic beverage or drug is possessed or
 38 consumed at the property ~~residence~~ by any minor where the person
 39 knows that an alcoholic beverage or drug is in the possession of
 40 or being consumed by a minor at the property ~~residence~~ and where
 41 the person fails to take reasonable steps to prevent the
 42 possession or consumption of the alcoholic beverage or drug.

43 (3) ~~The provisions of~~ This section does shall not apply to
 44 the use of alcoholic beverages at legally protected religious
 45 observances or activities or to the use of alcoholic beverages
 46 on property where a minor child is accompanied by his or her
 47 parent or legal guardian who allows such use by the child.

48 (4) Any person who violates ~~any of the provisions of~~
 49 subsection (2) commits a misdemeanor of the second degree,
 50 punishable as provided in s. 775.082 or s. 775.083. A person who
 51 violates subsection (2) a second or subsequent time commits a
 52 misdemeanor of the first degree, punishable as provided in s.
 53 775.082 or s. 775.083.

54 (5) If a violation of subsection (2) causes or contributes
 55 to causing serious bodily injury, as defined in s. 316.1933, or
 56 death to the minor, or if the minor causes or contributes to

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57 | causing serious bodily injury or death to another as a result of
58 | the minor's consumption of alcohol or drugs at the open ~~house~~
59 | party, the violation is a misdemeanor of the first degree,
60 | punishable as provided in s. 775.082 or s. 775.083.

61 | Section 2. This act shall take effect October 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Pilon offered the following:

Amendment (with title amendment)

5 Remove lines 36-47 and insert:

6 not ~~allow~~ grant permission for an open ~~house~~ party to take place
 7 at the property ~~residence if any alcoholic beverage or drug is~~
 8 ~~possessed or consumed at the residence by any minor~~ where the
 9 person knows that an alcoholic beverage or drug will be or is in
 10 the possession of or will be or is being consumed by a minor at
 11 the open party ~~residence~~ and where the person fails to take
 12 reasonable steps to prevent the possession or consumption of the
 13 alcoholic beverage or drug.

14 (3) ~~The provisions of~~ This section does ~~shall~~ not apply to
 15 the use of alcoholic beverages at legally protected religious
 16 observances or activities.



Amendment No. 1

21
22
23
24
25
26

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

Remove lines 6-8 and insert:
residence; prohibiting a person from ~~allowing~~ granting
permission for an open party to take place; providing criminal
penalties; ~~revising an exemption;~~ conforming provisions;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 15 Protest Activities

SPONSOR(S): Rooney and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 118, SB 240, HB 185

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|-----------|----------------------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N | Arguelles | Cunningham |
| 2) Judiciary Committee | | Arguelles <i>CAH</i> | Havlicak <i>RN</i> |

SUMMARY ANALYSIS

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. For example, s. 871.01, F.S., makes it unlawful for a person to:

- Willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God.
- Willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a "military funeral honors detail" as defined by 10 U.S.C. s. 1491.

The bill expands current law targeting funeral disturbances by prohibiting a wider scope of conduct in a broader range of instances. Specifically, the bill makes it a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur:

- Within 500 feet of the property line of any location where a funeral, burial, or memorial service is being conducted,
- During or within 1 hour before or 1 hour after the conducting of the funeral, burial, or memorial service.

The bill defines "protest activities" as "any action, including picketing, that is undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."

The distinction between s. 871.01, F.S., and the bill's provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly*. The bill prohibits "any action...that is undertaken with the intent to interrupt or disturb" a funeral, burial, or memorial service under the specified conditions, regardless of whether those actions *do in fact cause* such a disturbance.

The bill may have a fiscal impact on county jails in that it creates a new first degree misdemeanor offense.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. A summary of these statutes follows.

Section 877.03, F.S.

Section 877.03, F.S., relates to breach of the peace and disorderly conduct. The statute makes it a second degree misdemeanor¹ for a person to commit acts that:

- Corrupt public morals;
- Outrage the sense of public decency;
- Affect the peace and quiet of persons who may witness them;
- Engage in brawling or fighting; or
- Engage in such conduct as to constitute a breach of peace or disorderly conduct.

Courts have narrowed the construction of this language to prohibit speech that constitutes “fighting words”² or words that “inflict injury or tend to incite immediate breach of peace.”³

Section 870.01, F.S.

Section 870.01, F.S., makes it a first degree misdemeanor⁴ for a person to commit an affray. The statute also makes it a third degree felony⁵ for a person to riot, or incite or encourage a riot. Although the terms “affray” and “riot” are not defined, the courts have upheld the statute against vagueness challenges.⁶

Section 870.02, F.S.

Section 870.02, F.S., relates to unlawful assemblies. The statute makes it a second degree misdemeanor for three or more persons to meet together to commit a breach of the peace,⁷ or to do any other unlawful act.

Section 871.01, F.S.

Section 871.01(1), F.S., makes it a second degree misdemeanor to willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God. The Florida Supreme Court upheld this statute against First Amendment and overbreadth challenges.⁸

In 2006, in response to various groups creating public disturbances at high profile military funerals, subsection (2) was added to s. 871.01, F.S.⁹ Section 871.01(2), F.S., makes it a first degree misdemeanor for a person to willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a “military funeral honors detail” as defined by 10 U.S.C. s.

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

² *Macon v. State*, 854 So.2d 834, 837 (Fla. 5th DCA 2003).

³ *United States v. Lyons*, 403 F.3d 1248, 1254 (11th Cir. 2005).

⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁶ *See D.L.B. v. State*, 707 So.2d 844, 845 (Fla. 2d DCA 1998) (finding that statute sufficiently defines “affray,” given that “readily available dictionaries define “affray” as a public fight or brawl”); *State v. Beasley*, 317 So.2d 750, 753 (Fla. 1975) (upholding Section 870.01(2), F.S., as constitutional upon the Court’s authoritative, limiting construction).

⁷ Breach of the peace is described in s. 877.03, F.S.

⁸ *S.H.B. v. State*, 355 So.2d 1176 (Fla. 1978).

⁹ Chapter 2006-264, L.O.F. *Also see*, Florida House of Representatives Staff Analysis, House Bill 7127 (2006).

1491. A military honors detail includes the presence of two uniformed members of the armed forces, the playing of Taps, the folding of the United States flag and its presentation to the family.¹⁰

Although s. 871.01, F.S., does not define the phrase “interrupt or disturb,” the Supreme Court of Florida has described the phrase as follows:

[A] person must have deliberately acted to create a disturbance...the person must have acted with the intention that his behavior impede the successful functioning of the assembly or with reckless disregard of the effect of his behavior; additionally, the acts complained of must be such that a reasonable person would expect them to be disruptive and the acts must, in fact, significantly disturb the assembly.¹¹

Effect of the Bill

The bill creates s. 871.015, F.S., which targets conduct that takes place within a specified time and distance of a funeral, burial, or memorial service. The bill expands current law targeting funeral disturbances by prohibiting a *wider scope of conduct* in a *broader range of instances*.

The bill makes it a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur:

- Within 500 feet of the property line of any location,¹²
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place.

Definitions:

- The bill defines “protest activities” as “any action, including picketing, that is undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service.”
- The bill defines the phrase “funeral, burial, or memorial service” as “any service offered or provided in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains or cremated human remains.”

The distinction between s. 871.01, F.S., and the bill’s provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly*. The bill prohibits “any action...that is undertaken with the intent to interrupt or disturb” a funeral, burial, or memorial service under the specified conditions, regardless of whether those actions *do in fact cause* such a disturbance.

B. SECTION DIRECTORY:

Section 1. Creates s. 871.015, F.S., relating to unlawful protests.

Section 2. Provides that the act shall take effect October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

¹⁰ 10 U.S.C. s. 1491.

