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# **Agriculture & Property Rights Subcommittee**

**Tuesday, March 28, 2017  
9:00 am  
12 HOB**

**Richard Corcoran  
Speaker**

**Tom Goodson  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Agriculture & Property Rights Subcommittee

**Start Date and Time:** Tuesday, March 28, 2017 09:00 am

**End Date and Time:** Tuesday, March 28, 2017 11:00 am

**Location:** 12 HOB

**Duration:** 2.00 hrs

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

CS/HB 267 Estates by Civil Justice & Claims Subcommittee, Berman

HB 1241 Subdivided Lands by Eagle

**Consideration of the following proposed committee substitute(s):**

PCS for HB 333 -- Rural Economic Development Initiative

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 pm, Monday, March 27, 2017.

By request of Chair Goodson, all Agriculture & Property Rights Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 pm, Monday, March 27, 2017.

**NOTICE FINALIZED on 03/24/2017 4:22PM by Kaiser.Debbi**



# **The Florida House of Representatives**

**Commerce Committee**

**Agriculture & Property Rights Subcommittee**

**Richard Corcoran**  
Speaker

**Tom Goodson**  
Chair

## **AGENDA**

March 28, 2017

12 House Office Building

9:00 AM – 11:00 AM

- I. Call to Order & Roll Call**
  
- II. Consideration of the following bill(s):**
  - A. CS/HB 289 Estates by Civil Justice & Claims Subcommittee, Berman
  - B. PCS for HB 333, Rural Economic Development Initiative by Clemons
  - C. HB 1241, Subdivided Lands by Eagle
  
- III. Adjournment**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 267 Estates  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Berman  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Agriculture & Property Rights Subcommittee		Thompson <i>JAT</i>	Smith <i>MS</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

Surviving spouses have a right to elect a share of the deceased spouse's estate, different than the spouse would have received under a will, known as the elective share. The amount of the estate a surviving spouse is entitled is 30% of the value of the decedent's assets at the time of death. Current law provides which assets are included in determining the value of a decedent's elective estate as well as procedural requirements a surviving spouse must follow in order to claim the elective share.

The state's Constitution provides protection for certain property referred to as a homestead. One protection provided for homestead property is a restriction on a homestead owner from alienating or devising the homestead property. Where a homestead owner has a spouse, the homestead property passes to the spouse upon the death of the homestead owner in certain situations. Homestead property is currently excluded in determining the value of a decedent's elective estate, and is thus not included when calculating a surviving spouse's elective share.

The bill includes the protected homestead in the elective estate, except where a spouse validly waives his or her rights to the property, and provides a method of valuation for purposes of satisfying the elective share.

The bill assesses interest against persons who are delinquent in fulfilling their obligations to pay or contribute towards satisfaction of the elective share and creates an award of attorney fees and costs in certain elective share proceedings. The bill also extends the period of time the surviving spouse can petition a court for an extension of time to file for the elective share.

Lastly, the bill expands the scope of trusts that are included under the savings clause to include an elective share trust, even where a marital deduction is not elected.

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

The effective date of the bill is July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background: Homestead and the Elective Share**

Probate is the legal process for determining and paying for the debts of the deceased and distributing the deceased's property to heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. There are two significant exceptions to these general rules:

- The elective share provisions provide for a set inheritance for a surviving spouse, different than the spouse would otherwise receive by operation of the will; and
- Exempt property and homestead property transfer to certain surviving dependents.

Under current law, a homestead is not a property interest but is simply a constitutionally defined status. Article X, s. 4(a)(1) of the Florida Constitution provides a homestead exemption for certain property owned by "natural persons." The status of homestead which the constitution impresses on property under certain circumstances does not change the nature of the estate in the property owned by a homesteader residing in Florida, nor does the acquisition of homestead status confer any additional property interest or rights in property. Rather, the exemption merely exempts such property from certain liabilities to which it would otherwise be subject.

Specifically, the homestead is protected in three different ways: It provides the homestead with an exemption from taxes; it protects the homestead from forced sale by creditors; and it places certain restrictions on a homestead owner from alienating or devising the homestead property. Section 731.201(33), F.S., defines "protected homestead" as:

[T]he property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For the purposes of the code, real property owned as tenants by the entirety is not protected homestead.

Three requirements must be satisfied for real property to be impressed with the characteristics of homestead property under the Florida Constitution: (1) the property must be owned by a "natural person"; (2) the owner must have made, or intend to make, the real property his or her permanent residence or that of his family; and (3) the property must meet certain size and contiguity requirements.

Homestead property owned by the decedent in either a joint tenancy with rights of survivorship or tenancy by the entireties is not protected homestead as the decedent's interest in the homestead property terminates at death.<sup>1</sup> Current law, at ss. 732.401(1) and (2), F.S., addresses the descent (transfer of property to descendants) of homestead property where no devise is allowed. The statute provides:

(1) [T]he homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining

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<sup>1</sup> s. 732.401(5), F.S.  
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undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

The right of election pursuant to s. 732.401(2), F.S., may be exercised by the surviving spouse or with court approval, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court must determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime. The statute provides several requirements and guidelines for the right of election:

- The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime;
- A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election must be extended for at least 30 days after the rendition of the order allowing the election;
- Once made, the election is irrevocable; and
- The election must be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located.<sup>2</sup>

Prior to an election being made, expenses relating to the ownership of the homestead are allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with ch. 738, F.S. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.<sup>3</sup>

With respect to the elective share, the Legislature has specifically provided that, barring express waiver by a surviving spouse, a married person cannot deprive a surviving spouse of all or most of the interests in his or her estate through his or her will. Under such circumstances, when inadequate provisions are made for the surviving spouse, the spouse is given certain inheritance rights by statute; the surviving spouse may choose the greater of what was provided in the will or what the elective share statutes provide.

Specifically, the surviving spouse of a person who dies domiciled in Florida has the right to elect to take a share of the estate of the decedent, known as the elective share,<sup>4</sup> instead of the share of the estate provided in the will. The elective share is for the express purpose of caring for the surviving spouse.<sup>5</sup>

Florida's elective share laws are codified in Part II of ch. 732, F. S. Sections 732.201 - 732.2155, F. S., in the aggregate give the surviving spouse of a decedent who was domiciled in the state on his or her death the right to a forced share of the decedent's estate. Generally stated, the elective share is 30% of the aggregate value of the all of the decedent's assets at death. There are technical rules that govern what is included in the asset base against which the elective share can be taken, and the valuation of those assets for elective share purposes.

The bill amends portions of the Florida Probate Code pertaining to the treatment of homestead property as it relates to the elective share, the rights and procedural requirements of a surviving spouse taking an elective share, and provides for interest and attorney fees and costs for certain situations arising out of elective share related proceedings.

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<sup>2</sup> s. 732.401(2)(a-e), F.S. The statute contains language to include in the notice.

<sup>3</sup> s. 732.401(3), F.S.

