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# **Jobs & Entrepreneurship Council**

**Thursday, March 13, 2008  
11:00 AM – 12:00 PM  
Morris Hall (17 HOB)**

**Marco Rubio  
Speaker**

**Ron Reagan  
Chair**





# **The Florida House of Representatives**

## **Jobs & Entrepreneurship Council**

**Marco Rubio**  
Speaker

**Ron Reagan**  
Chair

### **AGENDA**

**March 6, 2008**

**Morris Hall - 11:00 A.M. – 12:00 P.M.**

**I. Call to Order**

**II. Roll Call**

**III. Consideration of the following bill(s):**

**HB 643 Foreclosure Fraud by Ford**

**HB 1013 Pari-mutuel Wagering Permitholders by Machek**

**IV. Consideration of the following proposed council bill:**

**PCB JEC 08-02 – Water and Waste Utilities**

**V. Chair's remarks**

**VI. Adjournment**







**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 643                      Foreclosure Fraud  
**SPONSOR(S):** Ford and others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	6 Y, 0 N	Holt/Bradford	Haug
2) <u>Jobs &amp; Entrepreneurship Council</u>		<del>Holt</del> Holt/Topp <i>BDT</i>	Thorn <i>GT</i>
3) _____			
4) _____			
5) _____			

**SUMMARY ANALYSIS**

HB 643 addresses two types of practices that comprise the foundation for foreclosure rescue schemes, foreclosure-rescue consultants and equity purchasers. The bill:

- Defines the following seven terms: Equity purchaser, Foreclosure-rescue consultant, Foreclosure-related rescue services, Foreclosure-rescue transaction, Homeowner, Residential real property, and Residential real property in foreclosure.
- Requires a foreclosure-rescue consultant, or its agents, to have a written agreement before initiating or engaging in any services. Certain disclosures are required to be in the agreement, such as the exact details of the service to be provided, terms of payment, total charges, and a notice of right to cancel. Further, a consultant is prohibited from charging or collecting a fee prior to completing or performing the agreed upon services.
- Requires an equity purchaser to have a written agreement signed by the homeowner prior to any instrument transferring the title can be given to the homeowner for signature. The Act creates a rebuttable presumption that the transaction between the homeowner and the foreclosure purchaser is a loan with a mortgage rather than a sale with a lease. The agreement must disclose all the material terms and conditions of the transaction, including cancellation rights. Also, the homeowner has a 30-day right to cure any default of the contract, and this right may be exercised on at least three separate occasions during the life of the agreement.
- Provides that a repurchase price offered within 2 years after the sale of the residential real property must not be unconscionable. In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any and all liens.
- Establishes a rebuttable presumption that the homeowner has a reasonable ability to make payments and to repurchase the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.
- Penalizes violators of any provision for unfair and deceptive trade practice. Violators are subject to the penalties and remedies provided in part II of chapter 501, F.S., including a monetary penalty not to exceed \$15,000 per violation.
- There is no fiscal impact relating to this bill. The amount of potential revenues received by the state for penalties and remedies as provided in part II of chapter 501, F.S. is indeterminate at this time.

This act shall take effect July 1, 2008.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0643c.JEC.doc  
**DATE:** 3/11/2008

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower families:** The bill provides educational insight that may enable homeowners who are faced with foreclosure the ability to make informed decisions regarding foreclosure rescue transactions.

**Maintain public security:** The bill has the potential to provide the Office of the Attorney General enforcement tools that may save expenses by a reduction in litigation costs.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background:**

It is estimated that over 150,000 mortgage foreclosures have occurred in Florida during 2007. National ranking of foreclosures place Florida second on the list. As the foreclosure numbers ascend, there is a correlated rise in mortgage related crimes. According to Florida Attorney General data, criminals and scam artists have found a new market of consumers to defraud by making false promises to rescue homeowners from foreclosures. Homeowners victimized by these crimes have unknowingly signed over their deeds or even their accumulated equity has been stolen.

Generally, homeowners who are in serious default of mortgage payments are targeted by foreclosure consultants. Concisely, the scheme is initiated by a telephone call from the consultant to the homeowner in which a repayment resolution ensues. Absent the homeowner submitting documentation for the consultant to conduct a complete financial analysis, the homeowner is "qualified" over the phone for services, provided a fee "generally in the range of \$1200 to \$2000" is paid up-front. Moreover, during the telephone call, the fee is collected via credit card, electronic debit, or check, but the contractual terms and conditions are not discussed in detail. However, there are embedded in the contract that the homeowner receives from the consultant numerous limitations to the services and to the homeowner's refund and cancellation rights.

In exchange for the fee, the consultant, for example, makes inquiries to the lender regarding a plan for repayment that the lender will accept. These negotiations are done by the consultant without knowledge of the homeowner's financial condition or ability to meet any repayment plan. The resulting repayment plan represents the consultant fulfilling his service obligations. Consequently, the homeowner could be further burdened with a predatory or unachievable repayment plan. The consultant has collected his fee, with no contractual obligation to return any portion of it, despite the homeowner's inability to adhere to the new repayment plan.

An unscrupulous equity purchaser is usually involved in a lease/buy back scheme. A lease/buy back is a foreclosure rescue scam in which the homeowner (usually unknowingly) deeds the house to the rescuer and leases it back with an option to repurchase, normally after a year. The rescuer pays arrearages (usually nothing more) in exchange for the deed. The buyback price is normally at fair market value, which usually nets the rescuer many times his initial investment. More often than not, the homeowner is unable to afford the rent, which exceeds the mortgage payment he initially could not afford, and is evicted, forfeiting the right to repurchase. The rescuer then simply sells the house on the open market and keeps the equity.

##### **Effect of Proposed Changes:**

**Section 1:** The bill provides legislative findings and intent.

**Section 2:** HB 643 defines the term "foreclosure-rescue consultant" as "a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return



for payment of money or other valuable consideration, consideration, foreclosure related rescue services." The term "Equity purchaser" as used in the bill "means any person who acquires title to any residential real property as a result of a foreclosure rescue transaction." Exceptions are provided in the bill for both definitions. The bill includes additional definitions for the terms: 1) foreclosure-rescue transaction, 2) homeowner, 3) residential real property, and 4) residential real property in foreclosure.

**Section 3:** Prohibited acts: In the course of offering or providing foreclosure-related rescue services, a foreclosure rescue consultant, including the consultant's salespersons, agents, representatives, or independent contractors, may not:

1. Engage in or initiate foreclosure-related rescue services without first executing a written agreement for foreclosure-related rescue services; or
2. Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before successfully completing or performing all services contained in the agreement for foreclosure-related rescue services.

**Section 4:** Foreclosure-related rescue services; written agreement.

This section addresses foreclosure-rescue consultant agreements. The bill requires several disclosures be incorporated into an agreement as a means to enhance vulnerable homeowner protection. The agreement must be printed in a minimum 12-point type, and the homeowner has at least a 24-hour review period prior to signing. Among the many disclosures is a recommendation disclosure. A recommendation disclosure must direct the homeowner to contact his lending provider prior to signing the agreement; because, an opportunity may exist to negotiate a payment plan free of charge through the lender.

Cancellation disclosures must be printed in bold 14-point type, and the agreement must describe in detail the procedure for notifying the consultant of cancellation. Also, the agreement must be signed by both parties, but the bill provides that the homeowner receives a copy immediately upon his signing the agreement. Additionally, the agreement must allow a homeowner at least 5 business days from the signing date to cancel without penalty. If an agreement is cancelled, any payments are to be returned within 10 days. Moreover, the right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant.

**Section 5:** Foreclosure-rescue transactions; written agreement.

This section addresses equity purchasers' agreements. Several disclosures are also required to be included in these agreements. The bill requires at least a 12-point bold type written agreement signed by the homeowner prior to executing any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the foreclosure property. Specific disclosures must be in the agreement that describe all the material terms of the transaction. The bill requires that among those disclosures there be an option or right to repurchase the property that list such things as the purchase price, down payment amount, closing costs, and fees.

If the homeowner has the right to repurchase the property, the equity purchaser has the burden of verifying and demonstrating the homeowner has a reasonable ability to exercise the repurchase option. The price the homeowner pays may not be unfair or commercially unreasonable. A repurchase price offered within 2 years after the sale of the property that exceeds 25 percent of the price at which the equity purchaser acquired the property creates a rebuttable presumption that the foreclosure-rescue transaction was unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the purchaser in acquiring the property. The homeowner shall also have a

right in the agreement to cure any default in terms on at least three separate occasions during the life of the transaction.

An equity purchaser must give the homeowner, at the time the written agreement is signed, a notice stating that the homeowner may cancel the transaction without penalty within 5 business days. Notice of the right to cancel must serve as a separate cover sheet to the written agreement with no other written or pictorial material in at a least a 12-point bold.

The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel is not conditioned upon the homeowner's repayment of money paid to the homeowner under the foreclosure-rescue transaction. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. Any money paid by the homeowner is to be returned within 30 days after a cancellation notification.