¹¹ *S.H.B. v. State*, 355 So.2d 1176, 1178 (Fla. 1977) (finding “[t]hese elements are inherent in the statute as drafted.”).

¹² Including but not limited to a residence, cemetery, funeral home, or house of worship.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact local government revenues.

2. Expenditures:

The bill may have a fiscal impact on county jails in that it creates a new first degree misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

The First Amendment of the U.S. Constitution

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *or abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”¹³

The First Amendment protects not only verbal speech, but also *expressive conduct* such as picketing.¹⁴

Snyder v. Phelps

A recent U.S. Supreme Court case addressed the First Amendment’s relation to funeral protests. In March 2006, Westboro Baptist Church demonstrated near the funeral of Marine Lance Cpl. Matthew Snyder, who was killed in Iraq. The demonstration included the display of signs reading “Thank God for Dead Soldiers,” took place within 200-300 feet of the funeral procession, and concluded before the funeral began. Cpl. Snyder’s father subsequently sued Westboro under state tort law, including a claim for intentional infliction of emotional distress. The jury found in favor of Snyder and awarded damages. On appeal, the U.S. Supreme Court found that the First Amendment protected Westboro’s speech because, among other reasons, the speech took place in a public forum and the content was a matter of public concern. The Court also noted that even though the speech in this case was protected, even protected speech “may be subject to reasonable *time, place, or manner* restrictions that are *consistent with the standards announced in this Court’s precedents*.”¹⁵

¹³ Amendment I, United States Constitution (emphasis added).

¹⁴ See *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

¹⁵ *Snyder v. Phelps*, 131 S.Ct. 1207, 1218 (2011) (emphasis added).

It is important to note that the *Snyder* case did not involve the Court reviewing the constitutionality of a state statute regulating picketing.¹⁶ Rather, the Court addressed *whether the First Amendment was a defense to a state tort claim* for intentional infliction of emotional distress, which is a separate issue. Thus, when examining the constitutionality of a statute that regulates protest activities, it is important to examine whether the statute conforms to U.S. Supreme Court precedent.

Court Precedent

Content-Based vs. Content-Neutral Restrictions

It is a fundamental constitutional principle that debate, particularly on issues of public concern, should not be inhibited by the government.¹⁷ Therefore, the most important question regarding the First Amendment issues of the bill is *whether the government is prohibiting speech based on disfavored content*.¹⁸ Such “content-based” regulations are presumptively suspect and are subject to strict scrutiny by the court.¹⁹

The government *may* restrict speech through time, place, and manner regulations that are *justified without reference to the content of the speech*.²⁰

The Eighth Circuit Court of Appeals has found both a city ordinance²¹ and a state statute²² prohibiting protest activities within a certain time and distance of a funeral content-neutral. Content neutral restrictions are subject to intermediate scrutiny by the court.²³ Under intermediate scrutiny, the court looks at the relationship, or “fit,” between the *end* and the *means* of the statute. In other words, the restrictions of the statute must be *narrowly tailored* to achieve a *significant state interest*.²⁴ Additionally, the statute must leave open “ample alternative channels” for the restricted speech.²⁵

- A *significant state interest* is grounded in the state’s traditionally broad police powers.²⁶ Courts have found a state has a significant interest in protecting its citizens from disruption during events associated with a funeral or burial service,²⁷ and in public safety concerns resulting from disruptions of the public order.²⁸ Additionally, citizens have a recognized interest in avoiding unwanted speech, including in confrontational settings.²⁹
- A statute is *narrowly tailored* to a significant state interest if it does not burden substantially more speech than necessary to achieve the state’s goal.³⁰ To be narrowly tailored in this context, the statute does *not* have to be the least restrictive means available.³¹
- In the context of a statute regulating picketing in residential areas, the U.S. Supreme Court found there were *ample alternative channels* when: “Protestors have not been barred from the residential neighborhoods. They may enter such neighborhoods, alone or in groups, even

¹⁶ *Id.* (“Maryland’s law, however, was not in effect at the time of the events at issue here, so we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional.”).

¹⁷ *Id.* at 1215 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

¹⁸ See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

¹⁹ See *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994).

²⁰ See *Ward*, 491 U.S. at 791 (emphasis added; internal quotations omitted); *Snyder*, 131 S.Ct. at 1218.

²¹ *Phelps-Roper v. City of Manchester, Mo.*, 658 F.3d 813, 816 (8th Cir. 2011).

²² *Phelps-Roper v. Nixon*, 545 F.3d 685, 691 (8th Cir. 2008).

²³ See *Turner Broad.*, 512 U.S. at 642.

²⁴ *Ward*, 491 U.S. at 791.

²⁵ *Id.*

²⁶ See *Hill v. Colorado*, 530 U.S. 703, 715 (2000).

²⁷ *Phelps-Roper v. Taft*, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007) *aff’d* in part sub nom. *Phelps-Roper v. Strickland*, 539 F.3d 356 (6th Cir. 2008).

²⁸ *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Dist. of Columbia*, 972 F.2d 365, 372 (D.C. Cir. 1992) (citing *Mosley*, 408 U.S. at 98).

²⁹ *Hill* at 716-17.

³⁰ See *Turner Broad.*, 512 U.S. at 662.

³¹ *Id.* See also *Hill*, 530 U.S. at 726.

marching.... They may go door-to-door to proselytize their views. They may distribute literature in this manner ...or through the mails. They may contact residents by telephone, short of harassment.”³²

The bill limits the definition of “protest activities” as actions “undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service.” The Sixth Circuit U.S. Court of Appeals found a statute was narrowly tailored that described protest activities as “any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service.”³³ The court noted that the language limited “protest activities” to those *directed* at a particular funeral.³⁴ Furthermore, the Eighth Circuit U.S. Court of Appeals found that a statute that did *not* contain such language was likely *not* narrowly tailored for injunction purposes.³⁵

The bill establishes a 500 foot fixed buffer zone around funeral locations. Buffer zones are potentially too broad, and therefore not narrowly tailored, if they restrict too much protected speech. Criteria include the reference point that the buffer zone surrounds, and the size of the buffer zone itself. The nature of the bill’s buffer zone likely conforms to U.S. Supreme Court precedent. A U.S. District Court in 2007 held an Ohio statute’s 300 feet “fixed” buffer zone surrounding funeral locations constitutional, but held the “floating buffer zone” surrounding funeral *processions* unconstitutional because it was not narrowly tailored.³⁶ That holding conforms to a prior Supreme Court case addressing buffer zones.³⁷ Additionally, courts have found the *size* of the buffer zone itself to be context-specific.³⁸

Finally, the bill addresses the competing interests of funeral protestors and funeral attendees in a specific location. It is therefore important to carefully define the nature of those interests. The First Amendment protects expressive conduct such as picketing, and affords the highest protection to speech based on matters of public concern, or “political speech.”³⁹ On the other hand, citizens also have a recognized interest not to be forced to hear unwanted speech.⁴⁰ Protecting citizens from hearing unwanted speech is referred to as the “captive audience” doctrine.⁴¹ To illustrate the point, there is a difference between someone holding a sign displaying an offensive message, where the burden falls on offended viewers to “avoid further bombardment of their sensibilities simply by averting their eyes,”⁴² and forcing citizens to “undertake Herculean efforts to escape the cacophony of political protests.”⁴³ The Court has held that in some cases, funeral attendees are not a “captive audience” to protest speech.⁴⁴ In other cases, courts have held that forcing a funeral attendee to choose between attending a funeral and hearing the unwanted protest communication effectively makes the attendees a “captive

³² *Frisby v. Schultz*, 487 U.S. 474, 484 (1988).

³³ *Phelps-Roper v. Strickland*, 539 F.3d 356, 368 (6th Cir. 2008).

³⁴ *Id.* (citing *Frisby v. Schultz*, 487 U.S. 474 (1988)).