<sup>4</sup> s. 732.201, F.S.

<sup>5</sup> *In re Anderson's Estate*, 394 So.2d 1146 (Fla. 4th DCA 1981).

## Current Law and Effect of Proposed Changes

### Timely Election

The surviving spouse must make a timely election to take the elective share; otherwise the right to the elective share is forfeited. The elective share is paid outright to the surviving spouse and is awarded only to the extent that the value of other assets that pass from the decedent to the surviving spouse as a part of the decedent's overall testamentary plan do not rise above the requisite 30% level.

The surviving spouse's right of election may be exercised by various persons. It, of course, may be exercised by the surviving spouse. It may also be exercised by an attorney in fact or a guardian of the property of the surviving spouse as long as there is the approval of the court having jurisdiction of the probate proceeding.<sup>6</sup> The court, before it approves the election, is required to determine that the election is in the best interests of the surviving spouse, during the spouse's probable lifetime.

Except as provided in s. 732.2135(2), F.S., this election is to be filed on or before the earlier of the date that is six months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is two years after the date of the decedent's death.<sup>7</sup>

Within the period provided in s. 732.2135(1), F.S., the surviving spouse, attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. The court, for good cause shown, may extend the time for the election. If the court grants the petition for an extension, then the election must be filed within the time allowed by the extension.<sup>8</sup> A petition for an extension of time for making the election or for approval to make the election tolls the time for making the election.<sup>9</sup>

The bill provides that a surviving spouse, or attorney in fact, or guardian of the property, may petition the court for an extension of time for making an election. In addition to the period of time in s. 732.2135(1), F.S., the parties may petition the court for an extension:

- 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), F.S., if later than the time specified in subsection (1);
- But no more than 2 years after the decedent's death.

### Elective Estate

As discussed above, the elective share for a surviving spouse is statutorily set at 30% of the elective estate.<sup>10</sup> The elective share is reduced by the value of any property passing to the spouse in the decedent's will, under intestacy, or as a pretermitted spouse (not mentioned in the will because the will was written prior to the marriage). The elective share is in addition to the spouse's right to exempt property, a family allowance, and homestead.<sup>11</sup>

Once the entry of the order determining the surviving spouse's entitlement to the elective share has occurred, the personal representative must file and serve a petition to determine the amount of the elective share.<sup>12</sup> The petition is to contain:

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<sup>6</sup> See s. 732.2125(2), F.S.

<sup>7</sup> s. 732.2135(1), F.S.

<sup>8</sup> s. 732.2135(2), F.S.

<sup>9</sup> s. 732.2135(4), F.S.

<sup>10</sup> s. 732.2065, F.S.

<sup>11</sup> s. 732.2105, F.S.

<sup>12</sup> Fla. Prob. R. 5.360(c).



- The name and address of each direct recipient known to the personal representative;
- A description of the proposed distribution of assets to satisfy the elective share, and the time and manner of distribution; and
- An identification of those direct recipients, if any, from whom a specified contribution will be required and a statement of the amount of contribution sought from each.

Fla. Prob. R. 5.340 requires an inventory of the elective estate to be served together with the petition. Within 20 days after the service of the petition to determine the amount of the elective share, any interested person is permitted to serve an objection to the amount of, or distribution of, assets to satisfy the elective share. The objection must state with particularity the grounds upon which it is based. If an objection is served, the personal representative has to promptly serve a copy of the objection on all interested persons who have not previously been served.

If no objection is timely served, the court must enter an order on the petition. The order that is entered is required to:

- State the amount of the elective share;
- Identify the assets to be distributed to the surviving spouse in satisfaction of the elective estate; and
- If contribution is necessary, specify the amount of contribution for which each direct recipient is liable.

The bill includes the protected homestead in the value of the elective estate. Additionally, the bill provides rules governing the valuation of the interest in the protected homestead that the surviving spouse receives as part of his or hers elective share. Specifically, the bill provides that the value of the protected homestead is:

- The fair market value<sup>13</sup> of the protected homestead on the date of the decedent's death if the surviving spouse received a fee simple interest in the property;
- One half of the fair market value of the protected homestead on the date of the decedent's death if the spouse takes a life estate in the property or elects to take an undivided one-half interest as a tenant in common; or
- In the event the surviving spouse validly waives his or her homestead rights, but nevertheless receives an interest in the protected homestead, the value of the spouse's interest is determined as property interests that are not protected homestead.

The bill excludes the protected homestead from the elective estate if the surviving spouse waives his or her homestead rights in a marital agreement under s. 732.702, F.S., or otherwise, and receives no interest in it. This has the effect of preventing a spouse who has waived his or her right to the homestead in a premarital or post-marital agreement during the decedent's lifetime from circumventing the marital agreement by claiming a portion of the homestead's value indirectly by taking the elective share after the decedent's death.

### Contribution and Attorney Fees

Contribution means the remaining unsatisfied balance of the trust or the estate at the time of the distribution.<sup>14</sup> Any order of contribution and the resulting personal representative's duty to collect contribution is controlled by s. 732.2145, F.S.

<sup>13</sup> The bill provides a definition for fair market value for purposes of s. 732.2055, F.S., as the "net aggregate amount, as of the date of the decedent's death, of all mortgages, liens, and security interests in which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective share." HB 267, lines 234-239.

<sup>14</sup> See s. 732.2085, F.S.

Outstanding contributions bear interest at the statutory rate beginning 90 days after the order of contribution. The court's order of contribution is prima facie correct in proceedings in any court or jurisdiction.<sup>15</sup> Except as provided in s. 732.2145(3), F.S., the personal representative is required to collect contribution from the recipients' of the elective share as provided in the court's order of contribution.<sup>16</sup> If there is property within the possession or control of the personal representative that is distributable to a beneficiary or trustee who is required to contribute in satisfaction of the elective share, the personal representative must withhold the contribution required of the beneficiary or trustee from distribution.

If, after the order of contribution, the personal representative brings an action to collect contribution from property that is not within the personal representative's control, the judgment rendered shall include the personal representative's costs and reasonable attorney's fees.<sup>17</sup> The personal representative does not have to seek collection of any portion of the elective share from property not within the control of the personal representative until after the entry of the order of contribution. A personal representative who has the duty, under s. 732.2145, F.S., of enforcing contribution may be relieved of that duty by an order of the court finding that it is impracticable to enforce contribution in view of the improbability of collection under any judgment that might be obtained or otherwise.<sup>18</sup>

Nothing in s. 732.2145, F.S., relating to the order of contribution, limits the independent right of the surviving spouse to collect the elective share as provided in the court's order of contribution.<sup>19</sup> In fact, that right is specifically conferred by s. 732.2145(4), F.S. If the surviving spouse brings an action to enforce the order, the judgment must include the surviving spouse's reasonable attorney fees and costs.<sup>20</sup>

The bill also provides that direct recipients and beneficiaries who are required to make a contribution payment to the surviving spouse of some portion of the elective share are responsible for the interest on any unsatisfied amount after two years following the death of the decedent. The interest is in addition to interest accruing on unsatisfied contributions beginning 90 days after an order of contribution is entered. This payment of interest is calculated using the statutory rate allowed by Florida law.