In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any and all liens.

For purposes of this section, there is a rebuttable presumption that the homeowner has a reasonable ability to make payments and to repurchase the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60 percent of the homeowner's monthly gross income.

**Section 6:** Rebuttable presumption.

Any foreclosure-rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage.

**Section 7:** Violations.

A person who violates any provision of this act commits an unfair and deceptive trade practice as defined in part II of chapter 501, Florida Statutes. Violators are subject to the penalties and remedies provided in part II of chapter 501, Florida Statutes, including a monetary penalty not to exceed \$15,000 per violation.

**Section 8:**

This act shall take effect July 1, 2008.

**C. SECTION DIRECTORY:**

- Section 1: Legislative findings and intent
- Section 2: Definitions
- Section 3: Prohibited acts
- Section 4: Foreclosure-related rescue services; written agreement (foreclosure-rescue consultants)
- Section 5: Foreclosure-rescue transactions; written agreement (equity purchaser)
- Section 6: Rebuttable presumption
- Section 7: Violations
- Section 8: Effective date

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The amount of potential revenues received by the state for penalties and remedies as provided in part II of chapter 501, F.S. is indeterminate at this time.

2. Expenditures:  
None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None
2. Expenditures:  
None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

There is no fiscal impact relating to this bill. The amount of potential revenues received by the state for penalties and remedies as provided in part II of chapter 501, F.S. is indeterminate at this time.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:  
None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Research from office of the Attorney General indicates that legislation similar to HB 643 exists in 13 other states and 6 states have similar legislation pending. Currently, there are approximately 20 active investigations, and litigation is underway involving foreclosure-rescue consultants and equity purchasers, according to Attorney General's staff.

**D. STATEMENT OF THE SPONSOR**

None

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 6, 2007, the Committee on Financial Institutions voted to recommend a strike-all amendment. The amendment:

1. Expands the definition of "equity purchaser" to include persons who acquire a legal, equitable, or beneficial ownership interest in any real estate property, as a result of a foreclosure through other means, i.e. trust purchases. The exclusions applicable to acquiring title are expanded by the amendment to include legal, equitable, or beneficial interest by methods listed in the amendment.
2. Removes from the definition of "residential real property in foreclosure" the service of process requirement and the 90-day delinquency on a property loan requirement.
3. Narrows the exemptions for entities that are considered a "foreclosure-rescue consultant" by removing lawyers, real estate brokers, and mortgage brokers.
4. Clarifies the term "foreclosure-rescue transaction" to include a "lease option interest" as a form of conveyance.
5. Replaces "24 hour" references with "1 business day."
6. Adds "restructuring" to the Homeowner's Right of Cancellation notice as a recommendation that a homeowner pursues with his/her lender as a possible free of charge service.
7. Adds a 5:00 p.m. deadline for notice to an equity purchaser of cancellation.
8. Considers unconscionable a repurchase price that is greater than 17% per annum more than the total amount paid by the purchaser to acquire, improve, maintain, and hold the property.
9. Changes effective date to October 1, 2008.

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Jobs & Entrepreneurship Council  
2 Representative Ford offered the following:

3  
4  
5           **Amendment to Strike-All Amendment by Representative Ford**  
6 **(with title amendment)**

7           Remove line(s) 73-306 and insert:

8           5. A financial institution as defined in s. 655.005 and  
9 any parent or subsidiary of the financial institution or of the  
10 parent or subsidiary.

11           6. A licensed mortgage broker, mortgage lender, or  
12 correspondent mortgage lender that provides mortgage counseling  
13 or advice regarding residential real property in foreclosure,  
14 which counseling or advice is within the scope of services set  
15 forth in chapter 494 and is provided without payment of money or  
16 other consideration other than a mortgage brokerage fee as  
17 defined in s. 494.001.

18           (c) "Foreclosure-related rescue services" means any good  
19 or service related to, or promising assistance in connection  
20 with:

21           1. Stopping, avoiding, or delaying foreclosure proceedings  
22 concerning residential real property; or

23        2. Curing or otherwise addressing a default or failure to  
24 timely pay with respect to a residential mortgage loan  
25 obligation.

26        (d) "Foreclosure-rescue transaction" means a transaction:

27        1. By which residential real property in foreclosure is  
28 conveyed to an equity purchaser and the homeowner maintains a  
29 legal or equitable interest in the residential real property  
30 conveyed, including, without limitation, a lease option  
31 interest, an option to acquire the property, an interest as  
32 beneficiary or trustee to a land trust, or other interest in the  
33 property conveyed; and

34        2. That is designed or intended by the parties to stop,  
35 avoid, or delay foreclosure proceedings against a homeowner's  
36 residential real property.

37        (e) "Homeowner" means any record title owner of  
38 residential real property that is the subject of foreclosure  
39 proceedings.

40        (f) "Residential real property" means real property  
41 consisting of one-family to four-family dwelling units, one of  
42 which is occupied by the owner as his or her principal place of  
43 residence.

44        (g) "Residential real property in foreclosure" means  
45 residential real property against which there is an outstanding  
46 notice of the pendency of foreclosure proceedings recorded  
47 pursuant to s. 48.23.

48        (3) PROHIBITED ACTS.--In the course of offering or  
49 providing foreclosure-related rescue services, a foreclosure-  
50 rescue consultant may not:

51        (a) Engage in or initiate foreclosure-related rescue  
52 services without first executing a written agreement with the  
53 homeowner for foreclosure-related rescue services; or

54       (b) Solicit, charge, receive, or attempt to collect or  
55 secure payment, directly or indirectly, for foreclosure-related  
56 rescue services before completing or performing all services  
57 contained in the agreement for foreclosure-related rescue  
58 services.

59       (4) FORECLOSURE-RELATED RESCUE SERVICES; WRITTEN  
60 AGREEMENT.--

61       (a) The written agreement for foreclosure-related rescue  
62 services must be printed in at least 12-point uppercase type and  
63 signed by both parties. The agreement must include the name and  
64 address of the person providing foreclosure-related rescue  
65 services, the exact nature and specific detail of each service  
66 to be provided, the total amount and terms of charges to be paid  
67 by the homeowner for the services, and the date of the  
68 agreement. The date of the agreement may not be earlier than the  
69 date the homeowner signed the agreement. The foreclosure-rescue  
70 consultant must give the homeowner a copy of the agreement to  
71 review not less than 1 business day before the homeowner is to  
72 sign the agreement.

73       (b) The homeowner has the right to cancel the written  
74 agreement without any penalty or obligation if the homeowner  
75 cancels the agreement within 3 business days after signing the  
76 written agreement. The right to cancel may not be waived by the  
77 homeowner or limited in any manner by the foreclosure-rescue  
78 consultant. If the homeowner cancels the agreement, any payments  
79 that have been given to the foreclosure-rescue consultant must  
80 be returned to the homeowner within 10 business days after  
81 receipt of the notice of cancellation.

82       (c) An agreement for foreclosure-related rescue services  
83 must contain, immediately above the signature line, a statement

84 in at least 12-point uppercase type that substantially complies  
85 with the following:

86  
87                   HOMEOWNER'S RIGHT OF CANCELLATION

88  
89           YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED  
90 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3  
91 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY  
92 YOU.

93  
94           THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM  
95 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU  
96 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU  
97 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST  
98 BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE  
99 CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

100  
101           TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
102 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED  
103 (POSTMARKED) OR DELIVERED TO \_\_\_\_\_ (NAME) AT  
104 \_\_\_\_\_ (ADDRESS) NO LATER THAN MIDNIGHT OF  
105 \_\_\_\_\_ (DATE).

106  
107           IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER  
108 OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER  
109 OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN  
110 OR RESTRUCTURING WITH YOU FREE OF CHARGE.

111  
112           (d) The inclusion of the statement does not prohibit the  
113 foreclosure-rescue consultant from giving the homeowner more  
114 time in which to cancel the agreement than is set forth in the



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES  
Amendment No. (for drafter's use only)

115 statement, provided all other requirements of this subsection  
116 are met.

117 (e) The foreclosure-rescue consultant must give the  
118 homeowner a copy of the signed agreement within 1 business day  
119 after the homeowner signs the agreement.

120 (5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.--

121 (a)1. A foreclosure-rescue transaction must include a  
122 written agreement prepared in at least 12-point uppercase type  
123 that is completed, signed, and dated by the homeowner and the  
124 equity purchaser before executing any instrument from the  
125 homeowner to the equity purchaser quitclaiming, assigning,  
126 transferring, conveying, or encumbering an interest in the  
127 residential real property in foreclosure. The equity purchaser  
128 must give the homeowner a copy of the completed agreement within  
129 1 business day after the homeowner signs the agreement. The  
130 agreement must contain the entire understanding of the parties  
131 and must include:

132 a. The name, business address, and telephone number of the  
133 equity purchaser.

134 b. The street address and full legal description of the  
135 property.

136 c. Clear and conspicuous disclosure of any financial or  
137 legal obligations of the homeowner that will be assumed by the  
138 equity purchaser.