³⁵ *Nixon*, 545 F.3d 685, 693 (finding statute likely not narrowly tailored “[b]ecause the Missouri statute does not contain any such [narrowing] provisions”).

³⁶ *Phelps-Roper v. Taft*, 523 F.Supp.2d at 620 (N.D. Ohio 2007) (“statute not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio’s interest protecting its citizens from disruption during the events associated with a funeral or burial service”).

³⁷ See *Schenck v. Pro-Choice Network Of W. New York*, 519 U.S. 357, 377 (1997) (finding that injunction imposing floating buffer zones of 15 feet from people and vehicles entering and leaving clinics were not narrowly tailored).

³⁸ See *Madsen*, 512 U.S. at 772; *Strickland*, 539 F.3d at 368.

³⁹ See *Snyder*, 131 S.Ct. at 1215.

⁴⁰ See *Hill*, 530 U.S. at 716-17.

⁴¹ *Snyder*, 131 S.Ct. at 1220.

⁴² *Hill* at 716 (internal quotations omitted).

⁴³ *Id.* (quoting *Madsen*, 512 U.S. at 772-73).

⁴⁴ *Snyder*, 131 S.Ct. at 1220 (finding mourner was not a captive audience to protest speech when protestors stayed 1,000 feet away from the funeral location, mourner could only see the tops of the signs when driving to the funeral, and there was no indication that the picketing in any way interfered with the funeral service itself.”).

audience.”⁴⁵ The Court noted in *Snyder v. Phelps* that the captive audience doctrine has been applied “only sparingly.”⁴⁶

Overbreadth Doctrine of the First Amendment

Even if a statute legitimately prohibits some speech, if it also prohibits a substantial amount of protected speech in relation to its legitimate sweep it may be unconstitutionally overbroad.⁴⁷

This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially “because it also threatens others not before the court-- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid.”⁴⁸ The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression.⁴⁹ Invalidation for overbreadth is “strong medicine that is not to be casually employed.”⁵⁰ The overbreadth must be “real” and “substantial.”⁵¹

A July 2010 Michigan case provides a relevant example of overbreadth. In that case, a Michigan couple was part of a vehicle funeral procession in their van. The van had for years openly displayed various messages critical of U.S. policy and President Bush. The couple was arrested and held in jail for 24 hours under Michigan’s funeral protest law which made it illegal, in pertinent part, to engage in conduct that will “adversely affect” a funeral or funeral processional.⁵² The U.S. District Court found that those parts of the statute were likely unconstitutional under the overbreadth doctrine of the First Amendment.⁵³

Vagueness Doctrine of the Fourteenth Amendment

A statute is unconstitutional under the vagueness doctrine if an ordinary person of average intelligence would not be put on notice as to what conduct is prohibited by the statute. Additionally, vague statutes invite arbitrary and discriminatory enforcement.⁵⁴ It should be noted that when a statute is challenged as having a chilling effect on constitutionally protected speech due to vagueness, courts have held that a more stringent vagueness test should apply.⁵⁵

The bill may be vulnerable to a vagueness challenge if a law enforcement officer would not understand what constitutes prohibited protest activity as it is defined. When considering this issue it should be noted that the Florida Supreme Court has upheld s. 871.01, F.S., against a vagueness challenge as to the meaning of the phrase “interrupt or disturb.”⁵⁶ That phrase is used in the bill, although it should be noted that the bill would *not* require an actual disturbance to take place as in the Florida Supreme Court’s definition in *S.H.B v. State*.

The bill may also be vulnerable to a vagueness challenge if an ordinary person of average intelligence would not understand what type of conduct would be deemed conduct “undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service.”

⁴⁵ See *Phelps-Roper v. Strickland*, 539 F.3d 356, 362 (6th Cir. 2008); *McQueary v. Stumbo*, 453 F.Supp.2d 975, 992 (E.D. Ky. 2006). But compare *Phelps-Roper v. Nixon*, 545 F.3d 685 (8th Cir. 2008).

⁴⁶ *Snyder*, 131 S.Ct. at 1220.

⁴⁷ *United States v. Williams*, 553 U.S. 285, 292 (2008).

⁴⁸ *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

⁴⁹ *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

⁵⁰ *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

⁵¹ *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

⁵² Mich. Comp. Laws Ann. s. 750.167d.

⁵³ *Lowden v. County of Clare*, 709 F.Supp.2d 540, 563 (E.D. Mich. 2010) (finding “the interaction of the 500 foot buffer zone and the “adversely affects” language is particularly problematic given the broad scope of expressive activity restricted in such a large space”).

⁵⁴ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

⁵⁵ *Village. Of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).

⁵⁶ See *S.H.B. v. State*, 355 So.2d 1176, 1178 (Fla. 1977).

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to protest activities; creating s.
 3 871.015, F.S.; providing definitions; prohibiting
 4 engaging in protest activities within a specified
 5 distance of the property line of the location of a
 6 funeral, burial, or memorial service; providing
 7 criminal penalties; providing an effective date.

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

10
 11 Section 1. Section 871.015, Florida Statutes, is created
 12 to read:

13 871.015 Unlawful protests.—

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

15 (a) "Funeral, burial, or memorial service" means any
 16 service offered or provided in connection with the final
 17 disposition, memorialization, interment, entombment, or
 18 inurnment of human remains or cremated human remains.

19 (b) "Protest activities" means any action, including
 20 picketing, that is undertaken with the intent to interrupt or
 21 disturb a funeral, burial, or memorial service.

22 (2) A person may not knowingly engage in protest
 23 activities or knowingly cause protest activities to occur within
 24 500 feet of the property line of any residence, cemetery,
 25 funeral home, house of worship, or other location during or
 26 within 1 hour before or 1 hour after the conducting of a
 27 funeral, burial, or memorial service at that place.

28 (3) A person who violates this section commits a

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29 misdemeanor of the first degree, punishable as provided in s.
30 775.082 or s. 775.083.

31 Section 2. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 77 Landlords and Tenants
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** SB 490

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|-------------------------------|-----------|----------------|--|
| 1) Civil Justice Subcommittee | 10 Y, 2 N | Ward | Bond |
| 2) Judiciary Committee | | Ward <i>JW</i> | Havlicak <i>RH</i> |

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill modifies the Act to:

- Make it applicable to lease-purchase agreements for residential properties if the buyer has not paid at least one month's rent and paid a deposit of at least 5 percent of the purchase price of the property or at least 12 months' rent.
- Provide that attorney's fees may not be awarded for personal injury actions resulting from maintenance issues between landlord and tenant.
- Provide that certain statutory notice and attorney fee provisions may not be waived in a lease.
- Modify the statutory disclosure regarding deposits to provide specific wording.
- Require landlords to pay regular assessments to an association.
- Clarify eviction notice requirements for a recurrent noncompliance event within 12 months.
- Allow a landlord to accept partial rent without waiving the right to evict.
- Require reciprocal notice by the landlord and tenant of an intent to not renew the lease at the end of the term.
- Provide that a sheriff's notice of eviction is not stayed by weekends or holidays.
- Prohibit a landlord from retaliating against a tenant who lawfully pays a landlord's association dues pursuant to a lawful demand, or a tenant who complains of a fair housing violation.
- Provide that a landlord and a mobile home park owner must be given an opportunity to cure a deficiency in any notice or pleadings prior to dismissal of an eviction action.
- Provide technical and stylistic changes.

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

This bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Part II of ch. 83, F.S., entitled the "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill makes various changes to the Act, and makes a conforming change to landlord-tenant law for mobile home parks.

Exclusions from Application of the "Florida Residential Landlord and Tenant Act"

Part II of the Act does not apply to all residential tenancies.¹ For instance, Part II does not apply to residency or detention in a facility where residence is incidental to certain treatment or services (i.e. medical or religious services). Also, s. 83.42(2), F.S. provides that Part II does not apply to "[o]ccupancy under a contract of sale of a dwelling unit or the property of which it is a part."