Additionally, the bill grants courts the power to award attorney fees and costs when there is an objection or dispute over entitlement to or the amount of the elective share, the property interests included in the elective share or its value, or the satisfaction of the elective share. It adopts the same standard for granting an award of costs and attorney fees that is used in ss. 733.609, 732.615, 732.616 and 736.1004, F.S., applicable to surcharge actions and proceedings to modify a will or trust. A court may direct payment from the estate or from a party's interest in the elective share or the elective estate, or may enter a judgment that can be satisfied from other property of the party.

### *The Savings Clause and Elective Share Trusts*

Under the Code, a trust referred to as an "elective share trust," may be established for the benefit of a surviving spouse. An elective share trust is a trust under which:

- The surviving spouse is entitled for life to the use of the property or to all of the income payable at least as often annually;

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<sup>15</sup> s. 732.2145(1), F.S.

<sup>16</sup> s. 732.2145(2), F.S.

<sup>17</sup> s. 732.2145(2)(b), F.S.

<sup>18</sup> s. 732.2145(3), F.S.

<sup>19</sup> s. 732.2145(4), F.S.

<sup>20</sup> *Id.*

- The surviving spouse has the right under the terms of the trust or state law to require the trustee either to make the property productive or to convert it within a reasonable time; and
- During the spouse's life, no person other than the spouse has the power to distribute income or principal to anyone other than the spouse.

Moreover, s. 738.606, F.S., part of the Florida Uniform Principal Income Act, provides special protections when a marital deduction may be taken under the Internal Revenue Code or comparable law of any state. Specifically, where a deduction is allowed for all or part of a trust that must be distributed to the grantor's spouse, and the assets of which consist substantially of property that does not produce sufficient income for the spouse, the spouse may require the trustee to make the property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041, F.S., related to a trustee's power to adjust.

Under current law, not all elective share trusts will be made subject to a marital deduction election.

The bill expands the scope of the savings clause found in s. 738.606, F.S., to include an "elective share trust," as that term is defined in s. 732.2025(2), F. S. As with marital trusts intended to qualify for the estate tax marital deduction (which trusts are presently protected by the savings provisions of s. 738.606, F.S.), to qualify as an elective share trust, the governing instrument that creates the trust must give the surviving spouse the power to compel the trustee to convert property that is not productive of income into property that is productive.

Because not all elective share trusts will also be made subject to a marital deduction election, the bill specifically extends the savings provision of this s. 738.606, F.S., to those elective share trusts for which a marital deduction is not elected in order to satisfy the requirements for an elective share trust.

#### B. SECTION DIRECTORY:

Section 1 amends s. 732.2025, F.S., relating to definitions.

Section 2 amends s. 732.2035, F.S. relating to property entering into the elective share.

Section 3 amends s. 732.2045, F.S., relating to exclusions and overlapping application.

Section 4 amends s. 732.2055, F.S., relating to valuation of the elective share.

Section 5 amends s. 732.2075, F.S., relating to sources from which elective share payable.

Section 6 amends s. 732.2085, F.S., relating to liability of direct recipients and beneficiaries.

Section 7 amends s. 732.2095, F.S., relating to valuation of property satisfying elective share.

Section 8 amends s. 732.2115, F.S. relating to protection of payors and other third parties.

Section 9 amends s. 732.2135, F.S., relating to time of election; extensions; withdrawal.

Section 10 amends s. 732.2145, F.S., relating to order of contribution and duty to collect.

Section 11 creates s. 732.2151, F.S., relating to award of fees and costs.

Section 12 amends s. 738.606, F.S., relating to property not productive of income.

Section 13 relates to applicability.

Section 14 provides for an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

The bill may have a fiscal impact as a result of awarding attorney fees and costs in certain elective share proceedings. The impact could be positive for attorneys, beneficiaries, or spouses who are required to file actions while pursuing claims related to the elective share. The impact could also be negative on estates and beneficiaries defending against such actions as an award for attorney fees and costs against the estate could come out of assets in the estate.

The bill may have a fiscal impact for parties responsible for contributing towards the elective share and parties awaiting contributions to satisfy their elective share. An award of interest would have a negative impact on beneficiaries responsible for contributing to the elective share and a positive impact on surviving spouses who have not had their elective share satisfied.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 13, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing a section relating to the percentage of the elective estate that constitutes the surviving spouses elective share. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to estates; amending s. 732.2025,  
 3           F.S.; conforming cross-references; amending s.  
 4           732.2035, F.S.; providing that a decedent's property  
 5           interest in the protected homestead is included in the  
 6           elective estate; amending s. 732.2045, F.S.; revising  
 7           the circumstances under which the decedent's property  
 8           interest in the protected homestead is excluded from  
 9           the elective estate; amending s. 732.2055, F.S.;  
 10          providing for the valuation of the decedent's  
 11          protected homestead under certain circumstances;  
 12          amending s. 732.2075, F.S.; conforming cross-  
 13          references; amending s. 732.2085, F.S.; requiring the  
 14          payment of interest on any unpaid portion of a  
 15          person's required contribution toward the elective  
 16          share with respect to certain property; amending s.  
 17          732.2095, F.S.; revising provisions relating to the  
 18          valuation of a surviving spouse's interest in property  
 19          to include protected homestead; conforming cross-  
 20          references; amending s. 732.2115; conforming a cross-  
 21          reference; amending s. 732.2135, F.S.; revising the  
 22          period within which a specified person may petition  
 23          the court for an extension of time for making an  
 24          election; removing a provision authorizing assessment  
 25          of attorney fees and costs if an election is made in

26 bad faith; amending s. 732.2145, F.S.; requiring the  
 27 payment of interest on any unpaid portion of a  
 28 person's required contribution toward the elective  
 29 share after a certain date; creating s. 732.2151,  
 30 F.S.; providing for the award of fees and costs in  
 31 certain elective share proceedings; providing that a  
 32 court may direct payment from certain sources;  
 33 providing applicability; amending s. 738.606, F.S.;  
 34 providing that a surviving spouse may require a  
 35 trustee of a marital or elective share trust to make  
 36 property productive of income; providing  
 37 applicability; providing an effective date.

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

40  
 41 Section 1. Subsections (1) and (9) of section 732.2025,  
 42 Florida Statutes, are amended to read:

43 732.2025 Definitions.—As used in ss. 732.2025-732.2155,  
 44 the term:

45 (1) "Direct recipient" means the decedent's probate estate  
 46 and any other person who receives property included in the  
 47 elective estate by transfer from the decedent, including  
 48 transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right  
 49 of survivorship, or by beneficiary designation under a governing  
 50 instrument. For this purpose, a beneficiary of an insurance

51 policy on the decedent's life, the net cash surrender value of  
 52 which is included in the elective estate, is treated as having  
 53 received property included in the elective estate. In the case  
 54 of property held in trust, "direct recipient" includes the  
 55 trustee but excludes the beneficiaries of the trust.