139 d. The total consideration to be paid by the equity  
140 purchaser in connection with or incident to the acquisition of  
141 the property by the equity purchaser.

142 e. The terms of payment or other consideration, including,  
143 but not limited to, any services that the equity purchaser  
144 represents will be performed for the homeowner before or after  
145 the sale.

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146 f. The date and time when possession of the property is to  
147 be transferred to the equity purchaser.

148 2. A foreclosure-rescue transaction agreement must  
149 contain, above the signature line, a statement in at least 12-  
150 point uppercase type that substantially complies with the  
151 following:

152  
153 I understand that under this agreement I am selling my home  
154 to the other undersigned party.

155  
156 3. A foreclosure-rescue transaction agreement must state  
157 the specifications of any option or right to repurchase the  
158 residential real property in foreclosure, including the specific  
159 amounts of any escrow payments or deposit, down payment,  
160 purchase price, closing costs, commissions, or other fees or  
161 costs.

162 4. A foreclosure-rescue transaction agreement must comply  
163 with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and  
164 related regulations.

165 (b) The homeowner may cancel the foreclosure-rescue  
166 transaction agreement without penalty if the homeowner notifies  
167 the equity purchaser of such cancellation no later than 5:00  
168 p.m. on the 3rd business day after signing the written  
169 agreement. Any moneys paid by the equity purchaser to the  
170 homeowner or by the homeowner to the equity purchaser must be  
171 returned at cancellation. The right to cancel does not limit or  
172 otherwise affect the homeowner's right to cancel the transaction  
173 under any other law. The right to cancel may not be waived by  
174 the homeowner or limited in any way by the equity purchaser. The  
175 equity purchaser must give the homeowner, at the time the  
176 written agreement is signed, a notice of the homeowner's right

177 to cancel the foreclosure-rescue transaction as set forth in  
178 this subsection. The notice, which must be set forth on a  
179 separate cover sheet to the written agreement that contains no  
180 other written or pictorial material, must be in at least 12-  
181 point uppercase type, double-spaced, and read as follows:

182  
183 NOTICE TO THE HOMEOWNER/SELLER

184  
185 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS  
186 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

187  
188 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU  
189 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE  
190 THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

191  
192 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY  
193 YOU OR BY THE PURCHASER.

194  
195 ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE  
196 RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU  
197 TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

198  
199 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY  
200 5:00 P.M. ON \_\_\_\_\_ (DATE) AT \_\_\_\_\_  
201 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT  
202 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF  
203 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

204  
205 I (we) hereby cancel this transaction.

206 \_\_\_\_\_ Seller's Signature

207 \_\_\_\_\_ Printed Name of Seller

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208 \_\_\_\_\_ Seller's Signature  
209 \_\_\_\_\_ Printed Name of Seller  
210 \_\_\_\_\_ Date  
211 \_\_\_\_\_

212 (c) In any foreclosure-rescue transaction in which the  
213 homeowner is provided the right to repurchase the residential  
214 real property, the homeowner has a 30-day right to cure any  
215 default of the terms of the contract with the equity purchaser,  
216 and this right to cure may be exercised on up to three separate  
217 occasions. The homeowner's right to cure must be included in any  
218 written agreement required by this subsection.

219 (d) In any foreclosure-rescue transaction, before or at  
220 the time of conveyance, the equity purchaser must fully assume  
221 or discharge any lien in foreclosure as well as any prior liens  
222 that will not be extinguished by the foreclosure.

223 (e) If the homeowner has the right to repurchase the  
224 residential real property, the equity purchaser must verify and  
225 be able to demonstrate that the homeowner has or will have a  
226 reasonable ability to make the required payments to exercise the  
227 option to repurchase under the written agreement. For purposes  
228 of this subsection, there is a rebuttable presumption that the  
229 homeowner has a reasonable ability to make the payments required  
230 to repurchase the property if the homeowner's monthly payments  
231 for primary housing expenses and regular monthly principal and  
232 interest payments on other personal debt do not exceed 60  
233 percent of the homeowner's monthly gross income.

234 (f) If the homeowner has the right to repurchase the  
235 residential real property, the price the homeowner pays may not  
236 be unconscionable, unfair, or commercially unreasonable. A  
237 rebuttable presumption, solely between the equity purchaser and  
238 the homeowner, arises that the foreclosure-rescue transaction

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239 was unconscionable if the homeowner's repurchase price is  
240 greater than 17 percent per annum more than the total amount  
241 paid by the equity purchaser to acquire, improve, maintain, and  
242 hold the property. Unless the repurchase agreement or a  
243 memorandum of the repurchase agreement is recorded in accordance  
244 with s. 695.01, the presumption arising under this subsection  
245 shall not apply against creditors or subsequent purchasers for a  
246 valuable consideration and without notice.

247       (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue  
248 transaction involving a lease option or other repurchase  
249 agreement creates a rebuttable presumption, solely between the  
250 equity purchaser and the homeowner, that the transaction is a  
251 loan transaction and the conveyance from the homeowner to the  
252 equity purchaser is a mortgage under s. 697.01. Unless the lease  
253 option or other repurchase agreement, or a memorandum of the  
254 lease option or other repurchase agreement, is recorded in  
255 accordance with s. 695.01, the presumption created under this  
256 subsection shall not apply against creditors or subsequent  
257 purchasers for a valuable consideration and without notice.

258

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

260       Remove lines 340-345 and insert:

261 limitations for repurchase transactions; providing for a  
262 rebuttable presumption of certain transactions being  
263 unconscionable under certain circumstances; providing for  
264 limited application of the presumption; providing an exclusion;  
265 providing that a foreclosure-rescue transaction involving a  
266 lease option or other repurchase agreement creates a rebuttable  
267 presumption that the transaction is a loan transaction and the  
268 conveyance from the homeowner to the equity purchaser is a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES  
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269 mortgage; providing limited application of the presumption;  
270 providing an exclusion; providing that a person who violates

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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Bill No. 0643

COUNCIL/COMMITTEE ACTION

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

This amendment(s) is traveling with the bill: Action by the council is not required

1 Council/Committee hearing bill: Committee on Financial  
 2 Institutions  
 3 Representative Ford offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Section 501.2078, Florida Statutes, is amended  
 8 to read:

9 (Substantial rewording of section. See  
 10 s. 501.2078, F.S., for current text.)

11 501.2078 Violations involving homeowners during the course  
 12 of residential foreclosure proceedings.--

13 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature  
 14 finds that homeowners who are in default on their mortgages, in  
 15 foreclosure, or at risk of losing their homes due to nonpayment  
 16 of taxes may be vulnerable to fraud, deception, and unfair  
 17 dealings with foreclosure-rescue consultants or equity  
 18 purchasers. The intent of this section is to provide a homeowner  
 19 with information necessary to make an informed decision  
 20 regarding the sale or transfer of his or her home to an equity  
 21 purchaser. It is the further intent of this section to require

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22 that foreclosure-related rescue services agreements be expressed  
23 in writing in order to safeguard homeowners against deceit and  
24 financial hardship; to ensure, foster, and encourage fair  
25 dealing in the sale and purchase of homes in foreclosure or  
26 default; to prohibit representations that tend to mislead; to  
27 prohibit or restrict unfair contract terms; to provide a  
28 cooling-off period for homeowners who enter into contracts for  
29 services related to saving their homes from foreclosure or  
30 preserving their rights to possession of their homes; to afford  
31 homeowners a reasonable and meaningful opportunity to rescind  
32 sales to equity purchasers; and to preserve and protect home  
33 equity for the homeowners of this state.

34 (2) DEFINITIONS.--As used in this section, the term:

35 (a) "Equity purchaser" means any person who acquires a  
36 legal, equitable, or beneficial ownership interest in any  
37 residential real property as a result of a foreclosure-rescue  
38 transaction. The term does not apply to a person who acquires  
39 the legal, equitable, or beneficial interest in such property:

40 1. By a certificate of title from a foreclosure sale  
41 conducted under chapter 45;

42 2. At a sale of property authorized by statute;

43 3. By order or judgment of any court;

44 4. From a spouse, parent, grandparent, child, grandchild,  
45 or sibling of the person or the person's spouse; or

46 5. As a deed in lieu of foreclosure, a workout agreement,  
47 a bankruptcy plan, or any other agreement between a foreclosing  
48 lender and a homeowner.

49 (b) "Foreclosure-rescue consultant" means a person who  
50 directly or indirectly makes a solicitation, representation, or  
51 offer to a homeowner to provide or perform, in return for





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81 2. Curing or otherwise addressing a default or failure to  
82 timely pay with respect to a residential mortgage loan  
83 obligation.

84 (d) "Foreclosure-rescue transaction" means a transaction:

85 1. By which residential real property in foreclosure is  
86 conveyed to an equity purchaser and the homeowner maintains a  
87 legal or equitable interest in the residential real property  
88 conveyed, including, without limitation, a lease option  
89 interest, an option to acquire the property, an interest as  
90 beneficiary or trustee to a land trust, or other interest in the  
91 property conveyed; and

92 2. That is designed or intended by the parties to stop,  
93 avoid, or delay foreclosure proceedings against a homeowner's  
94 residential real property.