In *Pensacola Wine and Spirits Distillers, Inc., v. Gator Distributors, Inc.*, the court held that where the tenant had exercised an option to purchase, the lease was terminated and, therefore, the proper action for the landlord seeking possession was ejectment rather than eviction.² Under current law, it is possible for a tenant to sign a lease-purchase agreement, take possession of the premises, and make no payment, leaving ejection as the landlord's only remedy - a cause of action that takes more time than eviction.

The bill makes the Act applicable to lease-purchase agreements for residential properties where the buyer has not paid at least 12 months' rent, or when the buyer has paid at least one month's rent and a deposit of at least 5 percent of the purchase price of the property.

Attorney Fees

Section 83.48, F.S. governs the award of attorney's fees in a civil action instituted to enforce the rental agreement or provisions of the Act. The bill adds that the right to claim attorney's fees may not be waived in a lease agreement.

Currently, the prevailing party in a civil action to enforce a provision of a rental agreement or the Act may recover reasonable court costs, including attorney's fees from the non-prevailing party. Anecdotal evidence suggests that this provision has been interpreted to award attorney's fees where a tenant files a personal injury action against a landlord alleging a breach of the landlord's maintenance duties under s. 83.51, F.S. In general, attorney's fees are not awarded in personal injury actions. Section 83.48, F.S. is amended, therefore, to codify the holding in *Gilbert v. Jabour*, 527 So.2d 951 (Fla. 3rd DCA 1988), that attorney's fees may not be awarded in a claim for personal injury damages based on a breach of duty in the landlord's obligation to maintain the premises.

Deposit Money or Advance Rent Payments; Disclosures

Section 83.49, F.S. provides that a landlord must notify the tenant in writing of where the landlord will hold any security deposit and advance rent. The purpose of the statute is to assure tenants that their security deposits will be returned expeditiously or, in the alternative, that they will be promptly notified otherwise.³

¹ Section 83.42, F.S.

² 448 So.2d 34 (Fla. 1st DCA 1984).

³ See *Durene v. Alcime*, 448 So.2d 1208, 1210 (Fla. 3d DCA 1984).

Existing law requires that a landlord furnish a copy of subsection (3) of s. 83.49, F.S., which sets out remedies and time limits for claims to the security deposit after the end of the tenancy. This bill deletes the requirement to give a copy of subsection (3), and replaces it with a specifically worded disclosure.

Presently, the landlord must deposit advance rent into a separate account. However, current law is silent as to whether the landlord must give written notice and an opportunity to object before paying advance rent held in the separate account when due. The bill states that advance rent may be withdrawn from the deposit account when due, without further notice.

Current law provides that a tenant has 15 days to object after receipt of a landlord's notice of intention to impose a claim on a security deposit. After that, the landlord may deduct the amount of the claim and remit the balance to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.⁴ Current case law provides that, if a landlord fails to give timely notice of a claim against the deposit, the landlord must return the entire deposit but can file a later action for damages.⁵ The bill codifies the court's holding that the 15 days is not a statute of limitations on all actions, and further provides that a tenant who fails to timely object loses that particular right, but retains the right to pursue any available remedy in a separate cause of action.

Current law requires a landlord to transfer deposits to a new owner of the property. In practice, some landlords, especially ones who have been foreclosed, neglect to transfer the deposit to the new owner. This bill creates a rebuttable presumption that the new owner has received the deposit, but the presumption is limited to one month's rent.

To accommodate landlords who have stocks of preprinted lease forms complying with current law, the bill creates a new section providing that, for leases entered into on or before December 31, 2013, a landlord may elect to comply with the current, statutory disclosure requirements or the new disclosure requirements under the bill.

Outdated Disclosure

Section 83.50(2), F.S. requires that the landlord must disclose to new tenants of a building exceeding three stories whether there is availability of fire protection. Modern building codes require significant fire protection systems in new buildings over three stories tall. The bill deletes the outdated disclosure requirement entirely.

Landlord's Obligation to Maintain Premises and Pay Assessments

Current law provides that a landlord must comply with applicable building, housing and health code requirements.⁶ However, where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair, and the plumbing in reasonable working condition.⁷ The bill removes screens from the list of items a landlord must maintain.

Termination of Rental Agreement - Noncompliance

Section 83.56, F.S. governs instances where either the tenant or landlord may terminate the rental agreement. Tenant eviction may be grounded in either monetary default or non-monetary default. Non-monetary defaults fall into two categories: those that may be not be cured and those that may:

⁴ Section 83.49(3)(b), F.S.

⁵ See *Durene*, 448 So.2d at 1210.

⁶ Section 83.51(1)(a), F.S.

⁷ Section 83.51(1)(b), F.S.

- If the noncompliance is of a nature that the tenant should not be given an opportunity to cure it, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that notice is delivered to vacate the premises.
- If the noncompliance is of a nature that the tenant should be given an opportunity to cure it, the landlord may deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement.⁸

Some tenants have taken the position that a noncompliance with opportunity to cure still requires an additional 7-day notice upon the re-occurrence of the offense before filing for eviction. This bill amends s. 83.56(2)(b), F.S. to clarify that such additional notice is not required. It also adds to the written warning that the tenancy is subject to termination without further warning if the curable conduct is repeated within 12 months.

The bill also provides that the written notices set out in s. 83.56, F.S. for non-compliance of any kind, including non-payment of rent, may not be waived in the lease.

Termination of Rental Agreement - Rent; Waiver

Under current law, if a landlord accepts partial rent from a tenant with full knowledge that such payment is not for the full amount due, the landlord waives the right to terminate the rental agreement or to bring a civil action.⁹ The application of this law discourages landlords from negotiating partial payments with a tenant. This bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent. However, where a portion of the rent is subsidized, an action that has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance is waived.

Termination of a Tenancy with a Specific Duration

Current law provides that a rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement. However, such a provision may not require more than 60 days' notice.¹⁰ A rental agreement with a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement. This only occurs if the landlord provides written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. Such written notice must be provided to the tenant within 15 days before the start of the notification period contained in the lease and list all fees, penalties and other possible charges to the tenant.

The bill provides that if a rental agreement has a requirement for tenant notice to the landlord regarding nonrenewal, the rental agreement must provide a reciprocal agreement requiring the landlord to provide the same notice of intent not to renew, using the same notice period.

Landlord or Mobile Home Park Owner's Action for Rent or Possession

Sections 83.60 and 723.063, F.S. both relate to defenses a tenant may raise in an action for possession based upon nonpayment of rent. While s. 83.60, F.S. relates to landlords and tenants in a

⁸ Section 83.56(2)(a)-(b), F.S.

⁹ See *In re Sorrento's I, Inc.*, 195 B.R. 502 (Bkrtcy. M.D. Fla. 1996) (holding that landlord waived his right to terminate the rental agreement where he accepted two untimely checks for partial payment of the rent and the landlord had full knowledge they were not tendered on time and that they did not represent the full amount of rent for the month).

¹⁰ Section 83.575(1), F.S.

residential rental agreement, s. 723.063, F.S. relates to mobile home park owners and mobile home owners. The language is essentially the same in both sections.

Current law provides that in a landlord's or mobile home park owner's action for possession based on nonpayment of rent or an action seeking to recover unpaid rent, a tenant or mobile home owner may raise various defenses, including material noncompliance or retaliatory conduct pursuant to ss. 83.51(1) and 83.64, F.S. respectively. The bill provides that, before an action for possession based on nonpayment or seeking recovery of unpaid rent may be dismissed, the landlord or mobile home park owner must be given an opportunity to cure the deficiency in any notice or in the pleadings.

Current law provides that if a tenant raises a defense to an eviction proceeding other than payment of rent, the tenant must pay the rent into the court's registry pending outcome of the case. The amendment to s. 83.60(b)(2), F.S. makes clear that such defenses include the defense of a defective 3-day notice.

