



Civil Justice Subcommittee

Wednesday, March 12, 2014

8:00 AM

404 HOB

**Will Weatherford
Speaker**

**Larry Metz
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, March 12, 2014 08:00 am
End Date and Time: Wednesday, March 12, 2014 12:00 pm
Location: Sumner Hall (404 HOB)
Duration: 4.00 hrs

Consideration of the following bill(s):

HB 187 Civil Remedies Against Insurers by Passidomo
HB 757 Estates by Spano
HB 789 Rights Of Grandparents And Great-Grandparents by Rouson
HB 797 Clerks of Court by Pilon
HB 957 Local Regulation Of Wage Theft by Combee

NOTICE FINALIZED on 03/10/2014 15:58 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Civil Remedies Against Insurers
SPONSOR(S): Passidomo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>LMC</i>	Bond <i>YB</i>
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law authorizes any party to bring a civil action against an insurer if such party is damaged by an insurer's "bad faith." An insurer acts in bad faith when it does not attempt in good faith to settle claims and, under the circumstances, it could have had it acted fairly and honestly toward its insured and with due regard to his or her interest.

The bill provides that before bringing an action alleging bad faith, the insured, the claimant, or anyone acting on behalf of either the insured or the claimant (for simplicity purposes, hereinafter the "claimant") must provide a written notice of loss to the insurer.

If the insurer timely provides a disclosure statement already required under current law and offers to pay the claimant the lesser of the amount the claimant is willing to accept or the policy's liability limit within 45 days, in exchange for a full release from liability, then the insurer cannot be found to have acted in bad faith.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Obligations of Insurer to Insured

An insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment either to the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.¹

Common Law Bad Faith

Florida courts for many years have recognized an additional duty that does not arise directly from the contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.² The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as the result of the acts of one of the parties to the contract.³

Statutory Bad Faith

In addition, a 1982 Florida statute recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party, but also for an insured seeking payment from his or her own insurance company.⁴ This may be referred to as a first-party claim of bad faith.

The statute provides that any party has a claim and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.⁵

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.⁶ If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.⁷ Failure to settle on its own, however, does not mean that an insurer acts in bad faith, because liability may be unclear or damage minimal. Negligent failure to settle does not rise to the

¹ 16 Williston on Contracts s. 49:103 (4th ed.).

² *Auto. Mut. Indemnity Co. v. Shaw*, 184 So. 852 (Fla. 1938).

³ *Thompson v. Commercial Union Ins. Co. of New York*, 250 So.2d 259, 261 (Fla. 1971).

⁴ Section 624.155, F.S.

⁵ Section 624.155(1)(b), F.S.

⁶ *Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).

⁷ *Id.*

level of bad faith. Negligence may be considered by the jury because it is relevant to the question of bad faith, but a cause of action based solely on negligence is not allowed.⁸

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days' written notice of the alleged violation.⁹ The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.¹⁰ Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.¹¹ Third-party claims, on the other hand, exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.¹²

First-Party Claims of Bad Faith

A first-party bad faith claim occurs when an insured sues his or her insurer claiming that the insurer refused to settle the insured's own claim in good faith.¹³ A common example of a first-party bad faith claim is when an insured is involved in an accident with an uninsured motorist and does not reach a settlement with his or her own uninsured motorist liability carrier for costs associated with the accident.¹⁴ Before a first-party bad faith claim was recognized in statute, Florida courts rejected such claims because the insured is not exposed to liability and thus there is no fiduciary duty on the part of the insurer like there is when a third party is involved.¹⁵ An insured's claim against the insurer does not accrue until the conclusion of the underlying litigation for contractual benefits.¹⁶ The action against the insurer must be resolved in favor of the insured,¹⁷ because the insured cannot allege bad faith if it is not shown that the insurer should have paid the claim.

In a first-party action, there is never a fiduciary relationship between the parties, but an arm's length contractual one based on the insurance contract. At the time of the action itself, the insurer and the insured are adverse parties, but the nature of the claim raises complicated issues relating to the availability of certain evidence for discovery. Bad faith cases create unique issues during discovery because there are necessarily two separate phases of litigation—first regarding the underlying insurance claim and second regarding the bad faith claim. The Florida Supreme Court has held that first-party bad faith claimants are entitled to discovery of all materials contained in the underlying claim and related litigation file up to the date of the resolution of the underlying claim, which is the same as the standard for third-party claims.¹⁸ The Court reasoned that insurers are required to produce claim file materials regardless of whether they may be considered work product because they are generally the only source of direct evidence on the central issue of the insurance company's handling of the insured's claim.¹⁹ In general, adverse parties are not compelled to produce materials prepared in anticipation of litigation without a showing to the court that the party seeking discovery needs the materials to prepare his or her case and cannot obtain the equivalent by other means without undue hardship.²⁰ Although plaintiffs are not required to make such a showing under Florida law for the contents of the claim file,

⁸ *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).

⁹ Section 624.155(3)(a), F.S.

¹⁰ Section 624.155(3)(d), F.S.

¹¹ *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 753 So.2d 1278, 1284 (Fla. 2000).

¹² *Macola v. Gov. Employees Ins. Co.*, 953 So.2d 451, 458 (Fla. 2007)(holding that an insurer's tender of the policy limits to an insured in response to the filing of a civil remedy notice, after the initiation of a lawsuit against the insured but before entry of an excess judgment, does not preclude a common law cause of action against the insurer for third-party bad faith).

¹³ *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

¹⁴ See *Blanchard v. State Farm Mut. Auto. Ins. Co.* 575 So.2d 1289 (Fla. 1991).

¹⁵ *Allstate Indemnity Co. v. Ruiz*, 899 So.2d 1121, 1125 (Fla. 2005)(citing *State Farm. Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995)).

¹⁶ *Blanchard*, 575 So.2d at 1291.

¹⁷ *Id.*

¹⁸ *Ruiz*, 899 So.2d at 1129-30.

¹⁹ *Id.* at 1128.

²⁰ Fla. R. Civ. P. 1.280(b)(3).

they are required to do so in order to compel production of materials in preparation of the bad faith claim itself.²¹

Third-Party Claims of Bad Faith

A third-party bad faith claim arises when an insurer fails in good faith to settle a third-party's claim against the insured within policy limits, thus exposing the insured to liability in excess of his or her insurance coverage.²² A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant,²³ or it can be brought by the third party either directly or through an assignment of the insured's rights.²⁴ Florida courts have interpreted s. 624.155, F.S., as authorizing a direct third-party claim because the statute makes an action available to "any party."²⁵ However, because a cause of action under s. 624.155, F.S., is predicated on the failure of the insurer to act "fairly and honestly toward its insured," the duty only runs to the insured; no such duty is owed by the insurance company to a third-party claimant.²⁶ Therefore, unless there is a judgment in excess of policy limits against the insured, "a third-party plaintiff cannot demonstrate that the insurer breached a duty toward its insured."²⁷

In third-party cases, it is important to note that when the insured brings such a claim, there is a shift in the relationship between the insured and the insurer from the time when the underlying insurance contract is at issue and when the bad faith claim is brought. During settlement negotiations and any subsequent legal actions incident to the insurance claim, the insurer is acting pursuant to its contractual duties to indemnify and defend the insured. Upon filing a claim for bad faith, the insurer and insured become adverse.

When the insured brings a bad faith claim after being held liable to a third party in excess of policy limits, the insurer owes no duty to the insured because they are adverse parties at that point. However, even though the posture of the parties in a bad faith case is adverse, it is the insurer's behavior during the time when it was acting under a duty to the insured that is examined by courts. The Florida Supreme Court has defined the insurer's duty to the insured as a "fiduciary obligation to protect its insured from a judgment exceeding the limits of the insurance policy."²⁸ A fiduciary obligation is a high standard, which requires the insurer "to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business."²⁹ In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.³⁰ Although the focus in a bad faith case is on the conduct of the insurer, the conduct of the claimant is not entirely ignored, because it is relevant to whether there was a realistic opportunity for settlement.³¹

A court, for example, will look at the terms of a demand for settlement to determine if the insurer was given a reasonable amount of time to investigate the claim and make a decision whether settlement would be appropriate under the circumstances. One court held that dismissal of a bad faith claim was proper where the settlement demand in question gave a 10-day window, pointing out that "[i]n view of the short space of time between the accident and institution of suit, the provision of the offer to settle

²¹ *Ruiz*, 899 So.2d at 1130.

²² *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

²³ *See Powell v. Prudential Prop. and Cas. Ins. Co.*, 584 So.2d 12 (Fla. 3d DCA 1991).

²⁴ *See Thompson v. Commercial Union Ins. Co.* 250 So.2d 259 (Fla. 1971)(recognizing a direct third-party claim under the common law before the enactment of s. 624.155, F.S.); *State Farm Fire and Cas. Co. v. Zebrowski*, 706 So.2d 275 (Fla. 1997).

²⁵ *Zebrowski*, 706 So.2d at 277.

²⁶ *Id.*

²⁷ *Id.* (citing *Dunn v. Nat'l Sec. Fire & Cas. Co.*, 631 So.2d 1103 (Fla. 1993)).

²⁸ *Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 668 (Fla. 2004).

²⁹ *Id.* (quoting *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980)).

³⁰ *Berges*, 896 So.2d at 677.

³¹ *Barry v. GEICO Gen. Ins. Co.*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

limiting acceptance to ten days made it virtually impossible to make an intelligent acceptance."³² Although in this particular circumstance the court found that 10 days was not enough, it is not clear exactly what time period or other conditions for acceptance would be permissible, because courts look at the facts on a case-by-case basis and the current statute is silent on this point.

To illustrate the point, in another case, a trial judge granted summary judgment in favor of an insurance company that attempted to contact the injured party's stepfather 2 days after it was informed of the accident and was repeatedly and consistently rebuffed by the plaintiff and her attorney. The plaintiff's attorney, upon questioning by the trial judge, suggested that the insurance company may have tendered the check to the injured party, who was in a coma at the time. After the judge rejected that possibility, the plaintiff's attorney suggested that the insurance company could have tendered payment to the injured party's mother, who the attorney had already admitted was not authorized to accept the check. Nevertheless, despite the insurance company's efforts, which included three attempts to contact the plaintiff or her attorney within the first 10 days after the company learned about the accident, the appellate court overturned the summary judgment, holding that the determination of whether the insurance company acted in bad faith was a matter of fact for determination by the jury.³³

Effect of the Bill

The bill amends s. 624.155, F.S., to require that a claimant, before bringing an action under the statute or based on the common-law claim of bad faith, must provide a written notice of loss to the insurer. If the insurer timely provides a disclosure statement already required under current law³⁴ and offers to pay the claimant the lesser of the amount the claimant is willing to accept or the policy's liability limit within 45 days, in exchange for a full release from liability, then the insurer is not liable for bad faith.

B. SECTION DIRECTORY:

Section 1 amends s. 624.155, F.S., regarding a civil remedy.

Section 2 provides an effective date of July 1, 2014.

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.

³² *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).

³³ *Goheagan v. American Vehicle Ins. Co.*, 107 So.3d 433 (Fla. 4th DCA 2012).

³⁴ Section 627.4137, F.S.

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:

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

n/a

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A bill to be entitled
 An act relating to civil remedies against insurers;
 amending s. 624.155, F.S.; requiring insureds,
 claimants, or persons acting on their behalf to
 provide an insurer with written notice of loss as a
 condition precedent to a statutory or common-law
 action for third-party bad-faith failure to settle an
 insurance claim; providing that an insurer is not
 liable for a claim of bad faith failure to settle a
 claim if certain conditions are met; providing an
 effective date.

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

Section 1. Paragraph (a) of subsection (3) of section
 624.155, Florida Statutes, is amended, and subsection (10) is
 added to that section, to read:

624.155 Civil remedy.—

(3)(a) Except as provided in subsection (10), as a
 condition precedent to bringing an action under this section,
 the department and the authorized insurer must have been given
 60 days' written notice of the violation. If the department
 returns a notice for lack of specificity, the 60-day time period
 shall not begin until a proper notice is filed.

(10) As a condition precedent to a statutory or common-law
 action for third-party bad-faith failure to settle a liability

27 insurance claim, the insured, claimant, or anyone on behalf of
28 the insured or the claimant must provide the insurer with
29 written notice of loss. If the insurer complies with a request
30 for a disclosure statement described in s. 627.4137 and, within
31 45 days after receipt of the written notice of loss, offers to
32 pay the claimant the lesser of the amount that the claimant is
33 willing to accept or the limits of liability coverage applicable
34 to the claimant's insurance claim in exchange for a full release
35 of the insured from any liability arising from the incident and
36 the notice of insurance claim, then the insurer is not in
37 violation of the duty to attempt in good faith to settle the
38 claim and is not liable for bad-faith failure to settle under
39 this section or the common law.

40 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 757 Estates
SPONSOR(S): Spano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward <i>JW</i>	Bond <i>NB</i>
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A decedent's property may be disposed of according to a will or a trust, or a combination of the two. Property may effectively transfer at death by operation of law as well. Wills and trusts may be contested on several grounds, including undue influence of a beneficiary over the decedent. Other transfers during the life of a decedent may be set aside on the basis of undue influence as well.

The Florida Probate Code and the Florida Trust Code provide that all or any part of a will or trust is void if it is procured by fraud, duress, mistake, or undue influence. While both codes specify grounds for a will contest or trust contest, only the Probate Code contains a provision designating which party has the burden of proof. The bill amends the Trust Code to be consistent with the Probate Code so that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. The bill also applies the concept of undue influence to all challenges to gifts made during the lifetime of a decedent.

Life insurance proceeds are generally exempt from administration expenses and the claims of creditors. However, the exemption is lost if the insurance proceeds are paid to the insured or the insured's estate. The bill provides that a waiver of the statutory exemption from creditor's claims applicable to insurance proceeds paid to a trust established by the insured must be explicit. The bill provides that the waiver of the exemption cannot be inferred from general language in a trust instrument directing that all debts of the decedent be paid.

An "antilapse" statute prevents a devise from failing, or "lapsing," when the designated beneficiary does not survive the decedent. The Probate Code provides that in the event the will is silent, the share to which a beneficiary who predeceases the testator belongs to his or her heirs as long as those heirs are related no more distantly than descendants of grandparents. The antilapse provision of the Trust Code saves all devises, regardless of familial relationship, for administrative convenience. The bill changes the Trust Code's antilapse provision to make it consistent with the Probate Code, allowing outright devises to be treated more consistently with the settlor or testator's presumed intent. The bill provides that the changes are intended to clarify existing law, are remedial in nature, and apply retroactively.

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

The bill has an effective date of July 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Undue Influence

The Florida Probate Code¹ and Florida Trust Code² anticipate that both wills³ and trusts⁴ can be documents that make testamentary disposition of a decedent's assets. Further, some transactions during life⁵ are effective upon death outside of a will or a trust. Both codes provide that all or any part of a will or trust is void if it is procured by fraud, duress, mistake, or undue influence.⁶ Although both codes specify grounds for a will contest⁷ or trust contest,⁸ only the Probate Code contains a provision designating which party has the burden of proof. The proponent of the will has the initial burden of proving due execution of the will. Thereafter, the burden shifts to the will contestant to prove the grounds for the will contest.⁹ There is no analogous provision in the Trust Code designating who has the burden of proof in a trust contest.

A presumption¹⁰ of undue influence will arise with respect to a transaction if the contestant can show that a person in confidential relationship was active in procuring a document under which the contestant is a substantial beneficiary.¹¹ The presumption of undue influence in will contests is a policy-based presumption that shifts the burden of proof.¹² Courts have recognized that the burden-shifting nature of the presumption of undue influence is applicable whenever that presumption is established.¹³ However, because the burden shifting presumption is located in the Florida Probate Code, it could be argued that it only applies in will contests. The current statute does not apply to other undue influence proceedings, including trust contests and challenges to the validity of inter vivos¹⁴ transactions.

The bill amends s. 736.0207(1), F.S., to provide that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. The bill also amends s. 733.107(2), F.S., provide that a presumption of undue influence, once it arises, applies to all testamentary challenges including trust contests and challenges to inter vivos gifts.¹⁵ The bill codifies what many practitioners express as the accepted current state of Florida case law. Thus, the bill provides that it is remedial in nature and retroactive because it is intended to clarify existing law.¹⁶

¹ Chapters 731 through 735, F.S.