95 (e) "Homeowner" means any record title owner of  
96 residential real property that is the subject of foreclosure  
97 proceedings.

98 (f) "Residential real property" means real property  
99 consisting of one-family to four-family dwelling units, one of  
100 which is occupied by the owner as his or her principal place of  
101 residence.

102 (g) "Residential real property in foreclosure" means  
103 residential real property against which there is an outstanding  
104 notice of the pendency of foreclosure proceedings recorded  
105 pursuant to s. 48.23.

106 (3) PROHIBITED ACTS.--In the course of offering or  
107 providing foreclosure-related rescue services, a foreclosure-  
108 rescue consultant may not:



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138 be returned to the homeowner within 10 business days after  
139 receipt of the notice of cancellation.

140 (c) An agreement for foreclosure-related rescue services  
141 must contain, immediately above the signature line, a statement  
142 in at least 12-point uppercase type that substantially complies  
143 with the following:

144  
145 HOMEOWNER'S RIGHT OF CANCELLATION

146  
147 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED  
148 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5  
149 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY  
150 YOU.

151  
152 THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM  
153 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU  
154 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU  
155 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST  
156 BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE  
157 CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

158  
159 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
160 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED  
161 (POSTMARKED) OR DELIVERED TO \_\_\_\_\_ (NAME) AT  
162 \_\_\_\_\_ (ADDRESS) NO LATER THAN MIDNIGHT OF  
163 \_\_\_\_\_ (DATE).

164  
165 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER  
166 OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER

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167 OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN  
168 OR RESTRUCTURING WITH YOU FREE OF CHARGE.

169  
170 (d) The inclusion of the statement does not prohibit the  
171 foreclosure-rescue consultant from giving the homeowner more  
172 time in which to cancel the agreement than is set forth in the  
173 statement, provided all other requirements of this subsection  
174 are met.

175 (e) The foreclosure-rescue consultant must give the  
176 homeowner a copy of the signed agreement within 1 business day  
177 after the homeowner signs the agreement.

178 (5) FORECLOSURE-RESCUE TRANSACTIONS; WRITTEN AGREEMENT.--

179 (a)1. A foreclosure-rescue transaction must include a  
180 written agreement prepared in at least 12-point uppercase type  
181 that is completed, signed, and dated by the homeowner and the  
182 equity purchaser before executing any instrument from the  
183 homeowner to the equity purchaser quitclaiming, assigning,  
184 transferring, conveying, or encumbering an interest in the  
185 residential real property in foreclosure. The equity purchaser  
186 must give the homeowner a copy of the completed agreement within  
187 1 business day after the homeowner signs the agreement. The  
188 agreement must contain the entire understanding of the parties  
189 and must include:

190 a. The name, business address, and telephone number of the  
191 equity purchaser.

192 b. The street address and full legal description of the  
193 property.

194 c. Clear and conspicuous disclosure of any financial or  
195 legal obligations of the homeowner that will be assumed by the  
196 equity purchaser.

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197 d. The total consideration to be paid by the equity  
198 purchaser in connection with or incident to the acquisition of  
199 the property by the equity purchaser.

200 e. The terms of payment or other consideration, including,  
201 but not limited to, any services that the equity purchaser  
202 represents will be performed for the homeowner before or after  
203 the sale.

204 f. The date and time when possession of the property is to  
205 be transferred to the equity purchaser.

206 2. A foreclosure-rescue transaction agreement must  
207 contain, above the signature line, a statement in at least 12-  
208 point uppercase type that substantially complies with the  
209 following:

210  
211 I understand that under this agreement I am selling my home  
212 to the other undersigned party.

213  
214 3. A foreclosure-rescue transaction agreement must state  
215 the specifications of any option or right to repurchase the  
216 residential real property in foreclosure, including the specific  
217 amounts of any escrow payments or deposit, down payment,  
218 purchase price, closing costs, commissions, or other fees or  
219 costs.

220 4. A foreclosure-rescue transaction agreement must comply  
221 with all applicable provisions of 15 U.S.C. ss. 1600 et seq. and  
222 related regulations.

223 (b) The homeowner may cancel the foreclosure-rescue  
224 transaction agreement without penalty if the homeowner notifies  
225 the equity purchaser of such cancellation no later than 5:00  
226 p.m. on the 5th business day after signing the written

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227 agreement. The equity purchaser must return to the homeowner any  
228 moneys paid by the homeowner within 30 days after the homeowner  
229 notifies the equity purchaser of such cancellation. The right to  
230 cancel does not limit or otherwise affect the homeowner's right  
231 to cancel the transaction under any other law. The right to  
232 cancel is not conditioned upon the homeowner's repayment of  
233 money paid to the homeowner under the foreclosure-rescue  
234 transaction. The right to cancel may not be waived by the  
235 homeowner or limited in any way by the equity purchaser. The  
236 equity purchaser must give the homeowner, at the time the  
237 written agreement is signed, a notice of the homeowner's right  
238 to cancel the foreclosure-rescue transaction as set forth in  
239 this subsection. The notice, which must be set forth on a  
240 separate cover sheet to the written agreement that contains no  
241 other written or pictorial material, must be in at least 12-  
242 point uppercase type, double-spaced, and read as follows:

243  
244 NOTICE TO THE HOMEOWNER/SELLER

245  
246 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS  
247 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

248  
249 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU  
250 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE  
251 FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

252  
253 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY  
254 YOU OR BY THE PURCHASER.

255





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286 reasonable ability to make the required payments to exercise the  
287 option to repurchase under the written agreement. For purposes  
288 of this subsection, there is a rebuttable presumption that the  
289 homeowner has a reasonable ability to make the payments required  
290 to repurchase the property if the homeowner's monthly payments  
291 for primary housing expenses and regular monthly principal and  
292 interest payments on other personal debt do not exceed 60  
293 percent of the homeowner's monthly gross income.

294 (f) If the homeowner has the right to repurchase the  
295 residential real property, the price the homeowner pays may not  
296 be unconscionable, unfair, or commercially unreasonable. A  
297 rebuttable presumption arises that the foreclosure-rescue  
298 transaction was unconscionable if the homeowner's repurchase  
299 price is greater than 17 percent per annum more than the total  
300 amount paid by the equity purchaser to acquire, improve,  
301 maintain, and hold the property.

302 (6) REBUTTABLE PRESUMPTION.--Any foreclosure-rescue  
303 transaction involving a lease option or other repurchase  
304 agreement creates a rebuttable presumption that the transaction  
305 is a loan transaction and the conveyance from the homeowner to  
306 the equity purchaser is a mortgage under s. 697.01.

307 (7) VIOLATIONS.--A person who violates any provision of  
308 this section commits an unfair and deceptive trade practice as  
309 defined in part II of this chapter. Violators are subject to the  
310 penalties and remedies provided in part II of this chapter,  
311 including a monetary penalty not to exceed \$15,000 per  
312 violation.

313 Section 2. This act shall take effect October 1, 2008.

314  
315

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to foreclosure fraud; amending s.  
501.2078, F.S.; providing legislative findings and intent  
with respect to the need to protect homeowners who enter  
into agreements designed to save their homes from  
foreclosure; providing definitions; prohibiting a  
foreclosure-rescue consultant from engaging in certain  
acts or failing to perform contracted services; requiring  
that all agreements for foreclosure-related rescue  
services and foreclosure-rescue transactions be in  
writing; specifying information that must be in the  
written agreement; requiring that certain statements in  
the written agreement be in uppercase letters and of a  
specified size; providing that the homeowner has a right  
to cancel the agreement for a specified period and the  
right may not be waived; providing that the homeowner has  
a specified period during which to cure a default under  
certain circumstances; requiring equity purchasers to  
assume or discharge certain liens; requiring that an  
equity purchaser verify the homeowner's ability to make  
payments under a repurchase agreement; providing price  
limitations for repurchase transactions; providing that a  
foreclosure-rescue transaction involving a lease option or  
other repurchase agreement creates a rebuttable  
presumption that the transaction is a loan transaction and  
the conveyance from the homeowner to the equity purchaser  
is a mortgage; providing that a person who violates

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346 | certain provisions commits an unfair and deceptive trade  
347 | practice as defined in part II of ch. 501, F.S.; providing  
348 | penalties; providing an effective date.