Restoration of Possession to Landlord Upon Eviction

Current law provides that, in an action for possession, if judgment granting possession to the landlord is entered, the clerk must issue a writ to the sheriff commanding that the landlord shall be given possession after 24 hours' notice is posted on the premises.¹¹ The bill provides that weekends and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

Current law provides that a landlord may not increase a tenant's rent, decrease services to a tenant, or bring or threaten to bring a civil action primarily because the landlord is retaliating against the tenant.¹² A tenant may raise the defense of retaliatory conduct. However, to do so, the tenant must have acted in good faith. The statute sets out a nonexclusive list of examples of conduct for which the landlord may not retaliate (i.e., a tenant has organized, encouraged or participated in a tenants' organization).

The bill adds two examples to the list of conduct for which a landlord may not retaliate. Specifically, a landlord may not retaliate where: 1) the tenant has paid the rent to a condominium, cooperative, or homeowners association after demand from the association in order to pay the landlord's obligation to the association;¹³ or 2) the tenant has exercised legal rights under local, state, or federal fair housing laws.

B. SECTION DIRECTORY:

Section 1 amends s. 83.42, F.S. relating to exclusions from application to Part II.

Section 2 amends s. 83.48, F.S. relating to attorney fees.

Section 3 amends s. 83.49, F.S. relating to deposit money and advance rent.

Section 4 creates an unnumbered section relating to the application date for new disclosure requirements.

¹¹ Section 83.62, F.S.

¹² Section 83.64, F.S.

¹³ See ss. 718.116(11)(a), 719.108(10)(a), 720.3085, F.S. (providing that if a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit or parcel).

Section 5 amends s. 83.50, F.S. relating to disclosure.

Section 6 amends s. 83.51, F.S. relating to a landlord's obligation to maintain premises and pay assessments.

Section 7 amends s. 83.56, F.S. relating to termination of rental agreement.

Section 8 amends s. 83.575, F.S. relating to termination of tenancy with specific duration.

Section 9 amends s. 83.58, F.S. relating to remedies; tenant holding over.

Section 10 amends s. 83.59, F.S. relating to right of action for possession.

Section 11 amends s. 83.60, F.S. relating to defenses to action for rent or possession.

Section 12 amends 83.62, F.S. relating to restoration of possession to landlord.

Section 13 amends 83.63, F.S. relating to casualty damage.

Section 14 amends s. 83.64, F.S. relating to retaliatory conduct.

Section 15 amends s. 723.063, F.S. relating to defenses to action for rent or possession; procedure.

Section 16 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to landlords and tenants; amending s.
 3 83.42, F.S.; revising exclusions from applicability of
 4 the Florida Residential Landlord and Tenant Act;
 5 amending s. 83.48, F.S.; providing that the right to
 6 attorney fees may not be waived in a lease agreement;
 7 providing that attorney fees may not be awarded in a
 8 claim for personal injury damages based on a breach of
 9 duty of premises maintenance; amending s. 83.49, F.S.;
 10 revising and providing landlord disclosure
 11 requirements with respect to security deposits and
 12 advance rent; providing requirements for the
 13 disbursement of advance rents; providing a limited
 14 rebuttable presumption of receipt of security
 15 deposits; providing for applicability of changes made
 16 by the act to certain disclosure requirements;
 17 amending s. 83.50, F.S.; removing certain landlord
 18 disclosure requirements relating to fire protection;
 19 amending s. 83.51, F.S.; revising a landlord's
 20 obligation to maintain a premises with respect to
 21 screens; amending s. 83.56, F.S.; revising procedures
 22 for the termination of a rental agreement by a
 23 landlord; revising notice procedures; providing that a
 24 landlord does not waive the right to terminate the
 25 rental agreement or to bring a civil action for
 26 noncompliance by accepting partial rent, subject to
 27 certain notice; providing that the period to institute
 28 an action before an exemption involving rent subsidies

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29 is waived begins upon actual knowledge; amending s.
 30 83.575, F.S.; revising requirements for the
 31 termination of a tenancy having a specific duration to
 32 provide for reciprocal notice provisions in rental
 33 agreements; amending ss. 83.58 and 83.59, F.S.;

34 conforming cross-references; amending s. 83.60, F.S.;

35 providing that a landlord must be given an opportunity
 36 to cure a deficiency in any notice or pleadings before
 37 dismissal of an eviction action; making technical
 38 changes; amending s. 83.62, F.S.; revising procedures
 39 for the restoration of possession to a landlord to
 40 provide that weekends and holidays do not stay the
 41 applicable notice period; amending s. 83.63, F.S.;

42 conforming a cross-reference; amending s. 83.64, F.S.;

43 providing examples of conduct for which the landlord
 44 may not retaliate; amending s. 723.063, F.S.;

45 providing that a mobile home park owner must be given
 46 an opportunity to cure a deficiency in any notice or
 47 pleadings before dismissal of an eviction action;

48 providing an effective date.

49

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

51

52 Section 1. Subsection (2) of section 83.42, Florida
 53 Statutes, is amended to read:

54 83.42 Exclusions from application of part.—This part does
 55 not apply to:

56 (2) Occupancy under a contract of sale of a dwelling unit

57 or the property of which it is a part in which the buyer has
 58 paid at least 12 months' rent or in which the buyer has paid at
 59 least 1 month's rent and a deposit of at least 5 percent of the
 60 purchase price of the property.

61 Section 2. Section 83.48, Florida Statutes, is amended to
 62 read:

63 83.48 Attorney ~~Attorney's~~ fees.—In any civil action
 64 brought to enforce the provisions of the rental agreement or
 65 this part, the party in whose favor a judgment or decree has
 66 been rendered may recover reasonable attorney fees and court
 67 costs, ~~including attorney's fees,~~ from the nonprevailing party.
 68 The right to attorney fees in this section may not be waived in
 69 a lease agreement. However, attorney fees may not be awarded
 70 under this section in a claim for personal injury damages based
 71 on a breach of duty under s. 83.51.

72 Section 3. Subsections (2), (3), and (7) of section 83.49,
 73 Florida Statutes, are amended to read:

74 83.49 Deposit money or advance rent; duty of landlord and
 75 tenant.—

76 (2) The landlord shall, in the lease agreement or within
 77 30 days after ~~of~~ receipt of advance rent or a security deposit,
 78 give written notice to notify the tenant which includes
 79 disclosure of in writing of the manner in which the landlord is
 80 ~~holding~~ the advance rent or security deposit ~~and the rate of~~
 81 ~~interest, if any, which the tenant is to receive and the time of~~
 82 ~~interest payments to the tenant. Such written notice shall:~~

- 83 ~~(a) Be given in person or by mail to the tenant.~~
- 84 ~~(b) State the name and address of the depository where the~~

85 ~~advance rent or security deposit is being held, whether the~~
 86 ~~advance rent or security deposit is being held in a separate~~
 87 ~~account for the benefit of the tenant or is commingled with~~
 88 ~~other funds of the landlord, and, if commingled, whether such~~
 89 ~~funds are deposited in an interest-bearing account in a Florida~~
 90 ~~banking institution.~~

91 ~~(c) Include a copy of the provisions of subsection (3).~~
 92 Subsequent to providing such written notice, if the landlord
 93 changes the manner or location in which he or she is holding the
 94 advance rent or security deposit, he or she must ~~shall~~ notify
 95 the tenant within 30 days after ~~of~~ the change as provided in
 96 paragraphs (a)-(d). The landlord is not required to give new or
 97 additional notice solely because the depository has merged with
 98 another financial institution, changed its name, or transferred
 99 ownership to a different financial institution according to the
 100 ~~provisions herein set forth.~~ This subsection does not apply to
 101 any landlord who rents fewer than five individual dwelling
 102 units. Failure to give ~~provide~~ this notice is ~~shall~~ not be a
 103 defense to the payment of rent when due. The written notice
 104 must:

- 105 (a) Be given in person or by mail to the tenant.
- 106 (b) State the name and address of the depository where the
 107 advance rent or security deposit is being held or state that the
 108 landlord has posted a surety bond as provided by law.
- 109 (c) State whether the tenant is entitled to interest on
 110 the deposit.
- 111 (d) Contain the following disclosure:

112

113 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
 114 LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S
 115 ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU
 116 MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS
 117 SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING
 118 YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE,
 119 WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S
 120 INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU
 121 DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO
 122 THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE
 123 LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM
 124 AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF
 125 YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT
 126 AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A
 127 LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.