² Chapter 736, F.S.

³ Section 731.201(40), F.S.

⁴ Sections 736.0403(2) and 736.1106, F.S.

⁵ These are called "inter vivos transfers."

⁶ Sections 732.5165 and 736.0406, F.S.

⁷ Section 733.107, F.S.

⁸ Section 736.0207, F.S.

⁹ Section 733.107, F.S.

¹⁰ "A presumption is an assumption of fact . . ." s. 90.301(1), F.S.

¹¹ *In re Carpenter's Estate*, 253 So.2d 697, 703 (Fla. 1971).

¹² Section 733.107(2), F.S.

¹³ See, *Newman v. Brecher*, 887 So. 2d 384 (Fla. 4th DCA 2004); and *RBC Ministries v. Tompkins*, 974 So.2d 569, 571-72 (Fla. 2d DCA 2008).

¹⁴ The term 'inter vivos' refers to transactions during life.

¹⁵ The Supreme Court of Florida has expressed its approval of statutes explicitly incorporating s. 90.304, F.S., into a statutory presumption. See, *Universal Ins. Co. of North America v. Warfel*, 82 So.3d 47, 55-60 (Fla. 2012).

¹⁶ Retroactive statutes expressly stated by the Legislature to be remedial in nature are not unconstitutional unless they interfere with a vested right. *Maronda Homes, Inc. of Florida, v. Lakeview Reserve Homeowners Association, Inc.*, 127 So.3d 1258 (Fla. 2013), *American Optical Corporation v. Spiewak*, 73 So.3d 120 (Fla. 2011).

Exempt Nature of Life Insurance Proceeds

Life insurance proceeds are generally exempt from estate administration expenses and the claims of creditors.¹⁷ However, the exemption is lost if the insurance proceeds are paid to the insured or the insured's estate.¹⁸

Death benefits of any kind, including life insurance proceeds, may be made payable to the trustee of an inter vivos trust.¹⁹ If the insurance proceeds are paid to a trustee of a trust, the statute provides that the insurance proceeds "shall be held and disposed of in accordance with the terms of the trust . . ." ²⁰ Likewise, insurance proceeds may be made payable to the trustee named in a last will that is admitted to probate.²¹ The death benefits are not deemed to be part of the decedent's estate and are not subject to obligation to pay creditors of the decedent or probate estate administration until estate assets are depleted.²²

In the recent case of *Morey v. Everbank*²³ the insured designated his revocable trust as the beneficiary of a life insurance policy. After the insured's death, the trustee filed a petition requesting a court determination that life insurance proceeds payable to the trust were exempt from all "death obligations" and, therefore, unavailable to the estate or the estate's creditors. The trust instrument in *Morey* directed the trustee to pay to the personal representative such amounts certified by the personal representative to be required to pay the settlor's "death obligations," including estate administration expenses, all the settlor's enforceable debts, and all estate taxes.²⁴

The court focused on the language in s. 733.808(1), F.S., which provides that life insurance proceeds paid to a trustee "shall be *held and disposed of by the trustee in accordance with the terms of the trust . . .*" The court concluded that the language of the trust together with the entire structure of the trust evidenced an "apparent intent and practical result" that would be the same if the life insurance proceeds were paid directly to the estate.²⁵ The court ruled that the settlor waived the statutory exemption in s. 222.13, F.S.²⁶

The holding in *Morey* is contrary to the generally accepted interpretations of ss. 222.13(1) and 733.808(4), F.S. Practitioners have treated insurance proceeds payable to a trustee of a revocable trust as exempt from the claims of the creditors of the insured's estate unless the trust specifically directs their payment. Practitioners report particular concern that the holding in *Morey* may be interpreted too broadly, and that the case will be construed to erode the long-standing understanding that s. 733.808(4), F.S., was clear in its meaning that proceeds of insurance payable to a trust established by the insured are exempt from creditors' claims in most instances. Before *Morey*, few thought that insurance proceeds to the insured's revocable trust would expose the proceeds of insurance to creditor claims. Practitioners report that the language of s. 733.808(4), F.S., is insufficient to provide protection for both existing and new testamentary plans in light of the *Morey* decision.

The bill provides that a waiver of the statutory exemption from creditor's claims applicable to insurance proceeds paid to a trust established by the insured must be explicit. The proposed language prevents an unintentional waiver by providing that the statutory exemption may only be waived with trust language that specifically refers to s. 733.808(4), F.S. The waiver of the exemption cannot be inferred

¹⁷ Section 222.13(1), F.S.

¹⁸ *Id.*

¹⁹ Section 733.808(1), F.S.

²⁰ *Id.*

²¹ Section 733.808(2), F.S.

²² Sections 733.808(4), and 733.607(2), F.S.

²³ 93 So.3d 482 (Fla. 2012).

²⁴ *Id.* at 484-85 (quoting Article V of the trust instrument).

²⁵ *Id.* at 487.

²⁶ *Id.* at 487.

from general "pay all my debts" type language in a trust instrument. The bill provides that the changes in this provision are intended to clarify existing law, are remedial in nature, and apply retroactively.²⁷

Antilapse

An "antilapse" statute prevents a devise from failing, or "lapsing," when the designated beneficiary does not survive the decedent. The Probate Code provides that a gift to only a "grandparent, or a descendant of a grandparent" is saved from lapse.²⁸ Currently, the Trust Code's antilapse provision applies to all gifts regardless of familial relationship to the creator of the gift.²⁹ The statute applies to a "future interest," and does not contain any qualification that the beneficiary of that interest be a blood relative of the settlor. The statute defines "future interest" for purposes of determining lapse.³⁰ There are inconsistencies between the Probate and Trust Codes on this point. Florida's previous Trust Code, which was amended in 2007, contained an antilapse provision that saved only gifts to grandparents or descendants of grandparents from lapse.³¹ A new Trust Code was enacted in 2008, but that Code's antilapse statute does not contain a broad savings clause for gifts made to grandparents or descendants of grandparents. Instead, the current Trust Code's antilapse statute applies to a "future interest," and does not contain any qualification that the beneficiary of that interest be a blood relative of the settlor.

The bill amends the Trust Code to make an outright devise to a deceased beneficiary in a revocable trust or testamentary trust lapse unless the beneficiary was a grandparent, or a lineal descendant of a grandparent of the settlor of a revocable trust or the testator of a testamentary trust. As with wills, this is a default provision, meaning that the settlor or testator can always provide to the contrary in his or her testamentary documents. This would make the Probate Code and Trust Code's antilapse statutes more consistent, which is important given that many people use revocable trust agreements as substitutes for wills. Also, testamentary trusts, which are created under wills, are not covered by the Probate Code's antilapse statute. Instead, the definition of "future interest" under the Trust Code encompasses those devises which create a testamentary trust. Thus, changing the Trust Code's antilapse provision to make it more consistent with the Probate Code allows outright devises to be treated more consistently with the settlor or testator's presumed intent. The bill provides that this provision applies to trusts which become irrevocable after June 30, 2014.³²

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 733.107, F.S., relating to burden of proof in contests; presumption of undue influence.

Section 2 amends s. 733.808, F.S., relating to death benefits; disposition of proceeds.

Section 3 provides a statement of legislative intent that the changes made regarding s. 733.808, F.S., clarify existing law and are remedial in nature.

Section 4 amends s. 736.0207, F.S., relating to trust contests.

²⁷ *Id.*

²⁸ Section 732.603, F.S.

²⁹ Section 736.1106, F.S.

³⁰ "Future interest" includes an alternative future interest and a future interest in the form of a class gift. s. 736.1106(1)(c), F.S. "Future interest under the terms of a trust" means a future interest created by an inter vivos or testamentary trust to an existing trust or creating a trust or by an exercise of a power of appointment to an existing trust directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust. s. 736.1106(1)(d), F.S.

³¹ Section 737.6035, F.S. (2007).

³² A "Living Trust" is a testamentary document after the settlor dies, and thus, while it is revocable during the life of the settlor, it becomes irrevocable upon the settlor's death. *In re Guardianship of Trost*, 100 So.3d 1205 (Fla. 2d DCA 2012).

Section 5 amends s. 736.05053, F.S., relating to trustee's duty to pay expenses and obligations of settlor's estate.

Section 6 provides a statement of legislative intent that the changes made regarding s. 736.05053, F.S., clarify existing law and are remedial in nature.

Section 7 amends s. 736.1106, F.S., relating to antilapse; survivorship with respect to future interests under terms of inter vivos and testamentary trusts; substitute takers.

Section 8 provides an effective date of July 1, 2014.

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 revenues.

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:

"A statute is presumed not to have retroactive application, but the presumption is rebuttable by clear evidence that the legislature intended that the statute be applied retroactively."³³The bill provides that

³³ *Essex Ins. Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947, 951 (Fla. 2d DCA 2013).

the changes in this provision are intended to clarify existing law, are remedial in nature, and apply retroactively.

The Florida Constitution guarantees to all persons the right to acquire, possess and protect property. Article I, s. 9 provides that "[n]o person shall be deprived of life, liberty or property without due process of law."³⁴ Therefore, retroactive provisions may open the door to challenge vested property rights. "In determining whether a statute applies retroactively, the Supreme Court considers two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional."³⁵

In this bill, the legislative intent is expressed. The first prong of the test is met. The second prong looks to see if a vested right is impaired.

A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment. To be vested a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.³⁶

"Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes"³⁷

"When the legislature amends a statute shortly after controversy has arisen over its interpretation, the amendment can be considered an interpretation of the original law, not a substantive change. See *Metro. Dade Cnty. v. Chase Fed. Hous. Corp.*, 737 So.2d 494, 503 (Fla. 1999)."³⁸

Some statutes have specific intent provided. For example, section 2 of ch. 2011-215 provides:

"[t]he Legislature intends that this act be applied retroactively and overrule *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001), which adopted what the Florida Supreme Court acknowledged to be a minority view. That minority view fails to apportion fault for damages consistent with Florida's statutory comparative fault system, codified in s. 768.81, Florida Statutes, and leads to inequitable and unfair results, regardless of the damages sought in the litigation. The Legislature finds that, in a products liability action as defined in this act, fault should be apportioned among all responsible persons."

Likewise, s. 222.21(2)(c), F.S., provides in part "This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts without regard to the date an account was created."

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.

³⁴ Art. I, s. 9, FLA. CONST.

³⁵ 10A Fla. Jur 2d Constitutional Law §394, citing *Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc.*, 986 So. 2d 1279 (Fla. 2008).

³⁶ *School Bd. Of Miami-Dade County v. Carralero*, 992 So.2d 353 (Fla. 3d DCA 2008)(internal citations omitted).

³⁷ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

³⁸ *Essex Ins. Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947, 951 (Fla. 2d DCA 2013).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to estates; amending s. 733.107, F.S.;
 3 clarifying circumstances under which a burden of proof
 4 shifts in cases involving undue influence; amending s.
 5 733.808, F.S.; requiring that a directive to apply
 6 certain death benefits for the payment of claims and
 7 administration expenses be specified in certain
 8 instruments; providing for retroactive application;
 9 amending s. 736.0207, F.S.; establishing which party
 10 bears the burden of proof in an action to contest the
 11 validity or revocation of a trust; amending s.
 12 736.05053, F.S.; requiring a specific directive for
 13 certain assets and death benefits to be used to pay
 14 estate expenses; providing for retroactive
 15 application; amending s. 736.1106, F.S.; providing for
 16 the vesting of outright devises in certain trust
 17 documents; providing for applicability; providing an
 18 effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 733.107, Florida Statutes, is amended
 23 to read:

24 733.107 Burden of proof in contests; presumption of undue
 25 influence.—

26 (1) In all proceedings contesting the validity of a will,

27 | the burden shall be upon the proponent of the will to establish
 28 | prima facie its formal execution and attestation. A self-proving
 29 | affidavit executed in accordance with s. 732.503 or an oath of
 30 | an attesting witness executed as required in s. 733.201(2) is
 31 | admissible and establishes prima facie the formal execution and
 32 | attestation of the will. Thereafter, the contestant shall have
 33 | the burden of establishing the grounds on which the probate of
 34 | the will is opposed or revocation is sought.

35 | (2) In any transaction or event to which the presumption
 36 | of undue influence applies, the presumption ~~of undue influence~~
 37 | implements public policy against abuse of fiduciary or
 38 | confidential relationships and is therefore a presumption
 39 | shifting the burden of proof under ss. 90.301-90.304.

40 | Section 2. Subsection (4) of section 733.808, Florida
 41 | Statutes, is amended to read:

42 | 733.808 Death benefits; disposition of proceeds.—

43 | (4) Unless the trust agreement, declaration of trust, or
 44 | will expressly refers to this subsection and directs that it
 45 | does not apply, death benefits payable as provided in subsection
 46 | (1), subsection (2), or subsection (3), unless paid to a
 47 | personal representative under the provisions of subsection (3),
 48 | shall not be deemed to be part of the decedent's estate, and
 49 | shall not be subject to any obligation to pay the expenses of
 50 | the administration and obligations of the decedent's estate or
 51 | for contribution required from a trust under s. 733.607(2) to
 52 | any greater extent than if the proceeds were payable directly to

53 the beneficiaries named in the trust.

54 Section 3. The changes made by this act to s. 733.808,
 55 Florida Statutes, are intended to clarify existing law, are
 56 remedial in nature, and apply retroactively without regard to
 57 the date of the decedent's death.

58 Section 4. Section 736.0207, Florida Statutes, is amended
 59 to read:

60 736.0207 Trust contests.—

61 (1) In an action to contest the validity or revocation of
 62 all or part of a trust, the contestant has the burden of
 63 establishing the grounds for invalidity.

64 (2) An action to contest the validity of all or part of a
 65 revocable trust, or the revocation of part of a revocable trust,
 66 may not be commenced until the trust becomes irrevocable by its
 67 terms or by the settlor's death. If all of a revocable trust has
 68 been revoked, an action to contest the revocation may not be
 69 commenced until after the settlor's death. This section does not
 70 prohibit such action by the guardian of the property of an
 71 incapacitated settlor.

72 Section 5. Subsection (1) of section 736.05053, Florida
 73 Statutes, is amended to read:

74 736.05053 Trustee's duty to pay expenses and obligations
 75 of settlor's estate.—

76 (1) A trustee of a trust described in s. 733.707(3) shall
 77 pay to the personal representative of a settlor's estate any
 78 amounts that the personal representative certifies in writing to

79 the trustee are required to pay the expenses of the
 80 administration and obligations of the settlor's estate. Payments
 81 made by a trustee, unless otherwise provided in the trust
 82 instrument, must be charged as expenses of the trust without a
 83 contribution from anyone. The interests of all beneficiaries of
 84 such a trust are subject to the provisions of this subsection;
 85 however, the payments must be made from assets, property, or the
 86 proceeds of the assets or property that are included in the
 87 settlor's gross estate for federal estate tax purposes and may
 88 not be made from, other than assets proscribed in s. 733.707(3)
 89 or death benefits described in s. 733.808(4) unless the trust
 90 instrument expressly refers to s. 733.808(4) and directs that it
 91 does not apply, that are included in the settlor's gross estate
 92 for federal estate tax purposes.

93 Section 6. The changes made by this act to s. 736.05053,
 94 Florida Statutes, are intended to clarify existing law, are
 95 remedial in nature, and apply retroactively without regard to
 96 the date of the settlor's death.

97 Section 7. Subsection (5) of section 736.1106, Florida
 98 Statutes, is renumbered as subsection (6) and amended, and a new
 99 subsection (5) is added to that section, to read:

100 736.1106 Antilapse; survivorship with respect to future
 101 interests under terms of inter vivos and testamentary trusts;
 102 substitute takers.-

103 (5) Unless a contrary intent appears in the trust
 104 instrument, subsections (2)-(4) do not apply to an outright

105 devise that vests upon the death of the settlor unless the
 106 beneficiary is a grandparent, or a lineal descendant of a
 107 grandparent, of the settlor or testator and the beneficiary:

108 (a) Is dead at the time of the execution of the revocable
 109 trust or will;

110 (b) Fails to survive the settlor or testator; or

111 (c) Is required by the inter vivos trust or by operation
 112 of law to be treated as having predeceased the settlor or
 113 testator.