56 (9) "Revocable trust" means a trust that is includable in  
 57 the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.

58 Section 2. Section 732.2035, Florida Statutes, is amended  
 59 to read:

60 732.2035 Property entering into elective estate.—Except as  
 61 provided in s. 732.2045, the elective estate consists of the sum  
 62 of the values as determined under s. 732.2055 of the following  
 63 property interests:

- 64 (1) The decedent's probate estate.
- 65 (2) The decedent's interest in property which constitutes  
 66 the protected homestead of the decedent.
- 67 (3) The decedent's ownership interest in accounts or  
 68 securities registered in "Pay On Death," "Transfer On Death,"  
 69 "In Trust For," or coownership with right of survivorship form.  
 70 For this purpose, "decedent's ownership interest" means, in the  
 71 case of accounts or securities held in tenancy by the entirety,  
 72 one-half of the value of the account or security, and in all  
 73 other cases, that portion of the accounts or securities which  
 74 the decedent had, immediately before death, the right to  
 75 withdraw or use without the duty to account to any person.



76           ~~(4)(3)~~ The decedent's fractional interest in property,  
 77 other than property described in subsection ~~(3)(2)~~ or subsection  
 78 ~~(8)(7)~~, held by the decedent in joint tenancy with right of  
 79 survivorship or in tenancy by the entirety. For this purpose,  
 80 "decedent's fractional interest in property" means the value of  
 81 the property divided by the number of tenants.

82           ~~(5)(4)~~ That portion of property, other than property  
 83 described in subsection (2) and subsection (3), transferred by  
 84 the decedent to the extent that at the time of the decedent's  
 85 death the transfer was revocable by the decedent alone or in  
 86 conjunction with any other person. This subsection does not  
 87 apply to a transfer that is revocable by the decedent only with  
 88 the consent of all persons having a beneficial interest in the  
 89 property.

90           ~~(6)(a)(5)(a)~~ That portion of property, other than property  
 91 described in subsection ~~(2)(3)~~, subsection (4), subsection (5),  
 92 or subsection ~~(8)(7)~~, transferred by the decedent to the extent  
 93 that at the time of the decedent's death:

- 94           1. The decedent possessed the right to, or in fact enjoyed  
 95 the possession or use of, the income or principal of the  
 96 property; or
- 97           2. The principal of the property could, in the discretion  
 98 of any person other than the spouse of the decedent, be  
 99 distributed or appointed to or for the benefit of the decedent.

100

101 In the application of this subsection, a right to payments under  
 102 a commercial or private annuity, an annuity trust, a unitrust,  
 103 or a similar arrangement shall be treated as a right to that  
 104 portion of the income of the property necessary to equal the  
 105 annuity, unitrust, or other payment.

106 (b) The amount included under this subsection is:

107 1. With respect to subparagraph (a)1., the value of the  
 108 portion of the property to which the decedent's right or  
 109 enjoyment related, to the extent the portion passed to or for  
 110 the benefit of any person other than the decedent's probate  
 111 estate; and

112 2. With respect to subparagraph (a)2., the value of the  
 113 portion subject to the discretion, to the extent the portion  
 114 passed to or for the benefit of any person other than the  
 115 decedent's probate estate.

116 (c) This subsection does not apply to any property if the  
 117 decedent's only interests in the property are that:

118 1. The property could be distributed to or for the benefit  
 119 of the decedent only with the consent of all persons having a  
 120 beneficial interest in the property; or

121 2. The income or principal of the property could be  
 122 distributed to or for the benefit of the decedent only through  
 123 the exercise or in default of an exercise of a general power of  
 124 appointment held by any person other than the decedent; or

125 3. The income or principal of the property is or could be

126 distributed in satisfaction of the decedent's obligation of  
 127 support; or

128 4. The decedent had a contingent right to receive  
 129 principal, other than at the discretion of any person, which  
 130 contingency was beyond the control of the decedent and which had  
 131 not in fact occurred at the decedent's death.

132 (7)~~(6)~~ The decedent's beneficial interest in the net cash  
 133 surrender value immediately before death of any policy of  
 134 insurance on the decedent's life.

135 (8)~~(7)~~ The value of amounts payable to or for the benefit  
 136 of any person by reason of surviving the decedent under any  
 137 public or private pension, retirement, or deferred compensation  
 138 plan, or any similar arrangement, other than benefits payable  
 139 under the federal Railroad Retirement Act or the federal Social  
 140 Security System. In the case of a defined contribution plan as  
 141 defined in s. 414(i) of the Internal Revenue Code of 1986, as  
 142 amended, this subsection shall not apply to the excess of the  
 143 proceeds of any insurance policy on the decedent's life over the  
 144 net cash surrender value of the policy immediately before the  
 145 decedent's death.

146 (9)~~(8)~~ Property that was transferred during the 1-year  
 147 period preceding the decedent's death as a result of a transfer  
 148 by the decedent if the transfer was either of the following  
 149 types:

150 (a) Any property transferred as a result of the

151 termination of a right or interest in, or power over, property  
 152 that would have been included in the elective estate under  
 153 subsection (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest,  
 154 or power had not terminated until the decedent's death.

155 (b) Any transfer of property to the extent not otherwise  
 156 included in the elective estate, made to or for the benefit of  
 157 any person, except:

158 1. Any transfer of property for medical or educational  
 159 expenses to the extent it qualifies for exclusion from the  
 160 United States gift tax under s. 2503(e) of the Internal Revenue  
 161 Code, as amended; and

162 2. After the application of subparagraph 1., the first  
 163 annual exclusion amount of property transferred to or for the  
 164 benefit of each donee during the 1-year period, but only to the  
 165 extent the transfer qualifies for exclusion from the United  
 166 States gift tax under s. 2503(b) or (c) of the Internal Revenue  
 167 Code, as amended. For purposes of this subparagraph, the term  
 168 "annual exclusion amount" means the amount of one annual  
 169 exclusion under s. 2503(b) or (c) of the Internal Revenue Code,  
 170 as amended.

171 (c) Except as provided in paragraph (d), for purposes of  
 172 this subsection:

173 1. A "termination" with respect to a right or interest in  
 174 property occurs when the decedent transfers or relinquishes the  
 175 right or interest, and, with respect to a power over property, a

176 termination occurs when the power terminates by exercise,  
 177 release, lapse, default, or otherwise.

178 2. A distribution from a trust the income or principal of  
 179 which is subject to subsection (5)~~(4)~~, subsection (6)~~(5)~~, or  
 180 subsection (10)~~(9)~~ shall be treated as a transfer of property by  
 181 the decedent and not as a termination of a right or interest in,  
 182 or a power over, property.