128
 129 IF THE LANDLORD FAILS TO TIMELY MAIL YOU NOTICE, THE
 130 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A
 131 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY
 132 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE
 133 DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A
 134 REFUND.

135
 136 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE
 137 BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE
 138 FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND
 139 ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

140

141 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
 142 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
 143 RIGHTS AND OBLIGATIONS.

144
 145 (3) The landlord or the landlord's agent may disburse
 146 advance rents from the deposit account to the landlord's benefit
 147 when the advance rental period commences and without notice to
 148 the tenant. For all other deposits:

149 (a) Upon the vacating of the premises for termination of
 150 the lease, if the landlord does not intend to impose a claim on
 151 the security deposit, the landlord shall have 15 days to return
 152 the security deposit together with interest if otherwise
 153 required, or the landlord shall have 30 days to give the tenant
 154 written notice by certified mail to the tenant's last known
 155 mailing address of his or her intention to impose a claim on the
 156 deposit and the reason for imposing the claim. The notice shall
 157 contain a statement in substantially the following form:

158
 159 This is a notice of my intention to impose a claim for
 160 damages in the amount of upon your security deposit, due to
 161 It is sent to you as required by s. 83.49(3), Florida
 162 Statutes. You are hereby notified that you must object in
 163 writing to this deduction from your security deposit within 15
 164 days from the time you receive this notice or I will be
 165 authorized to deduct my claim from your security deposit. Your
 166 objection must be sent to ...(landlord's address)....

167
 168 If the landlord fails to give the required notice within the 30-

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169 day period, he or she forfeits the right to impose a claim upon
 170 the security deposit and may not seek a setoff against the
 171 deposit but may file an action for damages after return of the
 172 deposit.

173 (b) Unless the tenant objects to the imposition of the
 174 landlord's claim or the amount thereof within 15 days after
 175 receipt of the landlord's notice of intention to impose a claim,
 176 the landlord may then deduct the amount of his or her claim and
 177 shall remit the balance of the deposit to the tenant within 30
 178 days after the date of the notice of intention to impose a claim
 179 for damages. The failure of the tenant to make a timely
 180 objection does not waive any rights of the tenant to seek
 181 damages in a separate action.

182 (c) If either party institutes an action in a court of
 183 competent jurisdiction to adjudicate the party's right to the
 184 security deposit, the prevailing party is entitled to receive
 185 his or her court costs plus a reasonable fee for his or her
 186 attorney. The court shall advance the cause on the calendar.

187 (d) Compliance with this section by an individual or
 188 business entity authorized to conduct business in this state,
 189 including Florida-licensed real estate brokers and sales
 190 associates, constitutes ~~shall constitute~~ compliance with all
 191 other relevant Florida Statutes pertaining to security deposits
 192 held pursuant to a rental agreement or other landlord-tenant
 193 relationship. Enforcement personnel shall look solely to this
 194 section to determine compliance. This section prevails over any
 195 conflicting provisions in chapter 475 and in other sections of
 196 the Florida Statutes, and shall operate to permit licensed real

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197 estate brokers to disburse security deposits and deposit money
 198 without having to comply with the notice and settlement
 199 procedures contained in s. 475.25(1)(d).

200 (7) Upon the sale or transfer of title of the rental
 201 property from one owner to another, or upon a change in the
 202 designated rental agent, any and all security deposits or
 203 advance rents being held for the benefit of the tenants shall be
 204 transferred to the new owner or agent, together with any earned
 205 interest and with an accurate accounting showing the amounts to
 206 be credited to each tenant account. Upon the transfer of such
 207 funds and records to the new owner or agent ~~as stated herein,~~
 208 and upon transmittal of a written receipt therefor, the
 209 transferor is ~~shall be~~ free from the obligation imposed in
 210 subsection (1) to hold such moneys on behalf of the tenant.
 211 There is a rebuttable presumption that any new owner or agent
 212 received the security deposit from the previous owner or agent;
 213 however, this presumption is limited to 1 month's rent. This
 214 subsection does not ~~However, nothing herein shall~~ excuse the
 215 landlord or agent for a violation of other ~~the~~ provisions of
 216 this section while in possession of such deposits.

217 Section 4. The Legislature recognizes that landlords may
 218 have stocks of preprinted lease forms that comply with the
 219 notice requirements of current law. Accordingly, for leases
 220 entered into on or before December 31, 2013, a landlord may give
 221 notice that contains the disclosure required in the changes made
 222 by this act to s. 83.49, Florida Statutes, or the former notice
 223 required in s. 83.49, Florida Statutes 2012. The disclosure
 224 required by this act is required for all leases entered into on

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225 or after January 1, 2014.

226 Section 5. Section 83.50, Florida Statutes, is amended to
227 read:

228 83.50 Disclosure of landlord's address.—

229 ~~(1)~~ In addition to any other disclosure required by law,
230 the landlord, or a person authorized to enter into a rental
231 agreement on the landlord's behalf, shall disclose in writing to
232 the tenant, at or before the commencement of the tenancy, the
233 name and address of the landlord or a person authorized to
234 receive notices and demands in the landlord's behalf. The person
235 so authorized to receive notices and demands retains authority
236 until the tenant is notified otherwise. All notices of such
237 names and addresses or changes thereto shall be delivered to the
238 tenant's residence or, if specified in writing by the tenant, to
239 any other address.

240 ~~(2) The landlord or the landlord's authorized~~
241 ~~representative, upon completion of construction of a building~~
242 ~~exceeding three stories in height and containing dwelling units,~~
243 ~~shall disclose to the tenants initially moving into the building~~
244 ~~the availability or lack of availability of fire protection.~~

245 Section 6. Subsection (1) and paragraph (a) of subsection
246 (2) of section 83.51, Florida Statutes, are amended to read:

247 83.51 Landlord's obligation to maintain premises.—

248 (1) The landlord at all times during the tenancy shall:

249 (a) Comply with the requirements of applicable building,
250 housing, and health codes; or

251 (b) Where there are no applicable building, housing, or
252 health codes, maintain the roofs, windows, ~~screens,~~ doors,

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253 floors, steps, porches, exterior walls, foundations, and all
 254 other structural components in good repair and capable of
 255 resisting normal forces and loads and the plumbing in reasonable
 256 working condition. ~~However,~~

257
 258 The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile home
 259 or other structure owned by the tenant. The landlord's
 260 obligations under this subsection may be altered or modified in
 261 writing with respect to a single-family home or duplex.

262 (2) (a) Unless otherwise agreed in writing, in addition to
 263 the requirements of subsection (1), the landlord of a dwelling
 264 unit other than a single-family home or duplex shall, at all
 265 times during the tenancy, make reasonable provisions for:

266 1. The extermination of rats, mice, roaches, ants, wood-
 267 destroying organisms, and bedbugs. When vacation of the premises
 268 is required for such extermination, the landlord is ~~shall~~ not ~~be~~
 269 liable for damages but shall abate the rent. The tenant must
 270 ~~shall be required to~~ temporarily vacate the premises for a
 271 period of time not to exceed 4 days, on 7 days' written notice,
 272 if necessary, for extermination pursuant to this subparagraph.