114
 115 A devise in a revocable trust or a testamentary trust that is to
 116 take effect at the death of the settlor or testator does not
 117 vest until the death of the settlor or testator.

118 (6)(5) Subsections (1)-(4) apply to all trusts other than
 119 trusts that were irrevocable before the effective date of this
 120 code. Sections 732.603, 732.604, and 737.6035, as they exist on
 121 June 30, 2007, continue to apply to other trusts executed on or
 122 after June 12, 2003. Subsection (5) applies to those trusts that
 123 become irrevocable after June 30, 2014.

124 Section 8. This act shall take effect July 1, 2014.



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 Spano offered the following:

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

5 Between lines 21 and 22, insert:

6 Section 1. Subsection (9) is added to section 732.806,
 7 Florida Statutes, to read:

8 732.806 Gifts to lawyers and other disqualified persons.—

9 (9) This section applies only to written instruments
 10 executed on or after October 1, 2013.

11 Section 2. The changes made by this act to s. 732.806,
 12 Florida Statutes, are intended to clarify existing law and are
 13 remedial in nature.

14
 15
 16
 17 -----



Amendment No. 1

18
19
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25

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

Remove line 2 and insert:

An act relating to estates; amending s. 732.806, F.S.;
providing that certain restrictions on gifts to lawyers and
other disqualified persons apply to written instruments executed
on or after a specified date; providing for applicability;
amending s. 733.107, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 789 Rights Of Grandparents And Great-Grandparents
SPONSOR(S): Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 750

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>JMC</i>	Bond <i>YTB</i>
2) Healthy Families Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Grandparents are denied visitation with their minor grandchildren in a variety of situations. Historically, no relief was available for grandparents were denied contact with their minor grandchildren. Any third-party intrusion into matters concerning a family unit of parents and children was disfavored, including grandparent visitation, since the common law recognized parents as the ultimate family authority. Changes in the traditional family, however, prompted Florida to address grandparent visitation as early as 1978, when grandparents were first taken into consideration in dissolution proceedings. In 1984, the Legislature expanded grandparents' visitation, giving an independent right of action to grandparents for visitation with their minor grandchildren, outside of a dissolution proceeding.

Since the first grandparent visitation law was enacted, both the United States Supreme Court and the Florida Supreme Court have considered grandparents' visitation statutes in light of constitutional privacy concerns. Since the Florida Constitution has an express right of privacy provision, the Florida Supreme Court has determined that such statutes will be reviewed using the highest level of scrutiny - the 'compelling state interest' standard. In other words, the state must show a 'compelling state interest' in regulating the conduct governed by the statute. As a result, the courts have struck down most of current law devoted to grandparents' visitation rights on privacy grounds for failure to meet this standard. At the same time, in the context of those cases, the court has provided a framework within which a statute creating grandparents' visitation rights might be enacted.

This bill creates a limited grandparent visitation statute. The bill provides that a grandparent of a minor child whose parent or parents are deceased, missing, or in a permanent vegetative state may petition the court for visitation. The petitioner must make a preliminary showing that the remaining parent is unfit or that there has been significant harm to the child. The bill provides for mediation as a first resort. If that is ineffective, the court may, if it deems necessary, appoint a guardian ad litem for the child. The bill supplies a list of factors for the court to consider in its final determination, including the previous relationship the grandparent had with the child, the findings of the guardian ad litem, the potential disruption to the family, the consistency of values between the grandparent and the parent, the reasons visitation ended, and other considerations.

The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances. The bill also addresses other statutes that govern child custody and visitation, and provides for attorney's fees.

The bill adds great-grandparents to statutes defining next of kin, and to statutes which require notice of legal proceedings to grandparents.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

While Florida presently has a statute providing grandparents a means to petition for visitation with their minor grandchildren, much of that law has been declared unconstitutional by the Florida Supreme Court.¹ There is only one unchallenged criterion in the present law, providing that a grandparent may petition for visitation when a parent has deserted the child.

Effect of the Bill

The bill repeals the current statute and creates a new and more detailed provision for such a petition in light of Florida Supreme Court decisions. Some technical provisions in the dependency statute, the dissolution statutes, and the adoption statutes are changed to conform to the new law.

The bill also places great-grandparents in the same position as grandparents in regard to notices affecting adoption, dependency, and next of kin status.

Grandparent Visitation Rights - Petition

Section 752.01(1), F.S., currently provides that a grandparent may petition for visitation rights when:

- Visitation is in the best interest of the minor child, and
- A parent of the child has deserted the child.²

Section (1) also includes two grounds for awarding grandparent visitation which have been determined to be unconstitutional, but remain in the statute:

- Section 752.01(1)(a), F.S.,³ was determined to be unconstitutional by the decision in *Von Eiff v. Azicri*, 720 So.2d 510 (Fla. 1998).⁴
- Section 752.01(1)(c), F.S.,⁵ was determined to be unconstitutional by the decision in *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996).⁶

The bill repeals s. 752.01, F.S., and creates in lieu thereof, s. 752.011, F.S.

The new section provides that a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state may petition the court for visitation. Likewise, a grandparent may petition for visitation if there are two parents, one of whom is deceased, missing, or in a permanent vegetative state and the other has been convicted of a felony or an offense of violence. The petitioner

¹ See subsequent sections for discussion.

² Section 752.01(1)(b), F.S.

³ Formerly s. 752.01(1)(b), F.S.

⁴ The court held that the right of privacy in the Florida Constitution is a fundamental right and any statute that infringes on that right is subject to the "compelling state interest" test, the highest standard of review. The court determined that section (a), which provided for grandparent visitation in the event of dissolution of the parents, failed that test, because the standard set out in the statute was determination of the "best interest" of the child, without determining "proof of demonstrable harm to the child." *Von Eiff v. Azicri* at 514.

⁵ Formerly s. 752.01(1)(d), F.S.

⁶ The section is facially unconstitutional "because it constitutes impermissible state interference with parental rights protected" by the Florida Constitution. *Beagle*, at 1272.

must make a preliminary showing that the remaining parent is unfit or that there has been significant harm to the child.

The new section also directs the family to mediation, furnishes adjudication standards, and directs procedures for a petition seeking grandparent visitation with a minor child. The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances.⁷ Additionally, s. 752.015, F.S., is amended to provide a cross-reference to the new statute.

At the final hearing on whether to grant or deny grandparent visitation, the grandparent must show by clear and convincing evidence that the parent is unfit or there has been significant harm to the child. If so, then visitation may only be awarded if visitation is in the best interest of the child and if it will not harm the parent-child relationship. In determining best interest, the court is directed to consider:

- The love, affection, and other emotional ties existing between the minor child and the grandparent, including those resulting from the relationship that had been previously allowed by the child's parent;
- The length and quality of the previous relationship between the minor child and the grandparent, including the extent to which the grandparent was involved in providing regular care and support for the child;
- Whether the grandparent established ongoing personal contact with the minor child prior to the death of the parent;
- The reasons that the surviving parent cited to end contact or visitation between the minor child and the grandparent;
- Whether there has been demonstrable significant mental or emotional harm to the minor child as a result of disruption in the family unit from which the child derived support and stability from the grandparental relationship, and whether the continuation of that support and stability is likely to prevent further harm;
- The existence or threat to the minor child of mental injury as defined in s. 39.01, F.S.;
- The present mental, physical, and emotional health of the minor child;
- The present mental, physical, and emotional health of the grandparent;
- The recommendations of the minor child's guardian ad litem, if one is appointed;
- The results of any psychological evaluation of the minor child;
- The preference of the minor child if the child is determined to be of sufficient maturity to express a preference;
- A written testamentary statement by the deceased parent regarding visitation with the grandparent. The absence of such a testamentary statement does not provide evidence that the deceased parent would have objected to the requested visitation; and
- Such other factors as the court considers necessary in making its determination.

In determining material harm to the parent-child relationship, the court is directed to consider:

- Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the minor child;
- Whether visitation would materially interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship, and any other consideration related to disruption of the schedule and routines of the parent and the minor child;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child benefit from the relationship;

⁷ Recommendations of the Committee on Judiciary, The Florida Senate, *Interim Report 2009-120*, Grandparent Visitation Rights (October 2008).

- Whether the requested visitation would expose the minor child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- The nature of the relationship between the parent and the grandparent;
- The reasons that the parent made the decision to end contact or visitation between the minor child and the grandparent which was previously allowed by the parent;
- The psychological toll of visitation disputes on the minor child; and
- Such other factors as the court considers necessary in making its determination.

The term "clear and convincing evidence" creates a higher requirement for proof than is normally required in a civil action. The term means:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.⁸

The bill also addresses other statutes that govern child custody and visitation, and provides for attorney's fees:

- Article II of ch. 61, F.S., the Uniform Child Custody Jurisdiction and Enforcement Act,⁹ applies to actions brought under the provisions of the bill.
- Courts are encouraged to consolidate actions pending under s. 61.13, F.S.,¹⁰ with those brought under s. 752.011, F.S.

Grandparent Visitation Rights - Remarriage or Adoption

Currently, s. 752.07, F.S., provides that in the event of a remarriage, (in the case of one deceased parent), or if there is an adoption by a step parent, any existing visitation order in favor of a grandparent is unaffected, unless the grandparent has notice and an opportunity to be heard. It is currently silent as to who would be the proper party to bring any request to change visitation before the court. It also does not address adoption by a "close relative" under s. 63.172, F.S. The bill addresses these two issues in that it repeals s. 752.07, F.S., and creates s. 752.071, F.S. The new section provides that after adoption of a minor child by a stepparent or close relative, the adoptive parent may petition to terminate a previous order granting grandparent visitation. The burden is on the grandparent to show satisfaction of the criteria which would satisfy an original petition for visitation.

Great-Grandparents - Included as Next of Kin and Interested Parties

Generally, the bill adds great-grandparents to statutes defining next of kin, and to statutes which require notice of legal proceedings to grandparents:

- Currently, s. 39.01(45), F.S., defines "next of kin" to include an adult relative of a child who is a sibling, grandparent, aunt, uncle, or first cousin. The bill adds "great-grandparent" to the definition of "next of kin."
- Currently, s. 39.509, F.S., establishes a grandparent's reasonable visitation and other contact with a child who has been adjudicated a dependent child and taken from the parent's custody. The bill expands this entitlement to great-grandparents.

⁸ *Inquiry Concerning Davey*, 645 So.2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983).

⁹ Sections 61.501 - 61.520, F.S.

¹⁰ Section 61.13, F.S. governs child support obligations and custodial arrangements for minor children in a dissolution proceeding.

- Currently, s. 39.801(3)(a)5, F.S., provides that prior to termination of parental rights, notice must be given to a grandparent. The bill adds to existing law that a great-grandparent entitled to priority for adoption under s. 63.0425, F.S., is also entitled to notice.
- Currently, s. 63.0425, F.S., provides that a grandparent is entitled to notice concerning a termination of parental rights pending adoption. The bill adds to existing law that a great-grandparent who has had the child for at least 6 months within the 24 month period preceding the petition for termination is also entitled to notice of the hearing on the petition to terminate parental rights.
- Currently, s. 63.087(4), F.S., provides that a petition to terminate paternal rights pending an adoption must include, among other things, a certification of compliance with the requirements of s. 63.0425, F.S., regarding notice to grandparents of an impending adoption. The bill requires a certification of compliance regarding notice to great-grandparents of an impending adoption.
- Currently, s. 63.172(2), F.S., provides that the death of a parent and subsequent adoption of a minor child by a new spouse, or a close relative, does not terminate grandparental visitation.
- Currently, s. 39.6221(2), F.S., provides the court with guidance in establishing a permanent guardianship, including the frequency and nature of visitation or contact between a child and his or her grandparents. The bill provides that the court may provide for the frequency and nature of visitation or contact between a child and his or her great-grandparents.
- Currently, s. 39.6231(3), F.S., provides the court with guidance in establishing permanent placement with a fit and willing relative, including the frequency and nature of visitation or contact between a child and his or her grandparents. The bill provides that the court may provide for the frequency and nature of visitation or contact between a child and his or her great-grandparents.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 39.01, F.S., relating to definitions.

Section 2 amends s. 39.509, F.S., relating to visitation rights of grandparents and great-grandparents.

Section 3 amends s. 39.801, F.S., relating to procedures and jurisdiction, notice, and service of process.

Section 4 amends s. 63.0425, F.S., relating to grandparent's or great-grandparent's right to notice.

Section 5 repeals s. 752.01, F.S., relating to action by grandparent for right of visitation and when a petition shall be granted.

Section 6 creates s. 752.011, F.S., relating to petition for grandparent visitation of a minor child.

Section 7 repeals s. 752.07, F.S., relating to effect of adoption of child by stepparent on right of visitation and when a right may be terminated.

Section 8 creates s. 752.071, F.S., relating to effect of adoption by stepparent or close relative.

Section 9 amends s. 39.6221, F.S., relating to permanent guardianship of a dependent child.

Section 10 amends s. 39.6231, F.S., relating to permanent placement with a fit and willing relative.

Section 11 amends s. 63.087, F.S., relating to a proceeding to terminate parental rights pending adoption and general provisions.

Section 12 amends s. 63.172, F.S., relating to effect of judgment of adoption.

Section 13 amends s. 752.015, F.S., relating to mediation of visitation disputes.

Section 14 provides an effective date of July 1, 2014.

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 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:

The United States Supreme Court has recognized the fundamental liberty interest parents have in the 'care custody and management' of their children. *Santosky v. Kramer*, 455 U.S. 745 (1982). The Florida Supreme Court has likewise recognized that decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution. See *Beagle*, 678 So.2d at 1275; *Padgett v. Department of Health & Rehabilitative Servs.*, 577 So.2d 565, 570 (Fla. 1991). These rights may not be intruded upon absent a compelling state interest. *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 637 (Fla. 1980)." *Belair v. Drew*, 776 So.2d 1105, 1107 (Fla. 5th DCA 2001).

"When analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means. [citations omitted].

"In holding that 'this is a highly stringent standard' of review, this Court in *In re T.W.*¹¹ noted that it could cite no cases in Florida in which 'government intrusion in personal decisionmaking' survived the compelling state interest test. 551 So.2d at 1192." *Von Eiff v. Azicri*, 720 So.2d 510, 514 (Fla. 1998).

"In *Beagle*,¹² we unequivocally announced that 'the imposition, by the State, of grandparental visitation rights implicates the privacy rights of the Florida Constitution.' 678 So.2d at 1275. Based on our State's constitutional privacy right, this Court then held that 'the State may not intrude upon the parents' fundamental right to raise their children except in cases where the child is *threatened with harm* . . .'" [Emphasis in original]. *Von Eiff* at 514.

"In *Von Eiff*, the Florida Supreme Court held that privacy is a fundamental right and any statute that infringes on that right is subject to the 'compelling state interest' test, the highest standard of review. . . It concluded that section 752.01(1)(a) failed that test because the circuit court must order visitation based on the 'best interest' of the child, 'without first requiring proof of demonstrable harm to the child.'" *Id.* at 514. *Belair v. Drew*, 776 So.2d 1105, 1106 (Fla. 5th DCA 2001).

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

n/a

¹¹ *In re T. W.*, 551 So.2d 1186 (Fla. 1989).

¹² *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996).

1 A bill to be entitled
 2 An act relating to the rights of grandparents and
 3 great-grandparents; amending s. 39.01, F.S.; revising
 4 the definition of the term "next of kin" to include
 5 great-grandparents for purposes of various proceedings
 6 relating to children; amending s. 39.509, F.S.;
 7 providing great-grandparents the same visitation
 8 rights as grandparents; amending ss. 39.801 and
 9 63.0425, F.S.; providing for a great-grandparent's
 10 right to notice of adoption; repealing s. 752.01,
 11 F.S., relating to actions by a grandparent for
 12 visitation rights; creating s. 752.011, F.S.;
 13 authorizing the grandparent of a minor child to
 14 petition a court for visitation under certain
 15 circumstances; requiring a preliminary hearing;
 16 providing for the payment of attorney fees and costs
 17 by a petitioner who fails to make a prima facie
 18 showing of harm; authorizing grandparent visitation if
 19 the court makes specified findings; providing factors
 20 for court consideration; providing for application of
 21 the Uniform Child Custody Jurisdiction and Enforcement
 22 Act; encouraging the consolidation of certain
 23 concurrent actions; providing for modification of an
 24 order awarding grandparent visitation; limiting the
 25 frequency of actions seeking visitation; limiting
 26 application to a minor child placed for adoption;

27 providing for venue; repealing s. 752.07, F.S.,
 28 relating to the effect of adoption of a child by a
 29 stepparent on grandparent visitation rights; creating
 30 s. 752.071, F.S.; providing conditions under which a
 31 court may terminate a grandparent visitation order
 32 upon adoption of a minor child by a stepparent or
 33 close relative; amending ss. 39.6221, 39.6231, 63.087,
 34 63.172, and 752.015, F.S.; conforming provisions and
 35 cross-references to changes made by the act; providing
 36 an effective date.