1                                   A bill to be entitled  
 2       An act relating to foreclosure fraud; providing  
 3       legislative findings and intent with respect to the need  
 4       to protect homeowners who enter into agreements designed  
 5       to save their homes from foreclosure; providing  
 6       definitions; prohibiting a foreclosure-rescue consultant  
 7       from engaging in certain acts or failing to perform  
 8       contracted services; requiring that all agreements for  
 9       foreclosure-related rescue services and foreclosure-rescue  
 10      transactions be in writing; specifying information that  
 11      must be in the written agreement; requiring that certain  
 12      statements in the written agreement be in bold type, in  
 13      uppercase letters, and of a specified size; providing that  
 14      the homeowner has a right to cancel the agreement for a  
 15      specified period and the right may not be waived;  
 16      providing that the homeowner has a specified period during  
 17      which to cure a default under certain circumstances;  
 18      requiring equity purchasers to assume or discharge certain  
 19      liens; requiring that an equity purchaser verify the  
 20      homeowner's ability to make payments under a repurchase  
 21      agreement; providing price limitations for repurchase  
 22      transactions; providing that a foreclosure-rescue  
 23      transaction involving a lease option or other repurchase  
 24      agreement creates a rebuttable presumption that the  
 25      transaction is a loan transaction and the conveyance from

26 the homeowner to the equity purchaser is a mortgage;  
 27 providing that a person who violates certain provisions of  
 28 the act commits an unfair and deceptive trade practice as  
 29 defined in ch. 501, F.S.; providing penalties; providing  
 30 an effective date.

31

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

33

34 Section 1. Legislative findings and intent.--The  
 35 Legislature finds that homeowners who are in default on their  
 36 mortgages, in foreclosure, or at risk of losing their homes due  
 37 to nonpayment of taxes may be vulnerable to fraud, deception,  
 38 and unfair dealings with foreclosure-rescue consultants or  
 39 foreclosure purchasers. The intent of this act is to provide a  
 40 homeowner with information necessary to make an informed and  
 41 intelligent decision regarding the sale or transfer of his or  
 42 her home to an equity purchaser. It is the further intent of  
 43 this act to require that sales agreements be expressed in  
 44 writing in order to safeguard homeowners against deceit and  
 45 financial hardship; to ensure, foster, and encourage fair  
 46 dealing in the sale and purchase of homes in foreclosure or  
 47 default; to prohibit representations that tend to mislead; to  
 48 prohibit or restrict unfair contract terms; to provide a  
 49 cooling-off period for homeowners who enter into contracts for  
 50 services related to saving their homes from foreclosure or

51 preserving their rights to possession of their homes; to afford  
 52 homeowners a reasonable and meaningful opportunity to rescind  
 53 sales to equity purchasers; and to preserve and protect home  
 54 equity for the homeowners of this state.

55 Section 2. Definitions.--As used in this act, the term:

56 (1) "Equity purchaser" means any person who acquires title  
 57 to any residential real property as a result of a foreclosure-  
 58 rescue transaction. The term does not apply to a person who  
 59 acquires the title:

60 (a) To occupy the property as his or her primary  
 61 residence;

62 (b) By a deed from a foreclosure sale conducted under  
 63 chapter 45, Florida Statutes;

64 (c) At a sale of property authorized by statute;

65 (d) By order or judgment of any court;

66 (e) From a spouse, parent, grandparent, child, grandchild,  
 67 or sibling of the person or the person's spouse; or

68 (f) As a deed in lieu of foreclosure, a workout agreement,  
 69 a bankruptcy plan, or any other agreement between a foreclosing  
 70 lender and a homeowner.

71 (2) "Foreclosure-rescue consultant" means a person who  
 72 directly or indirectly makes a solicitation, representation, or  
 73 offer to a homeowner to provide or perform, in return for  
 74 payment of money or other valuable consideration, foreclosure-  
 75 related rescue services. The term does not apply to:

76        (a) A person licensed to practice law in this state when  
 77        rendering foreclosure-related rescue services in the course of  
 78        his or her practice as an attorney at law.

79        (b) A person licensed as a real estate broker under  
 80        chapter 475, Florida Statutes, if the person is acting within  
 81        the course and scope of a broker as defined in s. 475.01,  
 82        Florida Statutes.

83        (c) A person licensed as a mortgage broker or mortgage  
 84        lender under chapter 494, Florida Statutes, if the person is  
 85        acting within the course and scope of a mortgage broker as  
 86        defined in part II of chapter 494, Florida Statutes, or a  
 87        mortgage lender as described in part III of chapter 494, Florida  
 88        Statutes.

89        (d) A person acting under the express authority or written  
 90        approval of the United States Department of Housing and Urban  
 91        Development or other department or agency of the United States  
 92        or this state to provide foreclosure-related rescue services.

93        (e) A charitable, not-for-profit agency or organization,  
 94        as determined by the United States Internal Revenue Service  
 95        under s. 501(c)(3) of the Internal Revenue Code, that offers  
 96        counseling or advice to an owner of residential real property in  
 97        foreclosure or loan default if the agency or organization does  
 98        not contract for foreclosure-related rescue services with a for-  
 99        profit lender or person facilitating or engaging in foreclosure-  
 100       rescue transactions.



101        (f) A person who holds or is owed an obligation secured by  
 102        a lien on any residential real property in foreclosure if the  
 103        person performs foreclosure-related rescue services in  
 104        connection with this obligation or lien and the obligation or  
 105        lien was not the result of or part of a proposed foreclosure  
 106        reconveyance or foreclosure-rescue transaction.

107        (g) A financial institution as defined in s. 655.005,  
 108        Florida Statutes, or any subsidiary or affiliate thereof.

109        (3) "Foreclosure-related rescue services" means any good  
 110        or service related to, or promising assistance in connection  
 111        with:

112        (a) Stopping, avoiding, or delaying actual or anticipated  
 113        foreclosure proceedings concerning residential real property; or

114        (b) Curing or otherwise addressing a default or failure to  
 115        timely pay with respect to a residential mortgage loan  
 116        obligation.

117        (4) "Foreclosure-rescue transaction" means a transaction:

118        (a) By which residential real property is conveyed to an  
 119        equity purchaser and the homeowner maintains a legal or  
 120        equitable interest in the residential real property conveyed,  
 121        including, without limitation, a lease interest, an option to  
 122        acquire the property, an interest as beneficiary or trustee to a  
 123        land trust, or other interest in the property conveyed; and

124 (b) That is designed or intended by the parties to stop,  
 125 avoid, or delay actual or anticipated foreclosure proceedings  
 126 against a homeowner's residential real property.

127 (5) "Homeowner" means any record title owner of  
 128 residential real property that is the subject of actual or  
 129 anticipated foreclosure proceedings.

130 (6) "Residential real property" means real property  
 131 consisting of one-family to four-family dwelling units, one of  
 132 which is occupied by the owner as his or her principal place of  
 133 residence.

134 (7) "Residential real property in foreclosure" means  
 135 residential real property against which there is an outstanding  
 136 notice of the pendency of foreclosure recorded pursuant to s.  
 137 48.23, Florida Statutes, against which a summons and a complaint  
 138 have been served under chapter 702, Florida Statutes, or that is  
 139 owned by a person who is more than 90 days delinquent on any  
 140 loan that is secured by the property.

141 Section 3. Prohibited acts.--In the course of offering or  
 142 providing foreclosure-related rescue services, a foreclosure-  
 143 rescue consultant, including the consultant's salespersons,  
 144 agents, representatives, or independent contractors, may not:

145 (1) Engage in or initiate foreclosure-related rescue  
 146 services without first executing a written agreement for  
 147 foreclosure-related rescue services; or

148       (2) Solicit, charge, receive, or attempt to collect or  
149 secure payment, directly or indirectly, for foreclosure-related  
150 rescue services before successfully completing or performing all  
151 services contained in the agreement for foreclosure-related  
152 rescue services.

153       Section 4. Foreclosure-related rescue services; written  
154 agreement.--

155       (1) The written agreement for foreclosure-related rescue  
156 services must be printed in at least 12-point type and signed by  
157 both parties. The agreement must include the name and address of  
158 the person providing foreclosure-related rescue services, the  
159 exact nature and specific detail of each service to be provided,  
160 the total amount and terms of charges to be paid by the  
161 homeowner for the services, and the date of the agreement. The  
162 date of the agreement may not be earlier than the date the  
163 homeowner signed the agreement. The foreclosure-rescue  
164 consultant must give the homeowner a copy of the agreement to  
165 review not less than 24 hours before the homeowner is to sign  
166 the agreement.

167       (2) The written agreement must clearly state that the  
168 homeowner may cancel the written agreement without any penalty  
169 or obligation if the homeowner cancels the agreement within 5  
170 business days after signing the written agreement. The right to  
171 cancel may not be waived by the homeowner or limited in any  
172 manner by the foreclosure-rescue consultant. If the homeowner

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173 cancels the agreement, any payments that have been given to the  
 174 foreclosure-rescue consultant must be returned to the homeowner  
 175 within 10 days after receipt of the notice of cancellation.

176 (3) An agreement for foreclosure-related rescue services  
 177 must contain, immediately above the signature line for the  
 178 homeowner in bold, uppercase, 14-point or larger type, the  
 179 following disclosures:

180  
 181 HOMEOWNER'S RIGHT OF CANCELLATION

182 YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED  
 183 RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5  
 184 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY  
 185 YOU.