183 (d) Notwithstanding anything in paragraph (c) to the  
 184 contrary:

185 1. A "termination" with respect to a right or interest in  
 186 property does not occur when the right or interest terminates by  
 187 the terms of the governing instrument unless the termination is  
 188 determined by reference to the death of the decedent and the  
 189 court finds that a principal purpose for the terms of the  
 190 instrument relating to the termination was avoidance of the  
 191 elective share.

192 2. A distribution from a trust is not subject to this  
 193 subsection if the distribution is required by the terms of the  
 194 governing instrument unless the event triggering the  
 195 distribution is determined by reference to the death of the  
 196 decedent and the court finds that a principal purpose of the  
 197 terms of the governing instrument relating to the distribution  
 198 is avoidance of the elective share.

199 (10)~~(9)~~ Property transferred in satisfaction of the  
 200 elective share.

201 Section 3. Paragraph (i) of subsection (1) of section  
 202 732.2045, Florida Statutes, is amended to read:

203 732.2045 Exclusions and overlapping application.—

204 (1) EXCLUSIONS.—Section 732.2035 does not apply to:

205 (i) Property which constitutes the protected homestead of  
 206 the decedent if the surviving spouse validly waived his or her  
 207 homestead rights as provided under s. 732.702, or otherwise  
 208 under applicable law, and such spouse did not receive any  
 209 interest in the protected homestead upon ~~whether held by the~~  
 210 ~~decedent or by a trust at the decedent's death.~~

211 Section 4. Section 732.2055, Florida Statutes, is amended  
 212 to read:

213 732.2055 Valuation of the elective estate.—For purposes of  
 214 s. 732.2035, "value" means:

215 (1)(a) In the case of protected homestead:

216 1. If the surviving spouse receives a fee simple interest,  
 217 the fair market value of the protected homestead on the date of  
 218 the decedent's death.

219 2. If the spouse takes a life estate as provided in s.  
 220 732.401(1), or validly elects to take an undivided one-half  
 221 interest as a tenant in common as provided in s. 732.401(2),  
 222 one-half of the fair market value of the protected homestead on  
 223 the date of the decedent's death.

224 3. If the surviving spouse validly waived his or her  
 225 homestead rights as provided under s. 732.702 or otherwise under

226 applicable law, but nevertheless receives an interest in the  
 227 protected homestead, other than an interest described in s.  
 228 732.401, including an interest in trust, the value of the  
 229 spouse's interest is determined as property interests that are  
 230 not protected homestead.

231 (b) For purposes of this subsection, fair market value is  
 232 net of the aggregate amount, as of the date of the decedent's  
 233 death, of all mortgages, liens, and security interests to which  
 234 the protected homestead is subject and for which the decedent is  
 235 liable, but only to the extent that such amount is not otherwise  
 236 deducted as a claim paid or payable from the elective estate.

237 (2) In the case of any policy of insurance on the  
 238 decedent's life includable under s. 732.2035(5), (6), or (7) ~~s.~~  
 239 ~~732.2035(4), (5), or (6),~~ the net cash surrender value of the  
 240 policy immediately before the decedent's death.

241 (3)~~(2)~~ In the case of any policy of insurance on the  
 242 decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8),~~  
 243 the net cash surrender value of the policy on the date of the  
 244 termination or transfer.

245 (4)~~(3)~~ In the case of amounts includable under s.  
 246 732.2035(8) ~~s. 732.2035(7),~~ the transfer tax value of the  
 247 amounts on the date of the decedent's death.

248 (5)~~(4)~~ In the case of other property included under s.  
 249 732.2035(9) ~~s. 732.2035(8),~~ the fair market value of the  
 250 property on the date of the termination or transfer, computed

251 after deducting any mortgages, liens, or security interests on  
 252 the property as of that date.

253 ~~(6)~~<sup>(5)</sup> In the case of all other property, the fair market  
 254 value of the property on the date of the decedent's death,  
 255 computed after deducting from the total value of the property:

256 (a) All claims paid or payable from the elective estate;  
 257 and

258 (b) To the extent they are not deducted under paragraph  
 259 (a), all mortgages, liens, or security interests on the  
 260 property.

261 Section 5. Paragraph (b) of subsection (1), paragraph (b)  
 262 of subsection (2), and paragraph (c) of subsection (3) of  
 263 section 732.2075, Florida Statutes, are amended to read:

264 732.2075 Sources from which elective share payable;  
 265 abatement.-

266 (1) Unless otherwise provided in the decedent's will or,  
 267 in the absence of a provision in the decedent's will, in a trust  
 268 referred to in the decedent's will, the following are applied  
 269 first to satisfy the elective share:

270 (b) To the extent paid to or for the benefit of the  
 271 surviving spouse, amounts payable under any plan or arrangement  
 272 described in s. 732.2035(8) ~~s. 732.2035(7)~~.

273 (2) If, after the application of subsection (1), the  
 274 elective share is not fully satisfied, the unsatisfied balance  
 275 shall be allocated entirely to one class of direct recipients of



276 the remaining elective estate and apportioned among those  
 277 recipients, and if the elective share amount is not fully  
 278 satisfied, to the next class of direct recipients, in the  
 279 following order of priority, until the elective share amount is  
 280 satisfied:

281 (b) Class 2.—Recipients of property interests, other than  
 282 protected charitable interests, included in the elective estate  
 283 under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~  
 284 and, to the extent the decedent had at the time of death the  
 285 power to designate the recipient of the property, property  
 286 interests, other than protected charitable interests, included  
 287 under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

288  
 289 For purposes of this subsection, a protected charitable interest  
 290 is any interest for which a charitable deduction with respect to  
 291 the transfer of the property was allowed or allowable to the  
 292 decedent or the decedent's spouse under the United States gift  
 293 or income tax laws.

294 (3) If, after the application of subsections (1) and (2),  
 295 the elective share amount is not fully satisfied, the additional  
 296 amount due to the surviving spouse shall be determined and  
 297 satisfied as follows:

298 (c) If there is more than one trust to which this  
 299 subsection could apply, unless otherwise provided in the  
 300 decedent's will or, in the absence of a provision in the

301 decedent's will, in a trust referred to in the decedent's will,  
 302 the unsatisfied balance shall be apportioned pro rata to all  
 303 such trusts in proportion to the value, as determined under s.  
 304 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's  
 305 beneficial interests in the trusts.

306 Section 6. Paragraph (a) of subsection (3) of section  
 307 732.2085, Florida Statutes, is amended to read:

308 732.2085 Liability of direct recipients and  
 309 beneficiaries.—

310 (3) If a person pays the value of the property on the date  
 311 of a sale or exchange or contributes all of the property  
 312 received, as provided in paragraph (2)(b):

313 (a) No further contribution toward satisfaction of the  
 314 elective share shall be required with respect to that property.  
 315 However, if a person's required contribution is not fully paid  
 316 by 2 years after the date of the death of the decedent, such  
 317 person must also pay interest at the statutory rate on any  
 318 portion of the required contribution that remains unpaid.