37

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

39

40 Section 1. Subsection (45) of section 39.01, Florida
 41 Statutes, is amended to read:

42 39.01 Definitions.—When used in this chapter, unless the
 43 context otherwise requires:

44 (45) "Next of kin" means an adult relative of a child who
 45 is the child's brother, sister, grandparent, great-grandparent,
 46 aunt, uncle, or first cousin.

47 Section 2. Section 39.509, Florida Statutes, is amended to
 48 read:

49 39.509 Visitation rights of grandparents and great-
 50 grandparents ~~Grandparents rights~~.—Notwithstanding any other
 51 ~~provision of law~~, a maternal or paternal grandparent or great-
 52 grandparent as well as a step-grandparent or step-great-

53 grandparent ~~stepgrandparent~~ is entitled to reasonable visitation
 54 with his or her grandchild or great-grandchild who has been
 55 adjudicated a dependent child and taken from the physical
 56 custody of the parent unless the court finds that such
 57 visitation is not in the best interest of the child or that such
 58 visitation would interfere with the goals of the case plan.
 59 Reasonable visitation may be unsupervised and, where appropriate
 60 and feasible, may be frequent and continuing. An ~~Any~~ order for
 61 visitation or other contact must conform to ~~the provisions of s.~~
 62 39.0139.

63 (1) Grandparent or great-grandparent visitation may take
 64 place in the home of the grandparent or great-grandparent unless
 65 there is a compelling reason for denying such ~~a~~ visitation. The
 66 department's caseworker shall arrange the visitation to which a
 67 grandparent or great-grandparent is entitled pursuant to this
 68 section. The state may ~~shall~~ not charge a fee for any costs
 69 associated with arranging the visitation. However, the
 70 grandparent or great-grandparent shall pay for the child's cost
 71 of transportation if ~~when~~ the visitation is to take place in the
 72 grandparent's or great-grandparent's home. The caseworker shall
 73 document the reasons for any decision to restrict a
 74 grandparent's or great-grandparent's visitation.

75 (2) A grandparent or great-grandparent entitled to
 76 visitation pursuant to this section may ~~shall~~ not be restricted
 77 from appropriate displays of affection to the child, such as
 78 appropriately hugging or kissing his or her grandchild or great-

79 grandchild. Gifts, cards, and letters from the grandparent or
 80 great-grandparent and other family members may ~~shall~~ not be
 81 denied to a child who has been adjudicated a dependent child.

82 (3) Any attempt by a grandparent or great-grandparent to
 83 facilitate a meeting between the child who has been adjudicated
 84 a dependent child and the child's parent or legal custodian, ~~or~~
 85 any other person in violation of a court order shall
 86 automatically terminate future visitation rights of the
 87 grandparent or great-grandparent.

88 (4) When the child has been returned to the physical
 89 custody of his or her parent, the visitation rights granted
 90 pursuant to this section ~~shall~~ terminate.

91 (5) The termination of parental rights does not affect the
 92 rights of grandparents or great-grandparents unless the court
 93 finds that such visitation is not in the best interest of the
 94 child or that such visitation would interfere with the goals of
 95 permanency planning for the child.

96 (6) In determining whether grandparental or great-
 97 grandparental visitation is not in the child's best interest,
 98 the court consideration may consider ~~be given to~~ the following:

99 (a) The finding of guilt, regardless of adjudication, or
 100 entry or plea of guilty or nolo contendere to charges under the
 101 following statutes, or similar statutes of other jurisdictions:

102 1. Section s. 787.04, relating to removing a minor child
 103 ~~minors~~ from the state or concealing a minor child ~~minors~~
 104 contrary to court order;

- 105 2. Section ~~s.~~ 794.011, relating to sexual battery;
- 106 3. Section ~~s.~~ 798.02, relating to lewd and lascivious
- 107 behavior;
- 108 4. Chapter 800, relating to lewdness and indecent
- 109 exposure;
- 110 5. Section ~~s.~~ 826.04, relating to incest; or
- 111 6. Chapter 827, relating to the abuse of children.

112 (b) The designation by a court as a sexual predator as
 113 defined in s. 775.21 or a substantially similar designation
 114 under laws of another jurisdiction.

115 (c) A report of abuse, abandonment, or neglect under ss.
 116 415.101-415.113 or this chapter and the outcome of the
 117 investigation concerning such report.

118 Section 3. Paragraph (a) of subsection (3) of section
 119 39.801, Florida Statutes, is amended to read:

120 39.801 Procedures and jurisdiction; notice; service of
 121 process.—

122 (3) Before the court may terminate parental rights, in
 123 addition to the other requirements set forth in this part, the
 124 following requirements must be met:

125 (a) Notice of the date, time, and place of the advisory
 126 hearing for the petition to terminate parental rights and a copy
 127 of the petition must be personally served upon the following
 128 persons, specifically notifying them that a petition has been
 129 filed:

- 130 1. The parents of the child.

- 131 2. The legal custodians of the child.
- 132 3. If the parents who would be entitled to notice are dead
- 133 or unknown, a living relative of the child, unless upon diligent
- 134 search and inquiry no such relative can be found.
- 135 4. Any person who has physical custody of the child.
- 136 5. Any grandparent or great-grandparent entitled to
- 137 priority for adoption under s. 63.0425.
- 138 6. Any prospective parent who has been identified under s.
- 139 39.503 or s. 39.803.
- 140 7. The guardian ad litem for the child or the
- 141 representative of the guardian ad litem program, if the program
- 142 has been appointed.

143

144 The document containing the notice to respond or appear must

145 contain, in type at least as large as the type in the balance of

146 the document, the following or substantially similar language:

147 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING

148 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF

149 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND

150 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE

151 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS

152 NOTICE."

153 Section 4. Section 63.0425, Florida Statutes, is amended

154 to read:

155 63.0425 Grandparent's or great-grandparent's right to

156 notice.-

157 (1) If a child has lived with a grandparent or great-
 158 grandparent for at least 6 months within the 24-month period
 159 immediately preceding the filing of a petition for termination
 160 of parental rights pending adoption, the adoption entity shall
 161 provide notice to that grandparent or great-grandparent of the
 162 hearing on the petition.

163 (2) This section does not apply if the placement for
 164 adoption is the result of the death of the child's parent and a
 165 different preference is stated in the parent's will.

166 (3) This section does not apply in stepparent adoptions.

167 (4) This section does not contravene the provisions of s.
 168 63.142(4).

169 Section 5. Section 752.01, Florida Statutes, is repealed.

170 Section 6. Section 752.011, Florida Statutes, is created
 171 to read:

172 752.011 Petition for grandparent visitation of a minor
 173 child.—A grandparent of a minor child whose parents are
 174 deceased, missing, or in a permanent vegetative state, or whose
 175 one parent is deceased, missing, or in a permanent vegetative
 176 state and whose other parent has been convicted of a felony or
 177 an offense of violence, may petition the court for court-ordered
 178 visitation with the grandchild under this section.

179 (1) Upon the filing of a petition by a grandparent for
 180 visitation the court shall hold a preliminary hearing to
 181 determine whether the petitioner has made a prima facie showing
 182 of parental unfitness or significant harm to the child. Absent

183 such a showing, the court shall dismiss the petition and shall
 184 award reasonable attorney fees and costs to be paid by the
 185 petitioner to the respondent.

186 (2) If the court finds that there is prima facie evidence
 187 that a parent is unfit or that there is a danger of significant
 188 harm to the child, the court shall proceed toward a final
 189 hearing, may appoint a guardian ad litem, and shall order the
 190 matter to family mediation as provided in s. 752.015.

191 (3) After conducting a final hearing on the issue of
 192 visitation, the court may award reasonable visitation to the
 193 grandparent with respect to the minor child if the court finds
 194 by clear and convincing evidence that a parent is unfit or that
 195 there is a danger of significant harm to the child, that
 196 visitation is in the best interest of the minor child, and that
 197 the visitation will not materially harm the parent-child
 198 relationship.

199 (4) In assessing the best interest of the child under
 200 subsection (3), the court shall consider the totality of the
 201 circumstances affecting the mental and emotional well-being of
 202 the minor child, including:

203 (a) The love, affection, and other emotional ties existing
 204 between the minor child and the grandparent, including those
 205 resulting from the relationship that had been previously allowed
 206 by the child's parent.

207 (b) The length and quality of the previous relationship
 208 between the minor child and the grandparent, including the

209 extent to which the grandparent was involved in providing
 210 regular care and support for the child.

211 (c) Whether the grandparent established ongoing personal
 212 contact with the minor child before the death of the parent.

213 (d) The reasons that the surviving parent cited in ending
 214 contact or visitation between the minor child and the
 215 grandparent.

216 (e) Whether there has been demonstrable significant mental
 217 or emotional harm to the minor child as a result of the
 218 disruption in the family unit from which the child derived
 219 support and stability from the grandparent, and whether the
 220 continuation of that support and stability is likely to prevent
 221 further harm.

222 (f) The existence or threat to the minor child of mental
 223 injury as defined in s. 39.01.

224 (g) The present mental, physical, and emotional health of
 225 the minor child.

226 (h) The present mental, physical, and emotional health of
 227 the grandparent.

228 (i) The recommendations of the minor child's guardian ad
 229 litem, if one is appointed.

230 (j) The results of any psychological evaluation of the
 231 minor child.

232 (k) The preference of the minor child if the child is
 233 determined to be of sufficient maturity to express a preference.

234 (l) A written testamentary statement by the deceased

235 parent regarding visitation with the grandparent. The absence of
 236 a testamentary statement is not deemed to provide evidence that
 237 the deceased parent would have objected to the requested
 238 visitation.

239 (m) Other factors that the court considers necessary to
 240 making its determination.

241 (5) In assessing material harm to the parent-child
 242 relationship under subsection (3), the court shall consider the
 243 totality of the circumstances affecting the parent-child
 244 relationship, including:

245 (a) Whether there have been previous disputes between the
 246 grandparent and the parent over childrearing or other matters
 247 related to the care and upbringing of the minor child.

248 (b) Whether visitation would materially interfere with or
 249 compromise parental authority.

250 (c) Whether visitation can be arranged in a manner that
 251 does not materially detract from the parent-child relationship,
 252 including the quantity of time available for enjoyment of the
 253 parent-child relationship and any other consideration related to
 254 disruption of the schedule and routines of the parent and the
 255 minor child.

256 (d) Whether visitation is being sought for the primary
 257 purpose of continuing or establishing a relationship with the
 258 minor child with the intent that the child benefit from the
 259 relationship.

260 (e) Whether the requested visitation would expose the

261 minor child to conduct, moral standards, experiences, or other
 262 factors that are inconsistent with influences provided by the
 263 parent.

264 (f) The nature of the relationship between the child's
 265 parent and the grandparent.

266 (g) The reasons that the parent cited in ending contact or
 267 visitation between the minor child and the grandparent which was
 268 previously allowed by the parent.

269 (h) The psychological toll of visitation disputes on the
 270 minor child.

271 (i) Other factors that the court considers necessary to
 272 making its determination.

273 (6) Part II of chapter 61, the Uniform Child Custody
 274 Jurisdiction and Enforcement Act, applies to actions brought
 275 under this section.

276 (7) If separate actions under this section and s. 61.13
 277 are pending concurrently, the courts are strongly encouraged to
 278 consolidate the actions in order to minimize the burden of
 279 litigation on the minor child and the other parties.

280 (8) An order for grandparent visitation may be modified
 281 upon a showing by the person petitioning for modification that a
 282 substantial change in circumstances has occurred and that
 283 modification of visitation is in the best interest of the minor
 284 child.

285 (9) An original action requesting visitation under this
 286 section may be filed by a grandparent only once during any 2-

287 year period, except on good cause shown that the minor child is
 288 suffering, or may suffer, demonstrable significant mental or
 289 emotional harm caused by a parental decision to deny visitation
 290 between a minor child and the grandparent, which was not known
 291 to the grandparent at the time of filing an earlier action.

292 (10) This section does not provide for grandparent
 293 visitation with a minor child placed for adoption under chapter
 294 63 except as provided in s. 752.071 with respect to adoption by
 295 a stepparent or close relative.

296 (11) Venue shall be in the county where the minor child
 297 primarily resides, unless venue is otherwise governed by chapter
 298 39, chapter 61, or chapter 63.

299 Section 7. Section 752.07, Florida Statutes, is repealed.

300 Section 8. Section 752.071, Florida Statutes, is created
 301 to read:

302 752.071 Effect of adoption by stepparent or close
 303 relative.—After the adoption of a minor child by a stepparent or
 304 close relative, the stepparent or close relative may petition
 305 the court to terminate an order granting grandparent visitation
 306 under this chapter which was entered before the adoption. The
 307 court may terminate the order unless the grandparent is able to
 308 show that the criteria of s. 752.011 authorizing the visitation
 309 continue to be satisfied.

310 Section 9. Subsection (2) of section 39.6221, Florida
 311 Statutes, is amended to read:

312 39.6221 Permanent guardianship of a dependent child.—

313 (2) In its written order establishing a permanent
 314 guardianship, the court shall:

315 (a) List the circumstances or reasons why the child's
 316 parents are not fit to care for the child and why reunification
 317 is not possible by referring to specific findings of fact made
 318 in its order adjudicating the child dependent or by making
 319 separate findings of fact;

320 (b) State the reasons why a permanent guardianship is
 321 being established instead of adoption;

322 (c) Specify the frequency and nature of visitation or
 323 contact between the child and his or her parents;

324 (d) Specify the frequency and nature of visitation or
 325 contact between the child and his or her grandparents or great-
 326 grandparents, under s. 39.509;

327 (e) Specify the frequency and nature of visitation or
 328 contact between the child and his or her siblings; and

329 (f) Require that the permanent guardian not return the
 330 child to the physical care and custody of the person from whom
 331 the child was removed without the approval of the court.

332 Section 10. Subsection (3) of section 39.6231, Florida
 333 Statutes, is amended to read:

334 39.6231 Permanent placement with a fit and willing
 335 relative.—

336 (3) In its written order placing the child with a fit and
 337 willing relative, the court shall:

338 (a) List the circumstances or reasons why reunification is

339 not possible by referring to specific findings of fact made in
 340 its order adjudicating the child dependent or by making separate
 341 findings of fact;

342 (b) State the reasons why permanent placement with a fit
 343 and willing relative is being established instead of adoption;

344 (c) Specify the frequency and nature of visitation or
 345 contact between the child and his or her parents;

346 (d) Specify the frequency and nature of visitation or
 347 contact between the child and his or her grandparents or great-
 348 grandparents, under s. 39.509;

349 (e) Specify the frequency and nature of visitation or
 350 contact between the child and his or her siblings; and

351 (f) Require that the relative not return the child to the
 352 physical care and custody of the person from whom the child was
 353 removed without the approval of the court.

354 Section 11. Paragraph (e) of subsection (4) of section
 355 63.087, Florida Statutes, is amended to read:

356 63.087 Proceeding to terminate parental rights pending
 357 adoption; general provisions.—

358 (4) PETITION.—

359 (e) The petition must include:

360 1. The minor's name, gender, date of birth, and place of
 361 birth. The petition must contain all names by which the minor is
 362 or has been known, excluding the minor's prospective adoptive
 363 name but including the minor's legal name at the time of the
 364 filing of the petition. In the case of an infant child whose

365 adoptive name appears on the original birth certificate, the
 366 adoptive name may ~~shall~~ not be included in the petition or, nor
 367 ~~shall it be included~~ elsewhere in the termination of parental
 368 rights proceeding.