186  
 187 THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM  
 188 ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU  
 189 UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU  
 190 HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST  
 191 BE RETURNED TO YOU NO LATER THAN 10 DAYS AFTER THE CONSULTANT  
 192 RECEIVES YOUR CANCELLATION NOTICE.

193  
 194 TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
 195 STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED  
 196 (POSTMARKED) OR DELIVERED TO \_\_\_\_\_ (NAME) AT  
 197 \_\_\_\_\_ (ADDRESS) NO LATER THAN MIDNIGHT OF

198                                                     (DATE) .

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209                                             (5)                                                                    
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212            Section 5.                                                                    
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214                                             (1) (a)                                                                    
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222 The agreement must contain the entire understanding of the  
 223 parties and must include:

224 1. The name, business address, and telephone number of the  
 225 equity purchaser.

226 2. The street address and full legal description of the  
 227 property.

228 3. Clear and conspicuous disclosure of any financial or  
 229 legal obligations of the homeowner that will be assumed by the  
 230 equity purchaser.

231 4. The total consideration to be paid by the equity  
 232 purchaser in connection with or incident to the acquisition of  
 233 the property by the equity purchaser.

234 5. The terms of payment or other consideration, including,  
 235 but not limited to, any services that the equity purchaser  
 236 represents will be performed for the homeowner before or after  
 237 the sale.

238 6. The date and time when possession of the property is to  
 239 be transferred to the equity purchaser.

240 (b) Every foreclosure-rescue transaction agreement must  
 241 contain, above the signature line for the homeowner, a statement  
 242 in 16-point bold type that complies substantially with the  
 243 following:

244  
 245 I understand that under this agreement I am selling my  
 246 house to the other undersigned party.

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(c) Each foreclosure-rescue transaction agreement must state the specifications of any option or right to repurchase the residential real property in foreclosure, including the specific amounts of any escrow payments or deposit, down payment, purchase price, closing costs, commissions, or other fees or costs.

(2) An equity purchaser must give the homeowner, at the time the written agreement is signed, a notice stating that the homeowner may cancel the transaction without penalty if the homeowner cancels the transaction within 5 business days after signing the agreement. The equity purchaser must return to the homeowner any moneys paid by the homeowner within 30 days after the homeowner notifies the equity purchaser of such cancellation. The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel is not conditioned upon the homeowner's repayment of money paid to the homeowner under the foreclosure-rescue transaction. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. Notice of the right to cancel must serve as the cover sheet to the written agreement to enter into a foreclosure-rescue transaction. The notice must be on a separate sheet of paper with no other written or pictorial material, be in at

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271 least 12-point bold, uppercase, double-spaced type, and read as  
 272 follows:

273

274 NOTICE TO THE HOMEOWNER/SELLER

275

276 PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS  
 277 VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

278

279 BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU  
 280 MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE  
 281 FIFTH BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE.

282

283 THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY  
 284 YOU OR BY THE PURCHASERS.

285

286 ANY MONEY PAID TO YOU MUST BE RETURNED TO THE PURCHASER  
 287 WITHIN 30 DAYS AFTER CANCELLATION.

288

289 TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY  
 290 5:00 P.M. ON \_\_\_\_\_ (DATE) AT \_\_\_\_\_  
 291 (ADDRESS) . IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT  
 292 DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF  
 293 THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

294

295 I (we) hereby cancel this transaction.



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296 \_\_\_\_\_ Seller's Signature  
 297 \_\_\_\_\_ Printed Name of Seller  
 298 \_\_\_\_\_ Seller's Signature  
 299 \_\_\_\_\_ Printed Name of Seller  
 300 \_\_\_\_\_ Date

301  
 302 (3) In any foreclosure-rescue transaction in which the  
 303 homeowner is provided the right to repurchase the residential  
 304 real property, the homeowner has a 30-day right to cure any  
 305 default of the terms of the contract, and this right to cure may  
 306 be exercised on at least three separate occasions during the  
 307 life of the foreclosure-rescue transaction or any agreement by  
 308 the parties. The homeowner's right to cure must be included in  
 309 any written agreement required by this section.

310 (4) In any foreclosure-rescue transaction, before or at  
 311 the time of conveyance, the equity purchaser must fully assume  
 312 or discharge any lien in foreclosure as well as any prior liens  
 313 that will not be extinguished by the foreclosure, which  
 314 assumption or discharge must be accomplished without violating  
 315 the terms and conditions of the liens being assumed or  
 316 discharged.

317 (5) If the homeowner has the right to repurchase the  
 318 residential real property, the equity purchaser must verify and  
 319 be able to demonstrate that the homeowner has or will have a  
 320 reasonable ability to make the required payments to exercise the

321 option to repurchase under the written agreement. For purposes  
 322 of this section, there is a rebuttable presumption that the  
 323 homeowner has a reasonable ability to make payments and to  
 324 repurchase the property if the homeowner's payments for primary  
 325 housing expenses and regular principal and interest payments on  
 326 other personal debt do not exceed 60 percent of the homeowner's  
 327 monthly gross income.

328 (6) If the homeowner has the right to repurchase the  
 329 residential real property, the price the homeowner pays may not  
 330 be unconscionable, unfair, or commercially unreasonable. A  
 331 repurchase price offered within 2 years after the sale of the  
 332 residential real property in foreclosure that exceeds 25 percent  
 333 of the price at which the equity purchaser acquired the property  
 334 creates a rebuttable presumption that the foreclosure-rescue  
 335 transaction was unconscionable. The acquisition price paid by  
 336 the equity purchaser may include any actual costs incurred by  
 337 the purchaser in acquiring the property.

338 Section 6. Rebuttable presumption.--Any foreclosure-rescue  
 339 transaction involving a lease option or other repurchase  
 340 agreement creates a rebuttable presumption that the transaction  
 341 is a loan transaction and the conveyance from the homeowner to  
 342 the equity purchaser is a mortgage.

343 Section 7. Violations.--A person who violates any  
 344 provision of this act commits an unfair and deceptive trade  
 345 practice as defined in part II of chapter 501, Florida Statutes.

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346 Violators are subject to the penalties and remedies provided in  
347 part II of chapter 501, Florida Statutes, including a monetary  
348 penalty not to exceed \$15,000 per violation.

349 Section 8. This act shall take effect July 1, 2008.








**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1013  
**SPONSOR(S):** Machek  
**TIED BILLS:**

Pari-mutuel Wagering Permitholders  
**IDEN./SIM. BILLS:** SB 2378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Jobs &amp; Entrepreneurship Council</u>		MM <sup>Bot</sup> Marra/Topp	Thorn 
2) <u>Policy &amp; Budget Council</u>			
3) _____			
4) _____			
5) _____			

**SUMMARY ANALYSIS**

Currently, persons seeking to conduct pari-mutuel wagering, including horseraces, harness horse races, dog races, jai alai or quarter horse racing, must obtain permits and "licenses" from the Division of Pari-Mutuel Wagering (division), within the Department of Business and Professional Regulation (DBPR).

While the application procedure for each of the forms of pari-mutuel wagering are substantially the same for all the permissible activities but quarter horse racing, the issued permits are specific to the type of pari-mutuel wagering sanctioned and may not be used to conduct different pari-mutuel activities. There are limited circumstances when a permitholder could apply to conduct alternative pari-mutuel activities on a limited basis; however, there is no procedure outlined in law for converting a permit permanently. Two jai alai permits were previously converted to greyhound permits by statute, and there now exists a mechanism for these greyhound permitholders to convert back to jai alai permits.

The bill provides jai alai permitholders meeting certain criteria an additional avenue to convert their permits to greyhound racing permits.

The bill requires a jai alai permitholder to meet the following criteria in order to be eligible for conversion:

- The jai alai permit must not have been converted from another type of permit;
- The permitholder must not have conducted jai alai games for a period of 10 years before application.

The bill directs the division, upon receiving an application meeting the above requirements, to convert a jai alai permit to a permit to conduct greyhound racing and to issue a "license" to conduct greyhound racing to the permitholder. The "license" is issued by DBPR to describe the time, number and places of races to be held.

Currently, new pari-mutuel facilities offering greyhound racing will not be issued a permit if they are within 100 miles of an existing pari-mutuel facility. Because new jai alai frontons are allowed to be as close as 50 miles to the nearest existing pari-mutuel facilities, the bill could result in converted greyhound racing facilities to be located within 100 miles of existing pari-mutuels.

The department anticipates a loss of potential revenue of approximately \$720,000 in FY 2008-09, \$1 million in FY 2009-10, and \$1.1 million in FY 2010-11 through the use of additional greyhound tax credits related to the converted greyhound permits being used as secondary permits that would not be available under the currently dormant jai alai permits. The converted jai alai permits will allow existing greyhound facilities to be leased by the converted permitholder, thereby allowing the use of tax credits by both permitholders.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill provides a new application procedure for the conversion of pari-mutuel wagering permits to be performed by the division.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Chapter 550, F.S., provides limited forms of pari-mutuel wagering that may be conducted under the supervision of the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (DBPR). Section 550.054, F.S., provides permit and "licensure" procedures to conduct horseraces, harness horse races, dog races, and jai alai. Quarter horse racing permit and "licensure" procedures are outlined in s. 550.334, F.S. A permit allows a group to conduct pari-mutuel wagering; a "license" describes the time, number and places of approved performances.