273 2. Locks and keys.

274 3. The clean and safe condition of common areas.

275 4. Garbage removal and outside receptacles therefor.

276 5. Functioning facilities for heat during winter, running
 277 water, and hot water.

278 Section 7. Subsections (2) through (5) of section 83.56,
 279 Florida Statutes, are amended to read:

280 83.56 Termination of rental agreement.—

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281 (2) If the tenant materially fails to comply with s. 83.52
 282 or material provisions of the rental agreement, other than a
 283 failure to pay rent, or reasonable rules or regulations, the
 284 landlord may:

285 (a) If such noncompliance is of a nature that the tenant
 286 should not be given an opportunity to cure it or if the
 287 noncompliance constitutes a subsequent or continuing
 288 noncompliance within 12 months of a written warning by the
 289 landlord of a similar violation, deliver a written notice to the
 290 tenant specifying the noncompliance and the landlord's intent to
 291 terminate the rental agreement by reason thereof. Examples of
 292 noncompliance which are of a nature that the tenant should not
 293 be given an opportunity to cure include, but are not limited to,
 294 destruction, damage, or misuse of the landlord's or other
 295 tenants' property by intentional act or a subsequent or
 296 continued unreasonable disturbance. In such event, the landlord
 297 may terminate the rental agreement, and the tenant shall have 7
 298 days from the date that the notice is delivered to vacate the
 299 premises. The notice shall be ~~adequate if it is~~ in substantially
 300 the following form:

301
 302 You are advised that your lease is terminated effective
 303 immediately. You shall have 7 days from the delivery of this
 304 letter to vacate the premises. This action is taken because
 305 ... (cite the noncompliance)

306
 307 (b) If such noncompliance is of a nature that the tenant
 308 should be given an opportunity to cure it, deliver a written

309 notice to the tenant specifying the noncompliance, including a
 310 notice that, if the noncompliance is not corrected within 7 days
 311 from the date that the written notice is delivered, the landlord
 312 shall terminate the rental agreement by reason thereof. Examples
 313 of such noncompliance include, but are not limited to,
 314 activities in contravention of the lease or this part ~~act~~ such
 315 as having or permitting unauthorized pets, guests, or vehicles;
 316 parking in an unauthorized manner or permitting such parking; or
 317 failing to keep the premises clean and sanitary. If such
 318 noncompliance recurs within 12 months after notice, an eviction
 319 action may commence without delivering a subsequent notice
 320 pursuant to paragraph (a) or this paragraph. The notice shall be
 321 ~~adequate if it is~~ in substantially the following form:

322
 323 You are hereby notified that ...(cite the
 324 noncompliance).... Demand is hereby made that you remedy the
 325 noncompliance within 7 days of receipt of this notice or your
 326 lease shall be deemed terminated and you shall vacate the
 327 premises upon such termination. If this same conduct or conduct
 328 of a similar nature is repeated within 12 months, your tenancy
 329 is subject to termination without further warning and without
 330 your being given an opportunity to cure the noncompliance.

331
 332 (3) If the tenant fails to pay rent when due and the
 333 default continues for 3 days, excluding Saturday, Sunday, and
 334 legal holidays, after delivery of written demand by the landlord
 335 for payment of the rent or possession of the premises, the
 336 landlord may terminate the rental agreement. Legal holidays for

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337 the purpose of this section shall be court-observed holidays
 338 only. The 3-day notice shall contain a statement in
 339 substantially the following form:

340
 341 You are hereby notified that you are indebted to me in the
 342 sum of dollars for the rent and use of the premises
 343 ... (address of leased premises, including county) ..., Florida,
 344 now occupied by you and that I demand payment of the rent or
 345 possession of the premises within 3 days (excluding Saturday,
 346 Sunday, and legal holidays) from the date of delivery of this
 347 notice, to wit: on or before the day of, ... (year)....
 348 ... (landlord's name, address and phone number)...

349
 350 (4) The delivery of the written notices required by
 351 subsections (1), (2), and (3) shall be by mailing or delivery of
 352 a true copy thereof or, if the tenant is absent from the
 353 premises, by leaving a copy thereof at the residence. The notice
 354 requirements of subsections (1), (2), and (3) may not be waived
 355 in the lease.

356 (5) (a) If the landlord accepts rent with actual knowledge
 357 of a noncompliance by the tenant or accepts performance by the
 358 tenant of any other provision of the rental agreement that is at
 359 variance with its provisions, or if the tenant pays rent with
 360 actual knowledge of a noncompliance by the landlord or accepts
 361 performance by the landlord of any other provision of the rental
 362 agreement that is at variance with its provisions, the landlord
 363 or tenant waives his or her right to terminate the rental
 364 agreement or to bring a civil action for that noncompliance, but

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365 not for any subsequent or continuing noncompliance. However, a
 366 landlord does not waive the right to terminate the rental
 367 agreement or to bring a civil action for that noncompliance by
 368 accepting partial rent for the period.

369 (b) Any tenant who wishes to defend against an action by
 370 the landlord for possession of the unit for noncompliance of the
 371 rental agreement or of relevant statutes must ~~shall~~ comply with
 372 ~~the provisions in~~ s. 83.60(2). The court may not set a date for
 373 mediation or trial unless the provisions of s. 83.60(2) have
 374 been met, but must ~~shall~~ enter a default judgment for removal of
 375 the tenant with a writ of possession to issue immediately if the
 376 tenant fails to comply with s. 83.60(2).

377 (c) This subsection does not apply to that portion of rent
 378 subsidies received from a local, state, or national government
 379 or an agency of local, state, or national government; however,
 380 waiver will occur if an action has not been instituted within 45
 381 days after the landlord obtains actual knowledge of the
 382 noncompliance.

383 Section 8. Subsection (1) of section 83.575, Florida
 384 Statutes, is amended to read:

385 83.575 Termination of tenancy with specific duration.—

386 (1) A rental agreement with a specific duration may
 387 contain a provision requiring the tenant to notify the landlord
 388 within a specified period before vacating the premises at the
 389 end of the rental agreement, if such provision requires the
 390 landlord to notify the tenant within such notice period if the
 391 rental agreement will not be renewed; however, a rental
 392 agreement may not require more than 60 days' notice from either

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393 the tenant or the landlord before vacating the premises.

394 Section 9. Section 83.58, Florida Statutes, is amended to
395 read:

396 83.58 Remedies; tenant holding over.—If the tenant holds
397 over and continues in possession of the dwelling unit or any
398 part thereof after the expiration of the rental agreement
399 without the permission of the landlord, the landlord may recover
400 possession of the dwelling unit in the manner provided for in s.
401 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the
402 amount of rent due on the dwelling unit, or any part thereof,
403 for the period during which the tenant refuses to surrender
404 possession.

405 Section 10. Subsection (2) of section 83.59, Florida
406 Statutes, is amended to read:

407 83.59 Right of action for possession.—

408 (2) A landlord, the landlord's attorney, or the landlord's
409 agent, applying for the removal of a tenant, shall file in the
410 county court of the county where the premises are situated a
411 complaint describing the dwelling unit and stating the facts
412 that authorize its recovery. A landlord's agent is not permitted
413 to take any action other than the initial filing of the
414 complaint, unless the landlord's agent is an attorney. The
415 landlord is entitled to the summary procedure provided in s.
416 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the
417 calendar.

418 Section 11. Section 83.60, Florida Statutes, is amended to
419 read:

420 83.60 Defenses to action for rent or possession;

421 procedure.-

422 (1) (a) In an action by the landlord for possession of a
 423 dwelling unit based upon nonpayment of rent or in an action by
 424 the landlord under s. 83.55 seeking to recover unpaid rent, the
 425 tenant may defend upon the ground of a material noncompliance
 426 with s. 83.51(1) ~~{F.S. 1973}~~, or may raise any other defense,
 427 whether legal or equitable, that he or she may have, including
 428 the defense of retaliatory conduct in accordance with s. 83.64.
 429 The landlord must be given an opportunity to cure a deficiency
 430 in a notice or in the pleadings before dismissal of the action.