319 Section 7. Section 732.2095, Florida Statutes, is amended  
 320 to read:

321 732.2095 Valuation of property used to satisfy elective  
 322 share.—

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

324 (a) "Applicable valuation date" means:

325 1. In the case of transfers in satisfaction of the

326 elective share, the date of the decedent's death.

327         2. In the case of property held in a qualifying special  
328 needs trust on the date of the decedent's death, the date of the  
329 decedent's death.

330         3. In the case of other property irrevocably transferred  
331 to or for the benefit of the surviving spouse during the  
332 decedent's life, the date of the transfer.

333         4. In the case of property distributed to the surviving  
334 spouse by the personal representative, the date of distribution.

335         5. Except as provided in subparagraphs 1., 2., and 3., in  
336 the case of property passing in trust for the surviving spouse,  
337 the date or dates the trust is funded in satisfaction of the  
338 elective share.

339         6. In the case of property described in s. 732.2035(2),  
340 (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's  
341 death.

342         7. In the case of proceeds of any policy of insurance  
343 payable to the surviving spouse, the date of the decedent's  
344 death.

345         8. In the case of amounts payable to the surviving spouse  
346 under any plan or arrangement described in s. 732.2035(8) ~~s.~~  
347 ~~732.2035(7)~~, the date of the decedent's death.

348         9. In all other cases, the date of the decedent's death or  
349 the date the surviving spouse first comes into possession of the  
350 property, whichever occurs later.

351 (b) "Qualifying power of appointment" means a general  
 352 power of appointment that is exercisable alone and in all events  
 353 by the decedent's spouse in favor of the spouse or the spouse's  
 354 estate. For this purpose, a general power to appoint by will is  
 355 a qualifying power of appointment if the power may be exercised  
 356 by the spouse in favor of the spouse's estate without the  
 357 consent of any other person.

358 (c) "Qualifying invasion power" means a power held by the  
 359 surviving spouse or the trustee of an elective share trust to  
 360 invade trust principal for the health, support, and maintenance  
 361 of the spouse. The power may, but need not, provide that the  
 362 other resources of the spouse are to be taken into account in  
 363 any exercise of the power.

364 (2) Except as provided in this subsection, the value of  
 365 property for purposes of s. 732.2075 is the fair market value of  
 366 the property on the applicable valuation date.

367 (a) If the surviving spouse has a life interest in  
 368 property not in trust that entitles the spouse to the use of the  
 369 property for life, including, without limitation, a life estate  
 370 in protected homestead as provided in s. 732.401(1), the value  
 371 of the spouse's interest is one-half of the value of the  
 372 property on the applicable valuation date.

373 (b) If the surviving spouse elects to take an undivided  
 374 one-half interest in protected homestead as a tenant in common  
 375 as provided in s. 732.401(2), the value of the spouse's interest

376 is one-half of the value of the property on the applicable  
 377 valuation date.

378 (c) If the surviving spouse validly waived his or her  
 379 homestead rights as provided in s. 732.702 or otherwise under  
 380 applicable law but nevertheless receives an interest in  
 381 protected homestead, other than an interest described in s.  
 382 732.401, including, without limitation, an interest in trust,  
 383 the value of the spouse's interest is determined as property  
 384 interests that are not protected homestead.

385 (d)~~(b)~~ If the surviving spouse has an interest in a trust,  
 386 or portion of a trust, which meets the requirements of an  
 387 elective share trust, the value of the spouse's interest is a  
 388 percentage of the value of the principal of the trust, or trust  
 389 portion, on the applicable valuation date as follows:

390 1. One hundred percent if the trust instrument includes  
 391 both a qualifying invasion power and a qualifying power of  
 392 appointment.

393 2. Eighty percent if the trust instrument includes a  
 394 qualifying invasion power but no qualifying power of  
 395 appointment.

396 3. Fifty percent in all other cases.

397 (e)~~(e)~~ If the surviving spouse is a beneficiary of a  
 398 trust, or portion of a trust, which meets the requirements of a  
 399 qualifying special needs trust, the value of the principal of  
 400 the trust, or trust portion, on the applicable valuation date.

401        ~~(f)(d)~~ If the surviving spouse has an interest in a trust  
 402 that does not meet the requirements of either an elective share  
 403 trust or a qualifying special needs trust, the value of the  
 404 spouse's interest is the transfer tax value of the interest on  
 405 the applicable valuation date; however, the aggregate value of  
 406 all of the spouse's interests in the trust shall not exceed one-  
 407 half of the value of the trust principal on the applicable  
 408 valuation date.

409        ~~(g)(e)~~ In the case of any policy of insurance on the  
 410 decedent's life the proceeds of which are payable outright or to  
 411 a trust described in paragraph ~~(d)(b)~~, paragraph ~~(e)(e)~~, or  
 412 paragraph ~~(f)(d)~~, the value of the policy for purposes of s.  
 413 732.2075 and paragraphs (d), (e), and (f) ~~(b), (e), and (d)~~ is  
 414 the net proceeds.

415        ~~(h)(f)~~ In the case of a right to one or more payments from  
 416 an annuity or under a similar contractual arrangement or under  
 417 any plan or arrangement described in s. 732.2035(8) ~~s.~~  
 418 ~~732.2035(7)~~, the value of the right to payments for purposes of  
 419 s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (e), and (d)~~  
 420 is the transfer tax value of the right on the applicable  
 421 valuation date.

422        Section 8. Section 732.2115, Florida Statutes, is amended  
 423 to read:

424        732.2115 Protection of payors and other third parties.—  
 425 Although a property interest is included in the decedent's

426 elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a  
 427 payor or other third party is not liable for paying,  
 428 distributing, or transferring the property to a beneficiary  
 429 designated in a governing instrument, or for taking any other  
 430 action in good faith reliance on the validity of a governing  
 431 instrument.

432 Section 9. Section 732.2135, Florida Statutes, is amended  
 433 to read:

434 732.2135 Time of election; extensions; withdrawal.-

435 (1) Except as provided in subsection (2), the election  
 436 must be filed on or before the earlier of the date that is 6  
 437 months after the date of service of a copy of the notice of  
 438 administration on the surviving spouse, or an attorney in fact  
 439 or guardian of the property of the surviving spouse, or the date  
 440 that is 2 years after the date of the decedent's death.

441 (2) Within the period provided in subsection (1), or 40  
 442 days after the date of termination of any proceeding which  
 443 affects the amount the spouse is entitled to receive under s.  
 444 732.2075(1), whichever is later, but no more than 2 years after  
 445 the decedent's death, the surviving spouse or an attorney in  
 446 fact or guardian of the property of the surviving spouse may  
 447 petition the court for an extension of time for making an  
 448 election. For good cause shown, the court may extend the time  
 449 for election. If the court grants the petition for an extension,  
 450 the election must be filed within the time allowed by the

451 extension.