369 2. All information required by the Uniform Child Custody
 370 Jurisdiction and Enforcement Act and the Indian Child Welfare
 371 Act.

372 3. A statement of the grounds under s. 63.089 upon which
 373 the petition is based.

374 4. The name, address, and telephone number of any adoption
 375 entity seeking to place the minor for adoption.

376 5. The name, address, and telephone number of the division
 377 of the circuit court in which the petition is to be filed.

378 6. A certification of compliance with the requirements of
 379 s. 63.0425 regarding notice to grandparents or great-
 380 grandparents of an impending adoption.

381 Section 12. Subsection (2) of section 63.172, Florida
 382 Statutes, is amended to read:

383 63.172 Effect of judgment of adoption.—

384 (2) If one or both parents of a child die without the
 385 relationship of parent and child having been previously
 386 terminated and a spouse of the living parent or a close relative
 387 of the child thereafter adopts the child, the child's right of
 388 inheritance from or through the deceased parent is unaffected by
 389 the adoption and, unless the court orders otherwise, the
 390 adoption does ~~will~~ not terminate any grandparental or great-

391 grandparental rights delineated under chapter 752. For purposes
 392 of this subsection, a close relative of a child is the child's
 393 brother, sister, grandparent, great-grandparent, aunt, or uncle.

394 Section 13. Section 752.015, Florida Statutes, is amended
 395 to read:

396 752.015 Mediation of visitation disputes.—It is ~~shall be~~
 397 the public policy of this state that families resolve
 398 differences over grandparent visitation within the family. It is
 399 ~~shall be~~ the further public policy of this state that, when
 400 families are unable to resolve differences relating to
 401 grandparent visitation, ~~that~~ the family participate in any
 402 formal or informal mediation services that may be available. If
 403 ~~When~~ families are unable to resolve differences relating to
 404 grandparent visitation and a petition is filed pursuant to s.
 405 752.011 s. 752.01, the court shall, if such services are
 406 available in the circuit, refer the case to family mediation in
 407 accordance with the Florida Family Law Rules of Procedure ~~rules~~
 408 ~~promulgated by the Supreme Court.~~

409 Section 14. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 797 Clerks of Court
SPONSOR(S): Pilon
TIED BILLS: None IDEN./SIM. BILLS: SB 788

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Civil Justice Subcommittee, Analyst: Ward, Staff: Bond.

SUMMARY ANALYSIS

Clerks of the Court may accept partial payment for fines and costs under a payment plan. When payments are delinquent, the driver's license of the payor may be suspended.

Tax certificates are sold to pay delinquent real property taxes. A holder may request a sale of the property to satisfy the taxes, interest, costs of examining the title and advertising the sale.

- Provides for certain tax certificates on homesteads to be purchased from the county;
Provides that a tax certificate may be redeemed any time before the title is issued;
Requires the tax certificate holder to pay the costs of resale if the sale is unsuccessful;

The bill provides that the notice process required by the tax deed statutes satisfies the notice requirement for unclaimed surplus funds resulting from a tax deed sale.

Jurors and witnesses are currently paid by the clerk of the court either in cash or by warrant within 20 days after completion of service.

Currently, a party applying for a garnishment must deposit \$100 in the court registry for payment to the garnishee for payment of the attorney's fee of the garnishee.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Clerks of the Circuit Courts - In General

"In each county, a clerk of the circuit court is to be selected pursuant to the constitutional provision concerning the election of county officers."¹ "The court-related functions that clerks of the circuit court may perform are limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; payment of jurors and witnesses; payment of expenses for meals or lodging provided to jurors; data collection and reporting; processing of jurors; determinations of indigent status; and reasonable administrative support to enable the clerk of the court to carry out these court-related functions."²

"The fees that the clerks of the circuit courts and of the county courts are to charge for their services are also set out by statute. The clerk of any state appellate or county or state trial court will receive as compensation for similar services the same charges as provided for the clerk of the circuit court."³

Payment Plans

The clerk is directed by statute to "accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan."⁴ When the Department of Motor Vehicles receives notice from a clerk of the court that a person licensed to operate a motor vehicle in this state has failed to pay financial obligations for certain criminal offenses and for certain child support under a payment plan, the department shall suspend the license of the person named in the notice.⁵ The bill provides:

- If an individual fails to enroll in a payment plan, the default plan requires full payment within 90 days of the date on which the individual is ordered to pay the amount due;
- Except for indigent individuals, a request to defer payments must be submitted within 30 days of the date on which the individual receives notice of the amount due. The application must include a financial affidavit and a proposed payment plan that is up to 24 months in length. The clerk must agree to the proposed payment plan within 10 days after receiving the plan unless it fails to provide for full payment of all amounts due; and
- If an individual fails to comply with payment plan, the clerk shall notify the Department of Highway Safety and Motor Vehicles and the individual within 30 days after such failure, and the the department shall immediately:
 - Suspend the individual's driver license; and
 - Place a registration stop on any vehicle owned by the individual.

The bill amends both s. 28.246, F.S., which is the statute authorizing the clerk to accept payments plans for fines and court costs, and s. 322.245, F.S., which requires the Department of Motor Vehicles to suspend the driver's license of individuals who fail to complete such payment plans, to provide that in addition to suspension of the individual's driver's license, the Department of Motor Vehicles will place a stop on any vehicle registration owned by the person as well once notified by the clerk.

¹ 12A Fla. Jur 2d Courts and Judges § 263, citing Art. V s. 16, Fla. Const.

² 12A Fla. Jur 2d Courts and Judges § 271, citing s. 28.35(3)(a), F.S.

³ 12A Fla. Jur 2d Courts and Judges § 269, citing ss. 28.231, 28.24, 28.241, 28.242, 28.2401, 28.2402, 34.041, 34.045, F.S.

⁴ Section 28.246 (4), F.S.

⁵ Section 322.245(5)(a), F.S.

Tax Certificates and Sales for Taxes

"Counties, school districts, and municipalities shall, and special districts may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes. . . ."⁶ "All owners of property are held to know that [real property] taxes are due and payable annually and are responsible for ascertaining the amount of current and delinquent taxes and paying them before April 1 of the year following the year in which taxes are assessed."⁷ "The tax collector [in each county] has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property."⁸

"Tax certificate" means a paper or electronic legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued . . . against a specific parcel of real property and becoming a first lien thereon, superior to all other liens. . . ."⁹ Real property taxes "bear interest at the rate of 18 percent per year from the date of delinquency until a certificate is sold," with a minimum charge of 3 percent.¹⁰ A lien for taxes may not be foreclosed or enforced in any manner except as provided in the statute.¹¹ A tax certificate may be "redeemed at any time after the certificate is issued and before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming a tax certificate shall pay the tax collector the face amount plus all interest, costs, and charges."¹²

"The holder of a tax certificate at any time after 2 years have elapsed since April 1 of the year of issuance of the tax certificate and before the cancellation of the certificate may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located."¹³ Real property subject to tax certificates is sold at an advertised sale to the highest bidder.¹⁴

County held certificates for which there are no bidders at public sale are entered on a list entitled "lands available for taxes."¹⁵ Current statutes make no provision for who pays the additional cost of publication or when the payment is required, such as when a sale is bid but not completed by the buyer at a public sale.

There are special provisions for tax deed sales of property assessed on the latest tax roll as homestead property. In the event such property is sold, the bid of the certificate holder must be "increased to include an amount equal to one-half of the assessed value of the homestead property."¹⁶ If there are no higher bids at the public sale, the property is sold to the certificate holder.¹⁷ If the sale is canceled or the buyer fails to make full payment, the clerk "shall immediately re-advertise and hold the sale within 30 days."¹⁸ Department of Revenue rules¹⁹ currently require re-publication for re-sale of homestead property when no one bids on the property; and statutes require re-publication and re-sale of a property

⁶ Fla. Const. Art. VII, Section 9

⁷ Section 197.122(1), F.S.

⁸ Section 197.332(1), F.S.

⁹ Section 197.102(1)(f), F.S.

¹⁰ Section 197.172(1), F.S.

¹¹ Section 197.122(1), F.S.

¹² Section 197.472(1), F.S.

¹³ Section 197.502(1), F.S.

¹⁴ Section 197.54291, F.S.

¹⁵ Section 197.502(7), F.S.

¹⁶ Section 197.542(1), F.S.

¹⁷ *Id.*

¹⁸ Section 197.542(3), F.S.

¹⁹ 12D-13.063 F.A.C.

if the sale is canceled. Neither provision establishes a responsible party for costs of re-sale nor sets a payment deadline. The bill:

- Provides that tax certificates on homesteads under \$250 that are struck to the county may be purchased from the county once they reach \$250 in taxes and interest;
- Provides that a tax certificate may be redeemed any time before the tax deed title is issued;
- Requires the certificate holder to pay the costs of resale within 15 days of notice from the clerk, or the certificate is cancelled by entering the land on the "list of lands available for taxes;"
- Provides that holders of certificates on unsold homestead property must pay one half the value of the homestead within 15 days of the sale. Or the certificate is cancelled and the property is entered on the list of lands available from the county for taxes;
- Provides that if the sale is canceled or the buyer fails to make full payment within the time required, the clerk must re-advertise the sale within 30 days of the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the re-sale costs, with sale to be held within 30 days of re-advertising; and
- Provides that in a subsequent sale at which there are no bidders, where the certificate holder fails to pay the amount due within 15 days, the property will be placed on list of lands available for taxes.

Surplus Funds from Tax Deed Sales

Proceeds from tax deed sales are distributed by the clerk according to statute.²⁰ If there are excess proceeds, the clerk holds the funds for the benefit of parties who held an interest in the property, such as a mortgage or lienholder and the former owner.²¹

Currently, clerks are required to provide notice to former titleholders and lienholders for surplus funds twice - once pursuant to the tax-deed statutes and again as unclaimed property.²² In addition, the date from which the one year period for reporting as required by the unclaimed property statute is unclear with respect to surplus proceeds from tax deed sales.²³

The bill amends s. 197.582, F.S., to streamline the process by allowing the notice process required by the tax deed statutes to also satisfy the notice requirement for unclaimed funds.²⁴ It also provides that excess sale proceeds are presumed payable on the date the notice is mailed by the clerk that the funds are on hand under s. 197.582, F.S. This establishes a beginning for the one year reporting date for holders of unclaimed property to the state.²⁵

The bill further establishes distribution in accordance with lienholders' record priorities, and provides for the filing of an interpleader with assessment of fees in the event of a dispute.

Juror and Witness Fees

Jurors and witnesses are currently paid by the clerk of the court either in cash or by warrant within 20 days after completion of service. The bill provides that jurors and witnesses can also be paid by check.

Garnishment

"Garnishment is a type of summary remedy historically available to a creditor whereby a person's property, money, or credits in the possession of, under the control of, or owing by a third person known

²⁰ Section 197.582(2), F.S.

²¹ Section 197.582(2), F.S. Parties with an interest in the real property are given notice pursuant to s. 197.502(4), F.S.

²² Section 717.117(1), F.S.

²³ Section 717.117(3), F.S.

²⁴ Section 197.522(4), F.S.

²⁵ Section 717.117(3), F.S.

as the garnishee are applied to payment of the debtor's obligation to the creditor by proper statutory process against the debtor and the garnishee."²⁶ "Garnishment consists of notifying a third party to retain something that the third party has belonging to the defendant, to make disclosure to the court concerning it, and to dispose of it as the court directs."²⁷ Garnishment is governed by ch. 77, F.S.

Currently, a party applying for a garnishment must deposit \$100 in the court registry for payment to the garnishee on demand at any time after the service of the writ for payment of the attorney's fee of the garnishee in obtaining representation in response to the writ.

The bill amends s. 77.28, F.S., to eliminate the attorney fee payment from being processed through the court system and directs the party to pay the garnishee's attorney directly.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 28.246, F.S., relating to payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.

Section 2 amends s. 40.32, F.S., relating to clerks to disburse money; payments to jurors and witnesses.

Section 3 amends s. 77.28, F.S., relating to garnishment; attorney's fees costs; expenses; deposit required.

Section 4 amends s. 197.432, F.S., relating to sale of tax certificates for unpaid taxes.

Section 5 amends s. 197.472, F.S., relating to redemption of tax certificates.

Section 6 amends s. 197.502, F.S., relating to application for obtaining tax deed by holder of tax sale certificate, fees.

Section 7 amends s. 197.542, F.S., relating to tax deed sale at public auction.

Section 8 amends s. 197.582, F.S., relating to disbursement of proceeds of tax deed sale.

Section 9 amends s. 322.245, F.S., relating to suspension of driver's license upon failure of person charged with specified offenses.

Section 10 provides an effective date of July 1, 2014.

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.

²⁶ 13 Fla. Jur 2d Creditors' Rights § 59.

²⁷ *Id.*

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:

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

n/a

1 A bill to be entitled
2 An act relating to clerks of court; amending s.
3 28.246, F.S.; providing for default payment plans if
4 an individual fails to enroll in a payment plan;
5 providing for length of payment plans; requiring an
6 individual to file a financial affidavit with the
7 clerk to establish a payment plan; requiring the
8 Department of Highway Safety and Motor Vehicles to
9 suspend an individual's driver license and place a
10 registration stop on any vehicle owned by an
11 individual for nonpayment; amending s. 40.32, F.S.;
12 authorizing jurors and witnesses to be paid by check;
13 amending s. 77.28, F.S.; requiring a party applying
14 for garnishment to pay a deposit to the garnishee,
15 rather than the registry of the court; amending s.
16 197.432, F.S.; providing that tax certificates on
17 homesteads may be purchased from the county; amending
18 s. 197.472, F.S.; deleting a provision relating to the
19 redemption of tax certificates to conform to changes
20 made by the act; amending s. 197.502, F.S.; requiring
21 the certificateholder to pay costs of resale within 15
22 days if applicable; providing circumstances under
23 which land shall be placed on a specified list;
24 amending s. 197.542, F.S.; requiring the
25 certificateholder to pay a specified amount of the
26 assessed value of the homestead under certain

27 | circumstances; providing circumstances under which
 28 | land shall be placed on a specified list; amending s.
 29 | 197.582, F.S; clarifying notice requirements;
 30 | providing for excess proceeds relating to unclaimed
 31 | property; requiring the clerk to ensure that excess
 32 | funds are paid according to specified priorities;
 33 | amending s. 322.245, F.S.; authorizing the suspension
 34 | of vehicle registration for nonpayment of financial
 35 | obligations; providing an effective date.

36 |
 37 | Be It Enacted by the Legislature of the State of Florida:
 38 |

39 | Section 1. Subsection (4) of section 28.246, Florida
 40 | Statutes, is amended to read:

41 | 28.246 Payment of court-related fines or other monetary
 42 | penalties, fees, charges, and costs; partial payments;
 43 | distribution of funds.—

44 | (4) The clerk of the circuit court shall accept partial
 45 | payments for court-related fees, service charges, costs, and
 46 | fines in accordance with the terms of an established payment
 47 | plan. If an individual fails to enroll in a payment plan, the
 48 | individual is deemed to have entered into a default payment plan
 49 | with full payment due no later than 90 days after the date on
 50 | which the individual is ordered to pay any fees, service
 51 | charges, costs, or fines or is sent notice of the amount due.

52 | (a) Except as provided in paragraph (c), an individual

53 seeking to defer payment of fees, service charges, costs, or
54 fines imposed by operation of law or order of the court under
55 any provision of general law shall apply to the clerk for
56 enrollment in a payment plan within 30 days after the date on
57 which the individual receives notice of the amount due. The
58 individual shall include in the application a financial
59 affidavit reflecting the individual's ability to pay and a
60 proposed payment plan that is up to 24 months in length. The
61 clerk shall agree to the proposed payment plan within 10 days
62 after receiving the plan unless it fails to provide for full
63 payment of all amounts due.

64 (b) If an individual fails to comply with the terms of a
65 payment plan, the clerk shall notify the Department of Highway
66 Safety and Motor Vehicles and the individual of such failure
67 within 30 days after such failure. Upon receipt of such notice,
68 the department shall immediately suspend the individual's driver
69 license and place a registration stop on any vehicle owned by
70 the individual pursuant to s. 322.245.