431 (b) The defense of a material noncompliance with s.
 432 83.51(1) ~~{F.S. 1973}~~ may be raised by the tenant if 7 days have
 433 elapsed after the delivery of written notice by the tenant to
 434 the landlord, specifying the noncompliance and indicating the
 435 intention of the tenant not to pay rent by reason thereof. Such
 436 notice by the tenant may be given to the landlord, the
 437 landlord's representative as designated pursuant to s. 83.50~~(1)~~,
 438 a resident manager, or the person or entity who collects the
 439 rent on behalf of the landlord. A material noncompliance with s.
 440 83.51(1) ~~{F.S. 1973}~~ by the landlord is a complete defense to an
 441 action for possession based upon nonpayment of rent, and, upon
 442 hearing, the court or the jury, as the case may be, shall
 443 determine the amount, if any, by which the rent is to be reduced
 444 to reflect the diminution in value of the dwelling unit during
 445 the period of noncompliance with s. 83.51(1) ~~{F.S. 1973}~~. After
 446 consideration of all other relevant issues, the court shall
 447 enter appropriate judgment.

448 (2) In an action by the landlord for possession of a

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449 dwelling unit, if the tenant interposes any defense other than
 450 payment, including, but not limited to, the defense of a
 451 defective 3-day notice, the tenant shall pay into the registry
 452 of the court the accrued rent as alleged in the complaint or as
 453 determined by the court and the rent that ~~which~~ accrues during
 454 the pendency of the proceeding, when due. The clerk shall notify
 455 the tenant of such requirement in the summons. Failure of the
 456 tenant to pay the rent into the registry of the court or to file
 457 a motion to determine the amount of rent to be paid into the
 458 registry within 5 days, excluding Saturdays, Sundays, and legal
 459 holidays, after the date of service of process constitutes an
 460 absolute waiver of the tenant's defenses other than payment, and
 461 the landlord is entitled to an immediate default judgment for
 462 removal of the tenant with a writ of possession to issue without
 463 further notice or hearing thereon. ~~If In the event~~ a motion to
 464 determine rent is filed, documentation in support of the
 465 allegation that the rent as alleged in the complaint is in error
 466 is required. Public housing tenants or tenants receiving rent
 467 subsidies are ~~shall be~~ required to deposit only that portion of
 468 the full rent for which they are ~~the tenant is~~ responsible
 469 pursuant to the federal, state, or local program in which they
 470 are participating.

471 Section 12. Subsection (1) of section 83.62, Florida
 472 Statutes, is amended to read:

473 83.62 Restoration of possession to landlord.—

474 (1) In an action for possession, after entry of judgment
 475 in favor of the landlord, the clerk shall issue a writ to the
 476 sheriff describing the premises and commanding the sheriff to

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477 put the landlord in possession after 24 hours' notice
 478 conspicuously posted on the premises. Saturdays, Sundays, and
 479 legal holidays do not stay the 24-hour notice period.

480 Section 13. Section 83.63, Florida Statutes, is amended to
 481 read:

482 83.63 Casualty damage.—If the premises are damaged or
 483 destroyed other than by the wrongful or negligent acts of the
 484 tenant so that the enjoyment of the premises is substantially
 485 impaired, the tenant may terminate the rental agreement and
 486 immediately vacate the premises. The tenant may vacate the part
 487 of the premises rendered unusable by the casualty, in which case
 488 the tenant's liability for rent shall be reduced by the fair
 489 rental value of that part of the premises damaged or destroyed.
 490 If the rental agreement is terminated, the landlord shall comply
 491 with s. 83.49(3) [~~F.S. 1973~~].

492 Section 14. Subsection (1) of section 83.64, Florida
 493 Statutes, is amended to read:

494 83.64 Retaliatory conduct.—

495 (1) It is unlawful for a landlord to discriminatorily
 496 increase a tenant's rent or decrease services to a tenant, or to
 497 bring or threaten to bring an action for possession or other
 498 civil action, primarily because the landlord is retaliating
 499 against the tenant. In order for the tenant to raise the defense
 500 of retaliatory conduct, the tenant must have acted in good
 501 faith. Examples of conduct for which the landlord may not
 502 retaliate include, but are not limited to, situations where:

503 (a) The tenant has complained to a governmental agency
 504 charged with responsibility for enforcement of a building,

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505 housing, or health code of a suspected violation applicable to
 506 the premises;

507 (b) The tenant has organized, encouraged, or participated
 508 in a tenants' organization;

509 (c) The tenant has complained to the landlord pursuant to
 510 s. 83.56(1); ~~or~~

511 (d) The tenant is a servicemember who has terminated a
 512 rental agreement pursuant to s. 83.682;

513 (e) The tenant has paid rent to a condominium,
 514 cooperative, or homeowners' association after demand from the
 515 association in order to pay the landlord's obligation to the
 516 association; or

517 (f) The tenant has exercised his or her rights under
 518 local, state, or federal fair housing laws.

519 Section 15. Subsection (1) of section 723.063, Florida
 520 Statutes, is amended to read:

521 723.063 Defenses to action for rent or possession;
 522 procedure.—

523 (1) (a) In any action based upon nonpayment of rent or
 524 seeking to recover unpaid rent, or a portion thereof, the mobile
 525 home owner may defend upon the ground of a material
 526 noncompliance with any portion of this chapter or may raise any
 527 other defense, whether legal or equitable, which he or she may
 528 have. The mobile home park owner must be given an opportunity to
 529 cure a deficiency in a notice or in the pleadings before
 530 dismissal of the action.

531 (b) The defense of material noncompliance may be raised by
 532 the mobile home owner only if 7 days have elapsed after he or

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533 she has notified the park owner in writing of his or her
 534 intention not to pay rent, or a portion thereof, based upon the
 535 park owner's noncompliance with portions of this chapter,
 536 specifying in reasonable detail the provisions in default. A
 537 material noncompliance with this chapter by the park owner is a
 538 complete defense to an action for possession based upon
 539 nonpayment of rent, or a portion thereof, and, upon hearing, the
 540 court or the jury, as the case may be, shall determine the
 541 amount, if any, by which the rent is to be reduced to reflect
 542 the diminution in value of the lot during the period of
 543 noncompliance with any portion of this chapter. After
 544 consideration of all other relevant issues, the court shall
 545 enter appropriate judgment.

546 Section 16. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Roberson, K. offered the following:

3
4 **Amendment (with title amendment)**

5 Between lines 277 and 278, insert:

6 Section 7. Section 83.54, Florida Statutes, is amended to
7 read:

8 83.54 Enforcement of rights and duties; civil action;
9 criminal offenses.—Any right or duty declared in this part is
10 enforceable by civil action. The possibility of a civil action
11 shall not preclude prosecution for a criminal offense related
12 to the lease or leased property.

13
14 -----
15 **T I T L E A M E N D M E N T**

16 Remove line 21 and insert:

17 screens; amending s. 83.54, F.S.; providing that the creation of
18 a civil remedy does not preclude prosecution of a criminal
19 offense; amending s. 83.56, F.S.; revising procedures



Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Spano offered the following:

Amendment

Remove lines 252-256 and insert:

6 health codes, maintain the roofs, windows, ~~screens~~, doors,
 7 floors, steps, porches, exterior walls, foundations, and all
 8 other structural components in good repair and capable of
 9 resisting normal forces and loads and the plumbing in reasonable
 10 working condition. The landlord, at commencement of the tenancy,
 11 must ensure that screens are installed in a reasonable
 12 condition. The landlord must repair damage to screens once
 13 annually thereafter, when necessary, until termination of the
 14 rental agreement. However