452 (3) The surviving spouse or an attorney in fact, guardian  
 453 of the property, or personal representative of the surviving  
 454 spouse may withdraw an election at any time within 8 months  
 455 after the decedent's death and before the court's order of  
 456 contribution.

457 (4) A petition for an extension of the time for making the  
 458 election or for approval to make the election shall toll the  
 459 time for making the election.

460 ~~(5) If the court determines that an election is made or~~  
 461 ~~pursued in bad faith, the court may assess attorney's fees and~~  
 462 ~~costs against the surviving spouse or the surviving spouse's~~  
 463 ~~estate.~~

464 Section 10. Subsection (1) of section 732.2145, Florida  
 465 Statutes, is amended to read:

466 732.2145 Order of contribution; personal representative's  
 467 duty to collect contribution.-

468 (1) The court shall determine the elective share and  
 469 contribution. Any amount of the elective share not satisfied  
 470 within 2 years of the date of death of the decedent shall bear  
 471 interest at the statutory rate until fully satisfied, even if an  
 472 order of contribution has not yet been entered. Contributions  
 473 shall bear interest at the statutory rate beginning 90 days  
 474 after the order of contribution. The order is prima facie  
 475 correct in proceedings in any court or jurisdiction.



476 Section 11. Section 732.2151, Florida Statutes, is created  
 477 to read:

478 732.2151 Award of fees and costs in elective share  
 479 proceedings.-

480 (1) The court may award taxable costs as in chancery  
 481 actions, including attorney fees, in any proceeding under this  
 482 part in which there is an objection to or dispute over:

483 (a) The entitlement to or the amount of the elective  
 484 share;

485 (b) The property interests included in the elective  
 486 estate, or its value; or

487 (c) The satisfaction of the elective share.

488 (2) When awarding taxable costs or attorney fees, the  
 489 court may do one or more of the following:

490 (a) Direct payment from the estate.

491 (b) Direct payment from a party's interest in the elective  
 492 share or the elective estate.

493 (c) Enter a judgement that can be satisfied from other  
 494 property of the party.

495 (3) In addition to any of the fees that may be awarded  
 496 under subsections (1) and (2), if the personal representative  
 497 does not file a petition to determine the amount of the elective  
 498 share as required by the Florida Probate Rules, the electing  
 499 spouse or the attorney-in-fact, guardian of the property, or  
 500 personal representative of the electing spouse may be awarded

501 from the estate reasonable costs, including attorney fees,  
 502 incurred in connection with the preparation and filing of the  
 503 petition.

504 (4) This section applies to all proceedings commenced on  
 505 or after July 1, 2017, without regard to the date of the  
 506 decedent's death.

507 Section 12. Subsection (1) of section 738.606, Florida  
 508 Statutes, is amended to read:

509 738.606 Property not productive of income.—

510 (1) If a marital deduction under the Internal Revenue Code  
 511 or comparable law of any state is allowed for all or part of a  
 512 trust, or if assets are transferred to a trust that satisfies  
 513 the requirements of s. 732.2025(2)(a) and (c), and such assets  
 514 have been used in whole or in part to satisfy an election by a  
 515 surviving spouse under s. 732.2125 and ~~the income of which must~~  
 516 ~~be distributed to the grantor's spouse and the assets of which~~  
 517 consist ~~substantially~~ of property that, in the aggregate, does  
 518 not provide the spouse with sufficient income from or use of the  
 519 trust assets, and if ~~the~~ amounts the trustee transfers from  
 520 principal to income under s. 738.104 and distributes to the  
 521 spouse from principal pursuant to the terms of the trust are  
 522 insufficient to provide the spouse with the beneficial enjoyment  
 523 required to obtain the marital deduction, even though, in the  
 524 case of an elective share trust, a marital deduction is not made  
 525 or is only partially made, the spouse may require the trustee of

526 such marital trust or elective share trust to make property  
 527 productive of income, convert property within a reasonable time,  
 528 or exercise the power conferred by ss. 738.104 and 738.1041. The  
 529 trustee may decide which action or combination of actions to  
 530 take.

531 Section 13. Applicability.—Except as otherwise provided in  
 532 this act, the amendments made by this act apply to decedents  
 533 whose death occurred on or after July 1, 2017.

534 Section 14. This act shall take effect July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 333 Rural Economic Development Initiative  
**SPONSOR(S):** Agriculture & Property Rights Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 600; CS/CS/HB 7005

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Property Rights Subcommittee		Thompson	JAT Smith MA

### SUMMARY ANALYSIS

The Rural Economic Development Initiative (REDI), housed within the Department of Economic Opportunity (DEO), is a program intended to encourage and facilitate economic development in rural communities through the participation of state and regional agencies.

The bill makes several changes to the REDI program including:

- Revising the legislative intent of the REDI program to focus on job creation, improved community infrastructure, the development and expansion of a skilled workforce, and improved access to healthcare;
- Revising the REDI membership to include specified agency and organization heads, as well as five appointed private sector members;
- Revising the definition of rural area of opportunity (RAO) to focus on rural communities with specific disadvantages such as economic distress, low labor force, low educational attainment, high unemployment, high infant mortality, and high diabetes and obesity;
- Removing the limit on the number of RAOs that REDI may recommend to the Governor; and
- Specifying reporting requirements of REDI.

The bill has no fiscal impact on state funds.

The effective date of the bill is upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Rural Economic Development Initiative (REDI)**

The Rural Economic Development Initiative (REDI), housed within the Department of Economic Opportunity DEO), was created in recognition that rural communities and regions face extraordinary challenges in their efforts to significantly improve their economies, and is intended to encourage and facilitate the location of economic development projects in rural communities.<sup>1</sup>

Responsibilities of REDI include coordinating and focusing the efforts and resources of state and regional agencies on the problems which affect the fiscal, economic, and community viability of economically distressed rural communities and working with local governments, community-based organizations, and private entities that have an interest in the growth and development of rural communities to find ways to balance environmental and growth management issues with local needs and economic development.<sup>2</sup> Other responsibilities include the review and evaluation of the impact of statutes and rules on rural communities, and the facilitation of better access to state resources by promoting direct access and referrals to both state and regional agencies and statewide organizations.<sup>3</sup>

REDI membership is comprised of state agencies and organizations statutorily directed to designate a deputy secretary or higher-level staff person from within the agency or organization to serve as a REDI representative. These agencies and organizations are:<sup>4</sup>

- The Department of Transportation;
- The Department of Environmental Protection;
- The Department of Agriculture and Consumer Services;
- The Department of State;
- The Department of Health;
- The Department of Children and Families;
- The Department of Corrections;
- The Department of Education;
- The Department of Juvenile Justice;
- The Fish and Wildlife Conservation Commission;
- Each water management district;
- Enterprise Florida, Inc.;
- CareerSource Florida, Inc.;
- VISIT Florida;
- The Florida Regional Planning Council Association;
- The Agency for Health Care Administration; and
- The Institute of Food and Agricultural Sciences (IFAS).