Currently, pari-mutuel permits are specific to the type of pari-mutuel wagering sanctioned and "licenses" will only be issued for the specific type of game or race authorized by the permit. There are limited circumstances when a permitholder could apply to conduct alternative pari-mutuel activities:

1. Permitholders meeting certain criteria may apply to convert their permit to conduct a summer jai alai fronton during the summer season only;
2. Quarter horse permitholders may substitute races of other breeds of horses under certain restrictions;
3. Harness track permitholders may apply for licensure to conduct quarter horse races during the summer season under certain restrictions.

Aside from these three instances, there is no procedure outlined in the chapter for converting a permit permanently. However, two jai alai permits, held by Golden Crown Corporation (Big Bend Jai Alai) and Sports Palace (Melbourne Kennel Club), have been converted to greyhound permits in the past through legislative means.<sup>1</sup> Section 550.01215(6), F.S., was passed in 1995 to allow these permitholders to convert back to jai alai permits. The section provides that:

Any permit which was converted from a jai alai permit to a greyhound permit may be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a period of 12 consecutive months.

While Florida remains the leader in both jai alai and greyhound racing in the United States, greyhound racing is more widespread, with 18 permitholders conducting 4,896 performances at 15 tracks throughout the state last year.<sup>2</sup> The state is now alone in conducting jai alai in the United States with 8 permitholders conducting 1,363 performances at 6 frontons in the state last year.<sup>3</sup> Attendance increased by 14% at both types of establishments last year.<sup>4</sup> According to the division, there are currently a half dozen inactive jai alai permits.

##### Effect of proposed changes

The bill provides jai alai permitholders meeting certain criteria an avenue to convert their permit to a greyhound racing permit.

<sup>1</sup> See Ch. 91-197, § 2, Laws of Fla. Before being repealed in 1992, s. 550.0121, F.S., outlined the specific dates certain operators could conduct performances. The statutory schedule has been replaced by s. 550.01215, F.S., outlining licensing procedures that require permitholders to list their requested schedule on the license application.

<sup>2</sup> 76<sup>th</sup> Annual Report; Division of Pari-mutuel Wagering. Fiscal Year 2006-2007.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill provides a new application procedure for the conversion of pari-mutuel wagering permits to be performed by the division.

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Chapter 550, F.S., provides limited forms of pari-mutuel wagering that may be conducted under the supervision of the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (DBPR). Section 550.054, F.S., provides permit and "licensure" procedures to conduct horseraces, harness horse races, dog races, and jai alai. Quarter horse racing permit and "licensure" procedures are outlined in s. 550.334, F.S. A permit allows a group to conduct pari-mutuel wagering; a "license" describes the time, number and places of approved performances.

Currently, pari-mutuel permits are specific to the type of pari-mutuel wagering sanctioned and "licenses" will only be issued for the specific type of game or race authorized by the permit. There are limited circumstances when a permitholder could apply to conduct alternative pari-mutuel activities:

1. Permitholders meeting certain criteria may apply to convert their permit to conduct a summer jai alai fronton during the summer season only;
2. Quarter horse permitholders may substitute races of other breeds of horses under certain restrictions;
3. Harness track permitholders may apply for licensure to conduct quarter horse races during the summer season under certain restrictions.

Aside from these three instances, there is no procedure outlined in the chapter for converting a permit permanently. However, two jai alai permits, held by Golden Crown Corporation (Big Bend Jai Alai) and Sports Palace (Melbourne Kennel Club), have been converted to greyhound permits in the past through legislative means.<sup>1</sup> Section 550.01215(6), F.S., was passed in 1995 to allow these permitholders to convert back to jai alai permits. The section provides that:

Any permit which was converted from a jai alai permit to a greyhound permit may be converted to a jai alai permit at any time if the permitholder never conducted greyhound racing or if the permitholder has not conducted greyhound racing for a period of 12 consecutive months.

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##### Effect of proposed changes

The bill provides jai alai permitholders meeting certain criteria an avenue to convert their permit to a greyhound racing permit.

<sup>1</sup> See Ch. 91-197, § 2, Laws of Fla. Before being repealed in 1992, s. 550.0121, F.S., outlined the specific dates certain operators could conduct performances. The statutory schedule has been replaced by s. 550.01215, F.S., outlining licensing procedures that require permitholders to list their requested schedule on the license application.

<sup>2</sup> 76<sup>th</sup> Annual Report, Division of Pari-mutuel Wagering. Fiscal Year 2006-2007.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

The bill requires a jai alai permitholder to meet the following criteria in order to be eligible for conversion:

- The jai alai permit must not have been converted from another type of permit;
- The permitholder must not have conducted jai alai games for a period of 10 years before application.

The bill directs the division, upon receiving an application meeting the above requirements, to convert a jai alai permit to a permit to conduct greyhound racing and to issue a "license" to conduct greyhound racing to the permitholder.

Currently, new pari-mutuel facilities offering greyhound racing will not be issued a permit if they are within 100 miles of an existing pari-mutuel facility. Because new jai alai frontons are allowed to be as close as 50 miles to the nearest existing pari-mutuel facilities, the bill could result in converted greyhound racing facilities to be located within 100 miles of existing pari-mutuels.

#### C. SECTION DIRECTORY:

Section 1. Amends subsection (14) of s. 550.054, F.S., to permit a jai alai permitholder meeting certain criteria to apply for a conversion to a greyhound racing permit.

Section 2. Provides an effective date - July 1, 2008.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The department anticipates losing \$720,000 in FY 2008-09, \$1 million in FY 2009-10, and approximately \$1.1 million in FY 2010-11 in revenue due to the maximization of greyhound tax credits made possible by this legislation.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

Indeterminate.

##### 2. Expenditures:

Indeterminate.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

#### D. FISCAL COMMENTS:

The department anticipates a loss of potential revenue of approximately \$720,000 in FY 2008-09, \$1 million in FY 2009-10, and \$1.1 million in FY 2010-11 through the use of additional greyhound tax credits related to the converted greyhound permits being used as secondary permits that would not be available under the currently dormant jai alai permits. The converted jai alai permits will allow existing greyhound facilities to be leased by the converted permitholder, thereby allowing the use of tax credits by both permitholders.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1013**

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Jobs & Entrepreneurship Council  
 2 Representative(s) Reagan offered the following:

**Amendment (with title amendment)**

Between line(s) 26 and 27 and insert:

6 Section 1. Paragraph (b) of subsection (3) of section 550.0951,  
 7 Florida Statutes, is amended to read:

8 550.0951 Payment of daily license fee and taxes;  
 9 penalties.--

10 (3) TAX ON HANDLE.--Each permitholder shall pay a tax on  
 11 contributions to pari-mutuel pools, the aggregate of which is  
 12 hereinafter referred to as "handle," on races or games conducted  
 13 by the permitholder. The tax is imposed daily and is based on  
 14 the total contributions to all pari-mutuel pools conducted  
 15 during the daily performance. If a permitholder conducts more  
 16 than one performance daily, the tax is imposed on each  
 17 performance separately.

18 (b)1. The tax on handle for dogracing is 5.5 percent of  
 19 the handle, except that for live charity performances held  
 20 pursuant to s. 550.0351, and for intertrack wagering on such  
 21 charity performances at a guest greyhound track within the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 market area of the host, the tax is 7.6 percent of the handle.  
23 Any permitholder whose live racing handle is over \$20,000,000.00  
24 shall be entitled to an incentive tax rate. The tax on live  
25 handle from \$20,000,001 to \$25,000,000 shall be 3.0 percent of  
26 such handle. The tax on live handle over \$25,000,000.00 shall  
27 be 0.5 percent of such handle.

28 2. The tax on handle for jai alai is 7.1 percent of the  
29 handle.

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

33 Remove line 9 and insert:  
34 are met; providing for certain incentive tax rates; providing an  
35 effective date.  
36

1                   A bill to be entitled  
 2           An act relating to pari-mutuel wagering permitholders;  
 3           amending s. 550.054, F.S.; providing for a jai alai  
 4           permitholder meeting certain conditions to apply to the  
 5           Division of Pari-mutuel Wagering to convert a permit to  
 6           conduct jai alai games to a permit to conduct greyhound  
 7           races; directing the division to issue a permit and  
 8           license to conduct greyhound races if certain conditions  
 9           are met; providing an effective date.