71 (c) The clerk shall enter into a payment plan with an
72 individual who the court determines is indigent for costs. A
73 monthly payment amount, calculated based upon all fees and all
74 anticipated costs, is presumed to correspond to the person's
75 ability to pay if the amount does not exceed 2 percent of the
76 person's annual net income, as defined in s. 27.52(1), divided
77 by 12.

78 (d) The court may review the reasonableness of any the

79 payment plan.

80 Section 2. Subsection (3) of section 40.32, Florida
 81 Statutes, is amended to read:

82 40.32 Clerks to disburse money; payments to jurors and
 83 witnesses.—

84 (3) Jurors and witnesses shall be paid by the clerk of the
 85 court ~~either~~ in cash, by check, or by warrant within 20 days
 86 after completion of jury service or of completion of service as
 87 a witness.

88 (a) If ~~Whenever~~ the clerk of the court pays a juror or
 89 witness by cash, the juror or witness shall sign the payroll in
 90 the presence of the clerk, a deputy clerk, or some other person
 91 designated by the clerk.

92 (b) If ~~Whenever~~ the clerk pays a juror or witness by
 93 warrant, he or she shall endorse on the payroll opposite the
 94 juror's or witness's name the words "Paid by warrant," giving
 95 the number and date of the warrant.

96 Section 3. Section 77.28, Florida Statutes, is amended to
 97 read:

98 77.28 Garnishment; attorney ~~attorney's~~ fees, costs,
 99 expenses; deposit required.—Before issuance of any writ of
 100 garnishment, the party applying for it shall pay ~~deposit~~ \$100 ~~in~~
 101 ~~the registry of the court which shall be paid~~ to the garnishee
 102 on the garnishee's demand at any time after the service of the
 103 writ for the payment or part payment of his or her attorney
 104 ~~attorney's~~ fee which the garnishee expends or agrees to expend

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105 in obtaining representation in response to the writ. ~~At the time~~
 106 ~~of deposit, the clerk shall collect the statutory fee provided~~
 107 ~~by s. 28.24(10) in addition to the \$100 deposited into the~~
 108 ~~registry of the court.~~ On rendering final judgment, the court
 109 shall determine the garnishee's costs and expenses, including a
 110 reasonable attorney ~~attorney's~~ fee, and in the event of a
 111 judgment in favor of the plaintiff, the amount is ~~shall be~~
 112 subject to offset by the garnishee against the defendant whose
 113 property or debt owing is being garnished. In addition, the
 114 court shall tax the garnishee's costs and expenses as costs. The
 115 plaintiff may recover in this manner the sum advanced by him or
 116 her ~~plaintiff~~ and paid into registry of court, and if the amount
 117 allowed by the court is greater than the amount of the deposit,
 118 together with any offset, judgment for the garnishee shall be
 119 entered against the party against whom the costs are taxed for
 120 the deficiency.

121 Section 4. Subsection (4) of section 197.432, Florida
 122 Statutes, is amended to read:

123 197.432 Sale of tax certificates for unpaid taxes.—

124 (4) A tax certificate representing less than \$250 in
 125 delinquent taxes on property that has been granted a homestead
 126 exemption for the year in which the delinquent taxes were
 127 assessed may not be sold at public auction or by electronic sale
 128 as provided in subsection (1) but must be issued by the tax
 129 collector to the county at the maximum rate of interest allowed.
 130 Section ~~The provisions of s.~~ 197.4725 or s. 197.502(3) may not

131 | be invoked if the homestead exemption is granted to the person
 132 | who received the homestead exemption for the year in which the
 133 | tax certificate was issued. However, if all such tax
 134 | certificates and accrued interest represent an amount of \$250 or
 135 | more, ss. 197.4725 and 197.502(3) ~~s. 197.502(3)~~ shall be invoked
 136 | ~~used to determine whether the county must apply for a tax deed.~~

137 | Section 5. Subsection (1) of section 197.472, Florida
 138 | Statutes, is amended to read:

139 | 197.472 Redemption of tax certificates.—

140 | (1) A ~~Any~~ person may redeem a tax certificate at any time
 141 | after the certificate is issued and before a tax deed is issued
 142 | ~~or the property is placed on the list of lands available for~~
 143 | ~~sale.~~ The person redeeming a tax certificate shall pay the tax
 144 | collector the face amount plus all interest, costs, and charges.

145 | Section 6. Subsections (2) and (7) of section 197.502,
 146 | Florida Statutes, are amended to read:

147 | 197.502 Application for obtaining tax deed by holder of
 148 | tax sale certificate; fees.—

149 | (2) A certificateholder, other than the county, who makes
 150 | application for a tax deed shall pay the tax collector at the
 151 | time of application all amounts required for redemption or
 152 | purchase of all other outstanding tax certificates, plus
 153 | interest, any omitted taxes, plus interest, any delinquent
 154 | taxes, plus interest, and current taxes, if due, covering the
 155 | property. In addition, the certificateholder shall pay the costs
 156 | of resale, if applicable, and failure to pay such costs within

157 15 days after notice from the clerk shall result in the clerk's
 158 entering the land on a list entitled "lands available for
 159 taxes."

160 (7) On county-held or individually held certificates for
 161 which there are no bidders at the public sale and the
 162 certificateholder fails to timely pay costs of resale or fails
 163 to pay the amounts due for issuance of a tax deed within 15 days
 164 after the sale, the clerk shall enter the land on a list
 165 entitled "lands available for taxes" and shall immediately
 166 notify the county commission and all other persons holding
 167 certificates against the property that the property is
 168 available. During the first 90 days after the property is placed
 169 on the list, the county may purchase the land for the opening
 170 bid or may waive its rights to purchase the property.
 171 Thereafter, any person, the county, or any other governmental
 172 unit may purchase the property from the clerk, without further
 173 notice or advertising, for the opening bid, except that if the
 174 county or other governmental unit is the purchaser for its own
 175 use, the board of county commissioners may cancel omitted years'
 176 taxes, as provided under s. 197.447. If the county does not
 177 elect to purchase the property, the county must notify each
 178 legal titleholder of property contiguous to the property
 179 available for taxes, as provided in paragraph (4)(h), before
 180 expiration of the 90-day period. Interest on the opening bid
 181 continues to accrue through the month of sale as prescribed by
 182 s. 197.542.

183 Section 7. Subsections (1) and (3) of section 197.542,
 184 Florida Statutes, are amended to read:

185 197.542 Sale at public auction.—

186 (1) Real property advertised for sale to the highest
 187 bidder as a result of an application filed under s. 197.502
 188 shall be sold at public auction by the clerk of the circuit
 189 court, or his or her deputy, of the county where the property is
 190 located on the date, at the time, and at the location as set
 191 forth in the published notice, which must be during the regular
 192 hours the clerk's office is open. The amount required to redeem
 193 the tax certificate, plus the amounts paid by the holder to the
 194 clerk in charges for costs of sale, redemption of other tax
 195 certificates on the same property, and all other costs to the
 196 applicant for tax deed, plus interest at the rate of 1.5 percent
 197 per month for the period running from the month after the date
 198 of application for the deed through the month of sale and costs
 199 incurred for the service of notice provided for in s.
 200 197.522(2), shall be the bid of the certificateholder for the
 201 property. If tax certificates exist or if delinquent taxes
 202 accrued subsequent to the filing of the tax deed application,
 203 the amount required to redeem such tax certificates or pay such
 204 delinquent taxes must be included in the minimum bid. However,
 205 if the land to be sold is assessed on the latest tax roll as
 206 homestead property, the bid of the certificateholder must be
 207 increased to include an amount equal to one-half of the assessed
 208 value of the homestead property as required by s. 197.502. If

209 there are no higher bids, the property shall be struck off and
 210 sold to the certificateholder, who shall pay to the clerk any
 211 amounts included in the minimum bid, the documentary stamp tax,
 212 ~~and recording fees, and, if the property is homestead property,~~
 213 the moneys to cover the one-half value of the homestead within
 214 15 days after the sale due. Upon payment, a tax deed shall be
 215 issued and recorded by the clerk. If the certificateholder fails
 216 to make full payment when due, the sale is considered canceled,
 217 and the clerk shall enter the land on a list entitled "lands
 218 available for taxes."

219 (3) If the sale is canceled for any reason~~7~~ or the buyer
 220 fails to make full payment within the time required, the clerk
 221 shall ~~immediately~~ readvertise the sale ~~to be held~~ within 30 days
 222 after the buyer's nonpayment or, if canceled, within 30 days
 223 after the clerk receives the costs of resale. The sale shall be
 224 held within 30 days after readvertising after the date the sale
 225 ~~was canceled.~~ Only one advertisement is necessary. The amount of
 226 the opening bid shall be increased by the cost of advertising,
 227 additional clerk's fees as provided for in s. 28.24(21), and
 228 interest as provided for in subsection (1). If at the subsequent
 229 sale there are no bidders at the tax deed sale and the
 230 certificateholder fails to pay the moneys due within 15 days
 231 after the sale, the clerk may not readvertise the sale and shall
 232 place the property on a list entitled "lands available for
 233 taxes." ~~This process must be repeated until the property is sold~~
 234 ~~and the clerk receives full payment or the clerk does not~~

235 ~~receive any bids other than the bid of the certificateholder.~~
 236 The clerk must receive full payment before the issuance of the
 237 tax deed.

238 Section 8. Subsection (2) of section 197.582, Florida
 239 Statutes, is amended, and subsection (3) is added to that
 240 section, to read:

241 197.582 Disbursement of proceeds of sale.—

242 (2) If the property is purchased for an amount in excess
 243 of the statutory bid of the certificateholder, the excess must
 244 be paid over and disbursed by the clerk. If the property
 245 purchased is homestead property and the statutory bid includes
 246 an amount equal to at least one-half of the assessed value of
 247 the homestead, that amount must be treated as excess and
 248 distributed in the same manner. The clerk shall distribute the
 249 excess to the governmental units for the payment of any lien of
 250 record held by a governmental unit against the property,
 251 including any tax certificates not incorporated in the tax deed
 252 application and omitted taxes, if any. If the excess is not
 253 sufficient to pay all of such liens in full, the excess shall be
 254 paid to each governmental unit pro rata. If, after all liens of
 255 governmental units are paid in full, there remains a balance of
 256 undistributed funds, the balance shall be retained by the clerk
 257 for the benefit of persons described in s. 197.522(1)(a), except
 258 those persons described in s. 197.502(4)(h), as their interests
 259 may appear. The clerk shall mail notices to such persons
 260 notifying them of the funds held for their benefit. Such notice

261 constitutes compliance with the requirements of s. 717.117(4).
 262 Any service charges, at the rate prescribed in s. 28.24(10), and
 263 costs of mailing notices shall be paid out of the excess balance
 264 held by the clerk. Excess proceeds shall be held and disbursed
 265 in the same manner as unclaimed redemption moneys in s. 197.473.
 266 For purposes of identifying unclaimed property pursuant to s.
 267 717.113, excess proceeds shall be presumed payable or
 268 distributable on the date the notice is sent. If excess proceeds
 269 are not sufficient to cover the service charges and mailing
 270 costs, the clerk shall receive the total amount of excess
 271 proceeds as a service charge.

272 (3) If unresolved claims against the property exist on the
 273 date the property is purchased, the clerk shall ensure that the
 274 excess funds are paid according to the priorities of the claims.
 275 If a lien appears to be entitled to priority and the lienholder
 276 has not made a claim against the excess funds, payment may not
 277 be made on any lien that is junior in priority. If potentially
 278 conflicting claims to the funds exist, the clerk shall initiate
 279 an interpleader action against the lienholders involved, and the
 280 court shall determine the proper distribution of the excess
 281 funds. The clerk may move the court for an award of reasonable
 282 fees and costs from the remaining proceeds.

283 Section 9. Subsection (5) of section 322.245, Florida
 284 Statutes, is amended to read:

285 322.245 Suspension of license upon failure of person
 286 charged with specified offense under chapter 316, chapter 320,

287 or this chapter to comply with directives ordered by traffic
 288 court or upon failure to pay child support in non-IV-D cases as
 289 provided in chapter 61 or failure to pay any financial
 290 obligation in any other criminal case.-

291 (5) (a) If ~~When~~ the department receives notice from a clerk
 292 of the court that a person licensed to operate a motor vehicle
 293 in this state under ~~the provisions of~~ this chapter has failed to
 294 pay financial obligations for any criminal offense other than
 295 those specified in subsection (1), in full or in part under a
 296 payment plan pursuant to s. 28.246(4), the department shall
 297 suspend the license and place a registration stop on any vehicle
 298 owned by ~~of~~ the person named in the notice.

299 (b) The department must reinstate the driving privilege
 300 and remove the registration stop of any vehicle owned by the
 301 person if ~~when~~ the clerk of the court provides an affidavit to
 302 the department stating that:

303 1. The person has satisfied the financial obligation in
 304 full or made all payments currently due under a payment plan;

305 2. The person has entered into a written agreement for
 306 payment of the financial obligation if not presently enrolled in
 307 a payment plan; or

308 3. A court has entered an order granting relief to the
 309 person ordering the reinstatement of the license and removing
 310 the registration stop of any vehicle owned by the person.

311 (c) The department may ~~shall~~ not be held liable for any
 312 license suspension and registration stop placed on any vehicle

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313 | owned by the person resulting from the discharge of its duties
314 | under this section.

315 | Section 10. This act shall take effect July 1, 2014.



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 Pilon offered the following:

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

5 Remove everything after the enacting clause and insert:
 6 Section 1. Subsection (3) of section 40.32, Florida
 7 Statutes, is amended to read:

8 40.32 Clerks to disburse money; payments to jurors and
 9 witnesses.-

10 (3) Jurors and witnesses shall be paid by the clerk of the
 11 court ~~either~~ in cash, by check, or by warrant within 20 days
 12 after completion of jury service or ~~of~~ completion of service as
 13 a witness.

14 (a) If ~~Whenever~~ the clerk of the court pays a juror or
 15 witness by cash, the juror or witness shall sign the payroll in
 16 the presence of the clerk, a deputy clerk, or some other person
 17 designated by the clerk.



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18 (b) If ~~Whenever~~ the clerk pays a juror or witness by
19 warrant, he or she shall endorse on the payroll opposite the
20 juror's or witness's name the words "Paid by warrant," giving
21 the number and date of the warrant.

22 Section 2. Section 77.27, Florida Statutes, is amended to
23 read:

24 77.27 No appeal until fees are paid.—If the writ is
25 dismissed or plaintiff fails to sustain his or her claim, an ~~no~~
26 appeal from the judgment is not ~~shall be~~ permitted until the
27 attorney ~~attorney's~~ fee provided in s. 77.28 has been paid into
28 ~~court~~.

29 Section 3. Section 77.28, Florida Statutes, is amended to
30 read:

31 77.28 Garnishment; attorney ~~attorney's~~ fees, costs,
32 expenses; deposit required.—Before issuance of any writ of
33 garnishment, the party applying for it shall pay ~~deposit~~ \$100 in
34 ~~the registry of the court which shall be paid~~ to the garnishee
35 on the garnishee's demand at any time after the service of the
36 writ for the payment or part payment of his or her attorney
37 ~~attorney's~~ fee which the garnishee expends or agrees to expend
38 in obtaining representation in response to the writ. ~~At the time~~
39 ~~of deposit, the clerk shall collect the statutory fee provided~~
40 ~~by s. 28.24(10) in addition to the \$100 deposited into the~~
41 ~~registry of the court.~~ On rendering final judgment, the court
42 shall determine the garnishee's costs and expenses, including a
43 reasonable attorney ~~attorney's~~ fee, and in the event of a



Amendment No. 1

44 judgment in favor of the plaintiff, the amount is ~~shall be~~
45 subject to offset by the garnishee against the defendant whose
46 property or debt owing is being garnished. In addition, the
47 court shall tax the garnishee's costs and expenses as costs. The
48 plaintiff may recover in this manner the sum advanced by him or
49 her ~~plaintiff and paid into registry of court~~, and, if the
50 amount allowed by the court is greater than the amount paid ~~of~~
51 ~~the deposit~~, together with any offset, judgment for the
52 garnishee shall be entered against the party against whom the
53 costs are taxed for the deficiency.

54 Section 4. Subsection (4) of section 197.432, Florida
55 Statutes, is amended to read:

56 197.432 Sale of tax certificates for unpaid taxes.—

57 (4) A tax certificate representing less than \$250 in
58 delinquent taxes on property that has been granted a homestead
59 exemption for the year in which the delinquent taxes were
60 assessed may not be sold at public auction or by electronic sale
61 as provided in subsection (1) but must be issued by the tax
62 collector to the county at the maximum rate of interest allowed.
63 ~~The provisions of s. 197.4725 or s. 197.502(3) may not be~~
64 ~~invoked if the homestead exemption is granted to the person who~~
65 ~~received the homestead exemption for the year in which the tax~~
66 ~~certificate was issued.~~ However, if all of the outstanding such
67 tax certificates and accrued interest and the current tax
68 certificate represent an amount of \$250 or more, the current tax
69 certificate must be offered for sale pursuant to subsection (1).

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70 A county that acquires a tax certificate pursuant to this
71 subsection may not sell the tax certificate pursuant to s.
72 197.4725 s. 197.502(3) shall be used to determine whether the
73 county must apply for a tax deed.

74 Section 5. Subsection (1) of section 197.472, Florida
75 Statutes, is amended to read:

76 197.472 Redemption of tax certificates.—

77 (1) A ~~Any~~ person may redeem a tax certificate at any time
78 after the certificate is issued and before a tax deed is issued
79 unless full payment for a tax deed is made to the clerk of the
80 court, including documentary stamps and recording fees ~~or the~~
81 ~~property is placed on the list of lands available for sale.~~ The
82 person redeeming a tax certificate shall pay the tax collector
83 the face amount plus all interest, costs, and charges.

84 Section 6. Subsections (2), (3), and (7) of section
85 197.502, Florida Statutes, are amended to read:

86 197.502 Application for obtaining tax deed by holder of
87 tax sale certificate; fees.—

88 (2) A certificateholder, other than the county, who makes
89 application for a tax deed shall pay the tax collector at the
90 time of application all amounts required for redemption or
91 purchase of all other outstanding tax certificates, plus
92 interest, any omitted taxes, plus interest, any delinquent
93 taxes, plus interest, and current taxes, if due, covering the
94 property. In addition, the certificateholder shall pay the costs
95 of resale, if applicable, and failure to pay such costs within



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15 days after notice from the clerk shall result in the clerk's entering the land on a list entitled "lands available for taxes."

(3) The county in which the property described in the certificate is located shall apply for a tax deed on all county-held certificates on property valued at \$5,000 or more on the property appraiser's most recent assessment roll, except deferred payment tax certificates, and may apply for tax deeds on certificates on property valued at less than \$5,000 on the property appraiser's most recent assessment roll. The application shall be made 2 years after April 1 of the year of issuance of the certificates or as soon thereafter as is reasonable. Upon application, the county shall deposit with the tax collector all applicable costs and fees as provided in subsection (1), but may not deposit any money to cover the redemption of other outstanding certificates covering the property. However, a county may not apply for a tax deed on a certificate held by the county if, in the year for which the most recent tax certificate was issued to the county, the value of that tax certificate and the outstanding tax certificates and accrued interest represented an amount of less than \$250 and the homestead exemption was granted to a person who received the exemption for that year.

(7) On county-held or individually held certificates for which there are no bidders at the public sale and for which the certificateholder fails to timely pay costs of resale or fails

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122 to pay the amounts due for issuance of a tax deed within 15 days
123 after the sale, the clerk shall enter the land on a list
124 entitled "lands available for taxes" and shall immediately
125 notify the county commission ~~and all other persons holding~~
126 ~~certificates against the property~~ that the property is
127 available. During the first 90 days after the property is placed
128 on the list, the county may purchase the land for the opening
129 bid or may waive its rights to purchase the property.
130 Thereafter, any person, the county, or any other governmental
131 unit may purchase the property from the clerk, without further
132 notice or advertising, for the opening bid, except that if the
133 county or other governmental unit is the purchaser for its own
134 use, the board of county commissioners may cancel omitted years'
135 taxes, as provided under s. 197.447. ~~If the county does not~~
136 ~~elect to purchase the property, the county must notify each~~
137 ~~legal titleholder of property contiguous to the property~~
138 ~~available for taxes, as provided in paragraph (4)(h), before~~
139 ~~expiration of the 90-day period.~~ Interest on the opening bid
140 continues to accrue through the month of sale as prescribed by
141 s. 197.542.

142 Section 7. Subsections (1) and (3) of section 197.542,
143 Florida Statutes, are amended to read:

144 197.542 Sale at public auction.—

145 (1) Real property advertised for sale to the highest
146 bidder as a result of an application filed under s. 197.502
147 shall be sold at public auction by the clerk of the circuit

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148 court, or his or her deputy, of the county where the property is
149 located on the date, at the time, and at the location as set
150 forth in the published notice, which must be during the regular
151 hours the clerk's office is open. The amount required to redeem
152 the tax certificate, plus the amounts paid by the holder to the
153 clerk in charges for costs of sale, redemption of other tax
154 certificates on the same property, and all other costs to the
155 applicant for tax deed, plus interest at the rate of 1.5 percent
156 per month for the period running from the month after the date
157 of application for the deed through the month of sale and costs
158 incurred for the service of notice provided for in s.
159 197.522(2), shall be the bid of the certificateholder for the
160 property. If tax certificates exist or if delinquent taxes
161 accrued subsequent to the filing of the tax deed application,
162 the amount required to redeem such tax certificates or pay such
163 delinquent taxes must be included in the minimum bid. However,
164 if the land to be sold is assessed on the latest tax roll as
165 homestead property, the bid of the certificateholder must be
166 increased to include an amount equal to one-half of the assessed
167 value of the homestead property as required by s. 197.502. If
168 there are no higher bids, the property shall be struck off and
169 sold to the certificateholder, who shall pay to the clerk any
170 amounts included in the minimum bid, the documentary stamp tax,
171 the and recording fees, and, if the property is homestead
172 property, the moneys to cover the one-half value of the
173 homestead within 15 days after the sale due. Upon payment, a tax

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174 deed shall be issued and recorded by the clerk. If the
175 certificateholder fails to make full payment when due, the clerk
176 shall enter the land on a list entitled "lands available for
177 taxes."

178 (3) If the sale is canceled for any reason, or the buyer
179 fails to make full payment within the time required, the clerk
180 shall ~~immediately~~ readvertise the sale ~~to be held~~ within 30 days
181 after the buyer's nonpayment or, if canceled, within 30 days
182 after the clerk receives the costs of resale. The sale shall be
183 held within 30 days after readvertising after the date the sale
184 was canceled. Only one advertisement is necessary. The amount of
185 the opening bid shall be increased by the cost of advertising,
186 additional clerk's fees as provided for in s. 28.24(21), and
187 interest as provided for in subsection (1). If, at the
188 subsequent sale, there are no bidders at the tax deed sale and
189 the certificateholder fails to pay the moneys due within 15 days
190 after the sale, the clerk may not readvertise the sale and shall
191 place the property on a list entitled "lands available for
192 taxes." ~~This process must be repeated until the property is sold~~
193 ~~and the clerk receives full payment or the clerk does not~~
194 ~~receive any bids other than the bid of the certificateholder.~~
195 The clerk must receive full payment before the issuance of the
196 tax deed.

197 Section 8. Subsection (2) of section 197.582, Florida
198 Statutes, is amended, and subsection (3) is added to that
199 section, to read:

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200 197.582 Disbursement of proceeds of sale.—
201 (2) If the property is purchased for an amount in excess
202 of the statutory bid of the certificateholder, the excess must
203 be paid over and disbursed by the clerk. If the property
204 purchased is homestead property and the statutory bid includes
205 an amount equal to at least one-half of the assessed value of
206 the homestead, that amount must be treated as excess and
207 distributed in the same manner. The clerk shall distribute the
208 excess to the governmental units for the payment of any lien of
209 record held by a governmental unit against the property,
210 including any tax certificates not incorporated in the tax deed
211 application and omitted taxes, if any. If the excess is not
212 sufficient to pay all of such liens in full, the excess shall be
213 paid to each governmental unit pro rata. If, after all liens of
214 governmental units are paid in full, there remains a balance of
215 undistributed funds, the balance shall be retained by the clerk
216 for the benefit of persons described in s. 197.522(1)(a), except
217 those persons described in s. 197.502(4)(h), as their interests
218 may appear. The clerk shall mail notices to such persons
219 notifying them of the funds held for their benefit. Such notice
220 constitutes compliance with the requirements of s. 717.117(4).
221 Any service charges, at the rate prescribed in s. 28.24(10), and
222 costs of mailing notices shall be paid out of the excess balance
223 held by the clerk. Excess proceeds shall be held and disbursed
224 in the same manner as unclaimed redemption moneys in s. 197.473.
225 For purposes of identifying unclaimed property pursuant to s.

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226 717.113, excess proceeds shall be presumed payable or
227 distributable on the date the notice is sent. If excess proceeds
228 are not sufficient to cover the service charges and mailing
229 costs, the clerk shall receive the total amount of excess
230 proceeds as a service charge.

231 (3) If unresolved claims against the property exist on the
232 date the property is purchased, the clerk shall ensure that the
233 excess funds are paid according to the priorities of the claims.
234 If a lien appears to be entitled to priority and the lienholder
235 has not made a claim against the excess funds, payment may not
236 be made on any lien that is junior in priority. If potentially
237 conflicting claims to the funds exist, the clerk may initiate an
238 interpleader action against the lienholders involved, and the
239 court shall determine the proper distribution of the
240 interpleaded funds. The clerk may move the court for an award of
241 reasonable fees and costs from the interpleaded funds.

242 Section 9. This act shall take effect July 1, 2014.
243

244 -----
245 **T I T L E A M E N D M E N T**

246 Remove everything before the enacting clause and insert:

247 A bill to be entitled

248 An act relating to clerks of court; amending s. 40.32,
249 F.S.; authorizing jurors and witnesses to be paid by
250 check; amending s. 77.27, F.S.; conforming a provision
251 to changes made by the act; amending s. 77.28, F.S.;

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252 requiring a party applying for garnishment to pay a
253 deposit to the garnishee, rather than in the registry
254 of the court; deleting a provision that requires the
255 clerk to collect a specified fee; amending s. 197.432,
256 F.S.; providing requirements for the sale of tax
257 certificates; amending s. 197.472, F.S.; revising
258 requirements for the redemption of tax certificates;
259 amending s. 197.502, F.S.; requiring the
260 certificateholder to pay costs of resale within 15
261 days under certain circumstances; providing
262 circumstances under which land shall be placed on a
263 specified list; prohibiting a county from applying for
264 a tax deed under certain circumstances; deleting a
265 provision relating to a notification procedure;
266 amending s. 197.542, F.S.; requiring the
267 certificateholder to pay a specified amount of the
268 assessed value of the homestead under certain
269 circumstances; providing circumstances under which
270 land shall be placed on a specified list; amending s.
271 197.582, F.S.; clarifying notice requirements;
272 providing for excess proceeds relating to unclaimed
273 property; requiring the clerk to ensure that excess
274 funds are paid according to specified priorities;
275 providing for interpleader actions and the award of
276 reasonable fees and costs; providing an effective
277 date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 957 Local Regulation Of Wage Theft

SPONSOR(S): Combee

TIED BILLS: None **IDEN./SIM. BILLS:** SB 926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>JMC</i>	Bond <i>NB</i>
2) Local & Federal Affairs Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Wage theft is a term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Federal and state laws provide protection from wage theft through various laws, including the Federal Fair Labor Standards Act and Florida's minimum wage laws. These laws may be enforced, according to which one is violated, by a civil action brought by the employee, or by government sanctions and fines. A few local governments have enacted local ordinances regarding wage theft.

This bill preempts any wage theft ordinance that was not enacted before January 1, 2014 and provides guidelines that a county must follow in order to establish a wage theft ordinance. Specifically:

- The county must partner with a local legal services organization to establish a process through which the legal services organization must address wage theft claims;
- The county may partner with a legal services organization located within that county or an adjoining county;
- An individual victim of wage theft may contact the legal services organization, which must determine whether the individual has a bona fide claim for unpaid wages;
- The legal services organization must notify the employer and offer the employer an opportunity to resolve the matter informally but expeditiously;
- The informal resolution may include attorney fees and costs from the employer;
- If an informal resolution cannot be reached, the legal services organization must file a court action as appropriate and refer unresolved claims to local pro bono or other counsel for resolution; and
- The county must set up a means for the legal services organization to provide regular (monthly, quarterly, or annual, or any combination thereof) reports regarding the legal services organization's work on wage theft cases.

The bill provides that the county may dedicate county funds to assist the legal services organization in addressing claims of wage theft.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"Wage theft" is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Some examples of wage theft include:

- Employee is paid below the state or federal minimum wage;
- Employee is paid partial wages or not paid at all;
- Non-exempt employee is not paid time and half for overtime hours;
- Employee is misclassified as an independent contractor;
- Employee does not receive final paycheck after employment is terminated.

There are a variety of federal and state laws that protect employees from wage theft including, but not limited to, the Fair Labor Standards Act¹ and Florida minimum wage laws.

Worker Protection: Federal and State Laws

Both federal² and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.

Fair Labor Standards Act of 1938

The Fair Labor Standards Act (FLSA)³ is the main federal law regarding wages. The FLSA establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime time hours worked. The FLSA establishes standards for minimum wages,⁴ overtime pay,⁵ recordkeeping,⁶ and child labor.⁷ The FLSA applies to most classes of workers.⁸ The FLSA provides that:

¹ 29 U.S.C ch. 8.

² A list of examples of federal laws that protect employees is located at: <http://www.dol.gov/compliance/laws/main.htm> (Last visited March 5, 2014). Examples include: The Davis-Bacon and Related Acts (requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay the laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area); The McNamara-O'Hara Service Contract Act (The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement); The Migrant and Seasonal Agricultural Workers Protection Act (provides employment-related protections to migrant and seasonal agricultural workers); The Contract Work Hours and Safety Standards Act (requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek); The Copeland "Anti-Kickback" Act (prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract).

³ 29 U.S.C ch. 8.

⁴ 29 U.S.C. s. 206.

⁵ 29 U.S.C. s. 207.

⁶ 29 U.S.C. s. 211.

⁷ 29 U.S.C. s. 212.

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.⁹

If an employee works more than forty hours in a week, then the employer must pay at least time and half for those hours over forty. A failure to pay is a violation of the FLSA.¹⁰

The FLSA also establishes a federal minimum wage in the United States.¹¹ The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.¹² The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;¹³
- Criminal prosecutions by the United States Department of Justice;¹⁴ or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.¹⁵

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.¹⁶ An employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.¹⁷

State Protection of Workers

State law provides for protection of workers, including anti-discrimination, work safety and a state minimum wage. The state minimum wage was passed as a constitutional amendment¹⁸ and the implementation language is located in s. 448.110, F.S.

Article X, s. 24(c) of the state constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." If an employer does not pay the state minimum wage, the amendment provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld. A court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs.

The current state minimum wage is \$7.93 per hour,¹⁹ which exceeds the current federal minimum wage of \$7.25 per hour.²⁰ Federal law requires the payment of the higher of the federal or state minimum

⁸ The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm> (last visited March 5, 2014).

⁹ 29 U.S.C. s. 207(a)(1).

¹⁰ There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see <http://www.dol.gov/compliance/guide/minwage.htm> (last visited March 5, 2014).

¹¹ 29 U.S.C. s. 206.

¹² 29 U.S.C. s. 218(a).

¹³ 29 U.S.C. s. 216(c).

¹⁴ 29 U.S.C. s. 216(a).

¹⁵ 29 U.S.C. s. 216(b).

¹⁶ 29 U.S.C. s. 216(b).

¹⁷ 29 U.S.C. s. 216(b).

¹⁸ See Article X, s. 24 of the Florida Constitution (adopted in 2004).

wage.²¹ In addition, any worker may sue in contract for unpaid wages. If the worker wins, he or she must be awarded costs and attorney fees.²²

Home Rule and Preemption

Article VIII, ss. 1 and 2, of the state constitution, establish two types of local governments: counties²³ and municipalities. The local governments have wide authority to enact various ordinances to accomplish their local needs.²⁴ Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject which has not been preempted to the state.