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

12  
 13           Section 1. Subsection (14) is added to section 550.054,  
 14 Florida Statutes, to read:

15           550.054 Application for permit to conduct pari-mutuel  
 16 wagering.--

17           (14) Any holder of a permit to conduct jai alai, which  
 18 permit was not previously converted from any other class of  
 19 permit, may apply to the division to convert such permit to a  
 20 permit to conduct greyhound racing in lieu of jai alai if the  
 21 permitholder has not conducted jai alai games during a period of  
 22 10 years immediately preceding its application under this  
 23 subsection. The division, upon application from the holder of a  
 24 jai alai permit meeting all conditions of this section, shall  
 25 convert the permit and shall issue to the holder of the permit a  
 26 permit and license to conduct greyhound racing.

27           Section 2. This act shall take effect July 1, 2008.









HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JEC 08-02 Water and Wastewater Utilities  
SPONSOR(S): Jobs & Entrepreneurship Council  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Jobs & Entrepreneurship Council		Cater/Topp	Thorn
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

PCB JEC 08-02 increases the gross annual revenue level below which private water and wastewater utilities qualify for a staff-assisted rate case from the Public Service Commission ("PSC"). The bill increases the level from \$150,000 to \$250,000 to adjust for inflation. The bill requires the PSC to adjust the level once every five years based on the price index the PSC establishes for water and wastewater utilities. The bill also requires the PSC, once every five years, to submit a report to the Legislature on the status of staff-assisted rate cases.

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

This act shall take effect July 1, 2008.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government-**This bill increases the gross annual revenue level below which a private water or wastewater utility may request a rate adjustment through a staff-assisted rate case.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

Chapter 367, F.S., gives the Public Service Commission (PSC) regulatory oversight regarding private water and wastewater utilities as it relates to service, and rates. However, ch. 367, F.S., only applies to utilities within those counties that have declared themselves subject to the provisions of this chapter. A county that declares itself subject to the provisions of ch. 367, F.S., may not exclude itself from those provisions for 10 years.<sup>1</sup>

Water and wastewater utilities regulated by the PSC are required to charge the rates and charges approved by the PSC. Section 367.081, F.S., provides the statutory procedures for fixing and changing rates, including procedures for rate cases. Section 367.081(4)(a), F.S., requires the PSC to annually establish "a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available." Section 367.081(4)(b), F.S., allows for the direct pass through of certain utility costs to the ratepayers, upon 45 days notice to the PSC.<sup>2</sup>

In a traditional rate case processed under s. 367.081, F.S., the utility is required to compile the information necessary to meet the minimum filing requirements for a rate case. In some cases, the company does not have the resources to do this in-house and must hire outside consultants and attorneys to work on its case. According to the PSC, these expenses average approximately \$48,000 per rate case. The utility is allowed by law to recover prudently incurred rate case expense.<sup>3</sup>

In addition to the traditional water and wastewater rate-setting process, s. 367.0814, F.S., provides an alternative for smaller utilities. Specifically, this section authorizes the PSC to establish rules to allow water or wastewater utilities with gross annual revenues of \$150,000 or less to obtain staff assistance for changing its rates and charges. This process is known as a staff-assisted rate case (SARC). This section was created in 1989<sup>4</sup>, and the revenue threshold for a SARC has not been subsequently amended.

In the SARC process, PSC staff does much of the work that would be required of the utility in a traditional rate case. It audits the company, compiles necessary information, presents the information to customers, and makes recommendations to the Commissioners as to whether or not the requested rate increase is justified. The SARC statute provides that the utility must accept "the final rates and charges approved by the commission unless the final rates and charges produce less revenue than the

---

<sup>1</sup> S. 367.171(1), F.S. As of October 2007, there were 34 counties subject to the PSC's jurisdiction. The counties are Alachua, Bradford, Brevard, Broward, Clay, Duval, Escambia, Franklin, Gadsden, Gulf, Highlands, Jackson, Lake, Lee, Levy, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Seminole, St. Lucie, Sumter, Volusia, and Washington.

<sup>2</sup> These costs include purchased water, electric power, ad valorem taxes, certain fees charged by the Department of Environmental Protection, and regulatory assessment fees imposed by the PSC.

<sup>3</sup> S. 367.081(7), F.S.

<sup>4</sup> S.8, ch. 89-353, L.O.F.

existing rates and charges.”<sup>5</sup> Customers may protest the results of SARC cases, but, according to the PSC, this rarely happens.

According to the PSC, 76 water systems and 49 wastewater systems have revenue levels that qualify them for a SARC. Since 2000, the PSC has averaged seven SARCs annually; however, the actual number of SARCs ranged from two in 2003 to twelve in 2007.

### **Proposed Changes**

This bill amends s. 367.0814(1), F.S., related to staff-assisted rate cases for small water and wastewater utilities. It increases the revenue level for a SARC to gross annual revenues of \$250,000 or less. The bill requires the PSC to adjust the gross annual revenue level on July 1, 2013, and every five years thereafter, based on the most recent cumulative five years of the price index established by the PSC pursuant to s. 367.081(4)(a), F.S.

According to the PSC, an additional 14 water systems and an additional 14 wastewater systems would be eligible for SARCs under the higher revenue level. The PSC predicts that no more than two additional SARCs would be filed per year.

Additionally, the bill creates s. 367.0814(10), F.S., requiring the PSC to submit to the President of the Senate and the Speaker of the House of Representatives by January 1, 2013, and every five years thereafter, a report on the status of SARCs. The report is supposed to include the following:

- The number of utilities eligible to request a SARC,
- The number of SARCs conducted annually for the most recent five-year period,
- The associated impact on PSC resources, and
- Any other information the PSC deems appropriate.

This bill has an effective date of July 1, 2008.

### **C. SECTION DIRECTORY:**

Section 1 Amends s. 367.0814, F.S., relating to staff-assisted rate cases for small water and wastewater utilities.

Section 2 Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None. The PSC has indicated that it can handle additional SARC proceedings and reporting requirements under this bill with existing resources.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

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<sup>5</sup> S. 367.0814(6), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill's proposed \$250,000 revenue cap can allow more private water and wastewater utilities to become eligible for a SARC proceeding, which can provide savings to those utilities and their customers. According to the PSC, this bill would add no more than two additional SARC proceedings per year. Considering that the average expense for a rate case is approximately \$48,000, utility customers could save approximately \$96,000 per year under this bill.

D. FISCAL COMMENTS:

This bill's proposed revenue cap increase from \$150,000 to \$250,000 provides the first statutory adjustment for inflation in s. 367.0814, F.S., since 1989, when the current \$150,000 SARC revenue cap became law. A current staff review of three separate economic indices reveals that this bill's proposed \$250,000 revenue cap is consistent with inflationary adjustments during the past 19 years. These indices are as follows:

- The Gross Domestic Product Implicit Price Deflator (GDP);
- The Consumer Price Index for All Urban Consumers (CPI-U); and
- The Chained Consumer Price Index for All Urban Consumers (C-CPI-U).

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of sales tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While the bill does not provide specific rule-making authority, the PSC's current SARC rule<sup>6</sup> can be amended pursuant to existing authority in s. 367.0814, F.S., to be consistent with the revisions made in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable as this is a proposed council bill.

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<sup>6</sup> S. 35-30.455, F.A.C.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES





HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. PCB JEC 08-02

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Jobs & Entrepreneurship Council  
 2 Representative(s) Reagan offered the following:

**Title Amendment**

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

Remove line 6 and insert:

the gross annual revenue level used by the Florida Public  
Service Commission for such purposes



BILL

PCB JEC 08-02

YEAR

1 A bill to be entitled  
 2 An act relating to water and wastewater utilities;  
 3 amending s. 367.0814, F.S.; revising provisions for staff  
 4 assistance in changing rates and charges for water and  
 5 wastewater utilities; providing for periodic adjustment of  
 6 a utility's gross annual revenue level for such purposes;  
 7 requiring the Florida Public Service Commission to  
 8 periodically submit a report to the Legislature;  
 9 specifying report requirements; providing an effective  
 10 date.

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

13  
 14 Section 1. Subsection (1) of section 367.0814, Florida  
 15 Statutes, is amended, and subsection (10) is added to that  
 16 section, to read:

17 367.0814 Staff assistance in changing rates and charges;  
 18 interim rates.--

19 (1) The commission may establish rules by which a water or  
 20 wastewater utility whose gross annual revenues are \$250,000  
 21 ~~\$150,000~~ or less may request and obtain staff assistance for the  
 22 purpose of changing its rates and charges. A utility may request  
 23 staff assistance by filing an application with the commission.  
 24 The gross annual revenue level shall be adjusted on July 1,  
 25 2013, and every 5 years thereafter, based on the most recent  
 26 cumulative 5 years of the price index established by the  
 27 commission pursuant to s. 367.081(4)(a).

28 (10) The commission shall submit to the President of the

BILL

PCB JEC 08-02

YEAR

29 Senate and the Speaker of the House of Representatives by  
 30 January 1, 2013, and every 5 years thereafter, a report of the  
 31 status of proceedings conducted under this section, including  
 32 the number of utilities eligible to request staff assistance,  
 33 the number of proceedings conducted annually for the most recent  
 34 5-year period, the associated impact on commission resources,  
 35 and any other information the commission deems appropriate.

36 Section 2. This act shall take effect July 1, 2008.