Preemption essentially takes a topic or field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the state.²⁵ Florida law recognizes two types of preemption: express and implied.²⁶ Express preemption requires a specific legislative statement and cannot be implied or inferred.²⁷ Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

The absence of express preemption does not bar a court from a finding of preemption by implication. A court will look at two factors to determine if the subject matter has been preempted by the Legislature:

- Whether the legislative scheme is so pervasive as to evidence an intent to preempt the particular area; and
- Whether there are strong public policy reasons for finding an area to be preempted by the Legislature.²⁸

In order to determine whether a legislative scheme is pervasive, a court will look at several factors including the nature of the subject matter, the need for state uniformity, and the scope and purpose of the state legislation.²⁹ For instance, the Florida Supreme Court has found implied preemption in the area of public records.³⁰

There is no apparent express preemption of wage laws to the federal and state governments. It is possible that a court could find that the numerous existing laws regarding employee wages are an implied preemption of the subject.

Wage Theft as a Cause of Action

Currently an unpaid or underpaid employee has a cause of action in contract or quasi-contract in all appropriate courts, depending upon the amount in controversy. There is also a cause of action for unpaid minimum wages in s. 448.110, F.S.

¹⁹ See Florida Department of Economic Opportunity website for information regarding the current minimum wage in the State of Florida, at <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices> (Last visited March 5, 2014).

²⁰ <http://www.dol.gov/dol/topic/wages/minimumwage.htm> (last visited March 5, 2014).

²¹ 29 U.S.C. s. 218(a).

²² See s. 448.08, F.S.

²³ There are two different types of counties in Florida; a charter county and a non-charter county.

²⁴ Article VIII of the state constitution establishes the powers of chartered counties, non-charter counties and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.

²⁵ *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 851 (Fla. 1st DCA 1996).

²⁹ See *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

³⁰ See *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984)(holding that the legislative scheme of the Public Records Act preempted the law relating to production of records for inspection).

Legal Services Organizations

The Florida Access to Civil Legal Assistance Act³¹ (Act) establishes an administrative framework whereby public funds may be used in an effective and efficient manner to enhance the availability of civil legal assistance to the poor. The Act allows the Department of Legal Affairs (DLA) to contract with a statewide not-for-profit that allocates funds to not-for-profit legal aid organizations.³²

The Florida Bar also provides rules and regulations for legal service plans in Florida.³³ The Bar's rules appear to encompass a much wider variety of groups than those organizations contemplated by the statutes. For instance, the Bar defines a "group" that could qualify under the bill as "an organization of two or more persons whose individual members are identifiable in terms of some common interest or affinity," and includes churches, educational institutions, credit unions, employing units, and associations.³⁴ The Bar also requires the group to carry an insurance policy of at least \$100,000 and to file a plan for approval by the Bar, among other requirements.³⁵

The DLA contracts with The Florida Bar Foundation, which, among other things, allocates money to legal service providers across the state, many of which fall under the umbrella of Florida Legal Services, Inc. Florida Legal Services affiliates have offices in Miami-Dade, Pasco, Hillsborough, Pinellas, Brevard, Broward, Orange, Osceola, Volusia, Putnam, Seminole, Marion, Citrus, Lee, Leon, Palm Beach, St. Lucie, Polk, Charlotte, Manatee, Sarasota, Highlands, Duval, Clay, St. Johns, Collier, Okaloosa, Bay, Escambia, Gadsden, Alachua, and Columbia Counties.³⁶ There may be additional offices that qualify for state funding which do not fall under the Florida Legal Services umbrella.

Most law schools also offer practice clinics whereby law students may, under the supervision of faculty, assist poor or underrepresented clients with certain legal matters.³⁷

Effect of the Bill

The bill creates s. 448.111, F.S., to preempt certain local ordinances that regulate wage theft and to provide standards for local governments to follow when drafting a wage theft ordinance. The bill provides that a county may adopt a wage theft ordinance upon a determination that it is necessary to do so. The bill does not provide guidance on how such a determination should be made.

If a county enacts a wage theft ordinance, the ordinance must meet certain requirements:

- The county must partner with a local legal services organization to establish a process through which the legal services organization must address wage theft claims;
- The county may partner with a legal services organization located within that county or an adjoining county;
- An individual victim of wage theft may contact the legal services organization, which must determine whether the individual has a bona fide claim for unpaid wages;
- The legal services organization must notify the employer and offer the employer an opportunity to resolve the matter informally but expeditiously;
- The informal resolution may include attorney fees and costs from the employer;

³¹ L.O.F. 2002-288

³² Section 68.095, F.S.

³³ Rules Regulating the Florida Bar, ch. 9.

³⁴ Rules Regulating the Florida Bar, rule 9-1.3.

³⁵ Rules Regulating the Florida Bar, rule 9-2.2.

³⁶ Information is from the Florida Legal Services, Inc., Legal Aid and Legal Service Program Directory – State of Florida, June 2013. <http://www.floridalegal.org/Directory/2013Directory.pdf>. (last visited March 6, 2014).

³⁷ For example, see http://www.law.fsu.edu/academic_programs/jd_program/cac/profile.html for a description of the Florida State University College of Law's Public Interest Law Center. (last visited March 6, 2014).

- If an informal resolution cannot be reached, the legal services organization must file a court action as appropriate and refer unresolved claims to local pro bono or other counsel for resolution; and
- The county must set up a means for the legal services organization to provide regular (monthly, quarterly, or annual, or any combination thereof) reports regarding the legal services organization's work on wage theft cases.

The bill provides that the county may dedicate county funds to assist the legal services organization in addressing claims of wage theft.

The bill appears to preempt a municipality or any local government other than a county from enacting a wage theft ordinance. The bill grandfathers any local wage theft ordinance that was enacted prior to January 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 448.111, F.S., regarding local regulation of wage theft.

Section 2 provides an effective date upon becoming a law.

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:

The bill preempts local governments from adopting wage theft ordinances that do not comply with the requirements of the bill. Current wage theft ordinances appear to create a stream of revenues and expenditures. However, the bill appears to grandfather all existing wage theft ordinances since there do not appear to have been any wage theft ordinances passed this calendar year. Therefore, the bill does not appear to have a direct impact on local governments.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Lines 16-20 of the bill describe a legal services organization as “an organization that provides free or low-cost legal services to qualified persons and meets the minimum standards established by The Florida Bar for providing such services, including a legal practice clinic operated by an accredited Florida law school.” This definition appears to reference ch. 9 of the Rules Regulating the Florida Bar, but it is unclear if there are other minimum standards that may be implicated. If the reference is to ch. 9, it would allow a county to partner with any number of organizations outside of the Florida Legal Services umbrella. Any two persons, one of whom is a managing attorney, could purchase an insurance policy, find a sponsor, and file a plan with the Bar. If the plan is approved by the Bar, they would be eligible under the bill to contract with the county.

Lines 31-34 of the bill require “a determination by a county that a local solution to wage theft is necessary” in order for the county to adopt a wage theft ordinance. The bill does not provide any guidance as to how such a determination is to be made or even if such a determination needs to be memorialized through a vote or resolution.

Lines 38-40 of the bill provide that a county “may” partner with a legal services organization located within the county itself or within an adjoining county. This language appears to be extraneous as there is nothing in the bill that would prevent a county from partnering with any local legal services organization in the state. Furthermore, there appear to be several counties in Florida that do not have a legal service organization within the county nor do they border a county which has a local service organization located within the county.³⁸

Lines 56-58 of the bill appear to require the local service organization to file a court action, but they refer unresolved claims to local pro bono or other counsel for resolution. It is unclear if the intent of this language is to exclude a local service organization from completing litigation after it files a court action or if the intent is to allow the local service organization to do so if another attorney is willing to do so. This language appears to prevent a pro bono attorney or another attorney that is not affiliated with the local service organization from filing a claim.

³⁸ Dixie, Lafayette, Taylor, Madison, Franklin, and Holmes Counties appear to fall into this category.
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Other Comments

Currently, only Miami-Dade,³⁹ Broward,⁴⁰ and Alachua⁴¹ Counties are known to have specific wage theft ordinances. These ordinances are similar. The ordinances provide that a complaint may be filed with the county for wage theft, and the case is heard before a hearing officer. The hearing officer may enter an enforceable conciliation agreement. The ordinances also state that a separate civil action may be filed.

In March 2011, the Florida Retail Federation (FRF) filed suit to challenge the constitutionality of the Miami-Dade County ordinance.⁴² The FRF alleged that the Miami-Dade ordinance: created a court outside of the unified court system created by Florida Constitution;⁴³ violated the separation of powers⁴⁴ by allowing the executive branch⁴⁵ to perform a judicial function; and violated the right to a jury trial⁴⁶ because an issue involving back pay is a legal issue that entitles the defendant to a jury trial,⁴⁷ which the ordinance does not allow. The trial court dismissed the case without specifically addressing any of these issues.⁴⁸

Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County.⁴⁹ The Palm Beach County Commission recently allocated \$104,000 to the Legal Aid Society of Palm Beach County

³⁹ Chapter 22, Miami-Dade County Code of Ordinances, adopted February 18, 2010. Chapter 22. sec. 3 of the Miami Dade County Code provides: "For any employer to fail to pay any portion of wages due to an employee, according to the wage rate applicable to that employee, within a reasonable time from the date on which that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a hearing examiner appointed by Miami-Dade County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that employer."

⁴⁰ Chapter 20 1/2, Broward County Code of Ordinances, adopted October 23, 2012.

⁴¹ Chapter 66, Alachua County Code of Ordinances, adopted April 16, 2013. The ordinance has an implementation date of January 1, 2014, however it was enacted in 2013, so it appears that this ordinance would be grandfathered.

⁴² *Fla. Retail Fed'n, Inc. v. Miami Dade County*, No. 2010-42326-CA-01 (Aug. 4, 2010).

⁴³ Article V, sec. 1, FLA. CONST., creates a supreme court, district courts of appeal, circuit courts, and county courts, and then proclaims, "No other courts may be established by the state, any political subdivisions or any municipality." The Florida Bar Journal published a commentary entitled *Judicial Reform – Now or Never* by one of the drafters of art. V, sec. 1, in which former state Rep. Talbot "Sandy" D'Alemberte wrote, "The abolition of municipal courts has received considerable comment. The legislature thought that municipal courts, for the most part, are not independent of the city councils which appointed them; thus they are unable to dispense impartial, objective justice." Florida Bar Journal, vol. 46, no. 2, Feb. 1972.

⁴⁴ Article II, sec. 3, FLA. CONST., prohibits a person belonging to one branch from exercising any powers appertaining to either of the other branches.

⁴⁵ For the purpose of Separation of Powers analysis, a local government is considered a part of the executive branch. See *City of Miami v. Wellman*, 976 So.2d 22, 26 (Fla. 3rd DCA 2008).

⁴⁶ Art. I, sec. 22, FLA. CONST., provides the right to a jury trial for all cases that traditionally afforded a jury trial at the time the original Florida constitution was adopted in 1845.

⁴⁷ Generally, cases involving legal, as opposed to equitable, relief are afforded a jury trial, according to *Metropolitan Dade County Fair Housing and Employment Appeals Bd. v. Sunrise Village Mobile Home Park, Inc.*, 511 So.2d 962 (Fla. 1967). Back pay is considered to be a legal issue which should be afforded a jury trial according to *O'Neal v. Florida A & M Univ. ex rel. Bd. of Trustees for Florida A & M Univ.*, 989 So.2d 11 (Fla. 1st DCA 2008).

⁴⁸ *Florida Retail Federation v. Miami-Dade County*, Case No. 10-42326CA30, decided on March 23, 2012, on file with Civil Justice Subcommittee staff.

⁴⁹ See Legal Aid Society of Palm Beach County, Inc., Wage Recovery Project November 16, 2012 Update, included in Palm Beach County Board of County Commissioner Agenda Item Summary Packet for Agenda Item 4A-2 at December 4, 2012 meeting. The packet is available online at <http://www.ordinancewatch.com/files/72011/LocalGovernment79272.pdf>, (last visited March 6, 2014).

to continue the program.⁵⁰ This bill appears to be drafted to allow counties to follow the Palm Beach County model.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

⁵⁰ *Palm Beach County Renews Compromise Wage Theft Effort*, Andy Reid, Florida Sun-Sentinel, January 15, 2014.
http://articles.sun-sentinel.com/2014-01-15/news/sfl-palm-beach-county-renews-compromise-wage-theft-effort-20140115_1_wage-county-commission-low-income-workers (last visited March 6, 2014)
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1 A bill to be entitled
 2 An act relating to local regulation of wage theft;
 3 creating s. 448.111, F.S.; providing definitions;
 4 providing requirements for county ordinances
 5 regulating wage theft; authorizing county funding to
 6 assist in addressing claims of wage theft; preempting
 7 further regulation of wage theft to the state;
 8 providing an exception; providing an effective date.

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

11
 12 Section 1. Section 448.111, Florida Statutes, is created
 13 to read:

14 448.111 Local regulation of wage theft.-

15 (1) DEFINITIONS.-As used in this section, the term:

16 (a) "Legal services organization" means an organization
 17 that provides free or low-cost legal services to qualified
 18 persons and meets the minimum standards established by The
 19 Florida Bar for providing such services, including a legal
 20 practice clinic operated by an accredited Florida law school.

21 (b) "Wage theft" means an illegal or improper underpayment
 22 or nonpayment of an individual employee's wage, salary,
 23 commission, or other similar form of compensation within a
 24 reasonable time after the date on which the employee performed
 25 the work to be compensated. A wage theft occurs when an employer
 26 fails to pay a portion of the wages, salary, commissions, or

27 other similar forms of compensation due to an employee within a
 28 reasonable time after the date on which the employee performed
 29 the work, according to the current applicable rate and the pay
 30 schedule of the employer established by policy or practice.

31 (2) LOCAL ORDINANCES; REQUIRED PROVISIONS.—Upon the
 32 determination by a county that a local solution to wage theft is
 33 necessary, the county may adopt a local ordinance that includes
 34 the following provisions:

35 (a) The county shall partner with a local legal services
 36 organization for the purpose of establishing a local process
 37 through which claims of wage theft shall be addressed by the
 38 legal services organization. The county may partner with a legal
 39 services organization located within the county itself or within
 40 an adjoining county.

41 (b) An individual who has experienced wage theft may
 42 contact the legal services organization for assistance in
 43 recovering wages. The legal services organization shall
 44 determine whether the individual has a bona fide claim for
 45 unpaid wages.

46 (c) The legal services organization shall notify the
 47 employer and provide the employer with an opportunity to resolve
 48 the matter of unpaid wages in the manner deemed most appropriate
 49 to each claim. The notification may occur by telephone, written
 50 correspondence, or any other means deemed appropriate by the
 51 legal services organization.

52 (d) The legal services organization shall work with the

53 employee and employer to resolve the issue informally but
 54 expeditiously. The informal resolution may include obtaining
 55 attorney fees and costs from the employer.

56 (e) The legal services organization shall file court
 57 actions as appropriate and refer unresolved claims to local pro
 58 bono or other counsel for resolution.

59 (f) The county shall establish a reporting mechanism
 60 through which the county receives regular reports regarding the
 61 legal services organization's work on cases of wage theft. The
 62 county may require monthly, quarterly, or annual reports, or any
 63 combination thereof.

64 (3) FUNDING.—The county may dedicate county funds to
 65 assist the legal services organization in addressing claims of
 66 wage theft.

67 (4) PREEMPTION.—Any regulation of wage theft enacted on or
 68 after January 1, 2014, by a county, municipality, or other
 69 political subdivision that exceeds the provisions of this
 70 section is preempted to the state.

71 Section 2. This act shall take effect upon becoming a law.



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 Combee offered the following:

3
4
5
6
7

Amendment

Remove lines 38-40 and insert:
legal services organization.



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: Civil Justice Subcommittee
 2 Representative Combee offered the following:

3
 4
 5
 6
 7

Amendment

Remove line 57 and insert:

actions as appropriate or refer unresolved claims to local pro



Amendment No. 3

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 Rodríguez, J. offered the following:

3
 4
 5
 6
 7
 8

Amendment

Remove line 70 and insert:

section, except as provided by s. 218.077(3), is preempted to
the state.