Representatives are required to have comprehensive knowledge of their agencies regulatory and service functions, and of the state's economic goals, policies, and programs. The representative serves as the primary point of contact for their agency with REDI on issues and projects relating to economically distressed rural communities.<sup>5</sup>

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<sup>1</sup> s. 288.0656(1)(a), F.S.

<sup>2</sup> s. 288.0656(3), F.S.

<sup>3</sup> s. 288.0656(4) and (5), F.S.

<sup>4</sup> s. 288.0656(6)(a), F.S.

<sup>5</sup> s. 288.0656(6)(b), F.S.

The law governing the REDI program defines a rural area of opportunity (RAO) as a rural community,<sup>6</sup> or a region comprised of rural communities, designated by the Governor, that have been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress. An area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.<sup>7</sup> Based on recommendations of REDI, up to three rural areas of opportunity can be designated by the Governor through executive order.<sup>8</sup> This designation establishes these areas as priority assignments for REDI as well as allows the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development initiative.<sup>9</sup>

Currently, there are three designated RAO areas:

- **Northwest Rural Area of Opportunity:** Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County. The name of this area's economic development organization is Opportunity Florida.<sup>10</sup>
- **South Central Rural Area of Opportunity:** DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County). The name of this area's economic development organization is Florida's Heartland Regional Economic Development Initiative, Inc.<sup>11</sup>
- **North Central Rural Area of Opportunity:** Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties. The name of this area's economic development organization is the North Florida Economic Development Partnership.<sup>12</sup>

Each rural area of opportunity, by a REDI recommendation and identification by Enterprise Florida Inc., may designate catalyst projects, which must be confirmed by the Department of Economic Opportunity. All agencies and departments of the state are required to use all available tools and resources available to promote the creation and development of each catalyst project and the development of catalyst sites.<sup>13</sup> For purposes of the REDI program, a catalyst project<sup>14</sup> is a business relocating or expanding in an RAO and serves as an economic generator of regional significance, and a catalyst site<sup>15</sup> is one or more parcels of land in an RAO that is prioritized for economic development.

---

<sup>6</sup> s. 288.0656(2)(e), F.S., defines a "Rural community" as a county with a population of 75,000 or fewer; a county with a population of 125,000 or fewer, which is contiguous to a county with a population of 75,000 or fewer; a municipality within such a county; or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in s. 288.0656(2)(c), F.S., and verified by DEO. For purposes of this paragraph, population is determined in accordance with the most recent official estimate pursuant to the state population census statute located in s. 186.901, F.S. The U.S. Census Bureau defines "rural" as all population, housing, and territory not included within an urban area, and identifies two types of urban areas, Urbanized Areas (UAs) of 50,000 or more people; and Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.

<sup>7</sup> s. 288.0656(2)(d), F.S.

<sup>8</sup> Per s. 288.0656(7)(b), F.S., a designation of RAO is contingent upon the execution of a memorandum of agreement among the Department of Economic Opportunity, the governing body of the county, and the governing bodies of any municipalities included within a RAO.

<sup>9</sup> s. 288.0656(7)(a) and 288.06561, F.S.

<sup>10</sup> For additional information on Opportunity Florida, see: <http://www.opportunityflorida.com/> (last viewed February 6, 2017).

<sup>11</sup> For additional information on Florida's Heartland Regional Economic Development Initiative, Inc., see: <http://flaheartland.com/> (last viewed February 6, 2017).

<sup>12</sup> For additional information on the North Florida Economic Development Partnership, see: <http://nflp.org/?/Home> (last viewed February 6, 2017).

<sup>13</sup> s. 288.0656(7)(c), F.S.

<sup>14</sup> s. 288.0656(2)(a), F.S.

<sup>15</sup> s. 288.0656(2)(b), F.S.

REDI is required to submit a report to DEO on all REDI activities for the previous fiscal year as a supplement to DEO's annual report required under s. 20.60, F.S.<sup>16</sup> This supplementary report must include:

- A status report on all projects currently being coordinated through REDI;
- The number of preferential awards and allowances made pursuant to the REDI program;
- The dollar amount of such awards, and the names of the recipients;
- A description of all waivers of program requirements granted;
- Information as to the economic impact of the projects coordinated by REDI; and
- Recommendations based on the review and evaluation of statutes and rules having an adverse impact on rural communities and proposals to mitigate such adverse impacts.

### **Effect of Proposed Changes**

#### **Rural Economic Development Initiative (REDI)**

The bill expands the intent of REDI to encourage and facilitate job creation, improved community infrastructure, the development and expansion of a skilled workforce, and improved access to healthcare in rural communities and regions.

#### **Duties and Responsibilities**

The bill revises the responsibilities of the REDI program requiring REDI to coordinate and focus the efforts and resources of state and regional agencies on the challenges of the state's rural areas of opportunity and economically distressed rural communities. The bill also requires REDI to work with local governments, community-based organizations, and private organizations that have an interest in the renewed prosperity and competitiveness of these communities.

The bill revises the review and evaluation provisions of the REDI program to require that it undertake outreach and capacity-building efforts to improve rural communities' ability to compete in a global economy. The authority to sponsor conferences and achievement awards as part of outreach and advocacy efforts is removed.

#### **REDI Membership**

The bill replaces the current REDI membership with the following members, or his or her designee:

- The Executive Director of the Department of Economic Opportunity, who serves as the chair;
- The Secretary of Transportation;
- The Secretary of Environmental Protection;
- The Commissioner of Agriculture;
- The State Surgeon General;
- The Commissioner of Education;;
- The chair of the board of directors of CareerSource Florida, Inc.; and
- The chair of the board of the regional economic development organization for each of the rural areas of opportunity.

Additionally, five members from the private sector are to be appointed to the membership of REDI. Of these, three must be appointed by the executive director of the Department of Economic Opportunity, one must be appointed by the President of the Senate, and one must be appointed by the Speaker of the House of Representatives. The bill provides that in making their appointments, the executive director, the President of the Senate, and the Speaker of the House of Representatives must ensure that the appointments reflect the diversity of Florida's business community and are representative of the



economic development goals in of the REDI program. Consideration shall be given to appoint members that reflect the state's racial, ethnic, and gender diversity, and who are from rural communities.

The bill provides the following REDI appointment terms:

- Each appointed member must be appointed to a 2-year term;
- Initial appointments must be made by July 1;
- Member terms expire on June 30;
- Vacancies are filled for the remainder of an unexpired term and filled in the same manner as the original appointment;
- An appointed member may be removed by the appointing officer for cause; and
- Absence of a member from three consecutive meetings results in automatic removal.

The bill removes the requirement that each REDI representative have comprehensive knowledge of their agency's functions and of the state's economic goals, policies, and programs.

The bill removes the requirement that REDI representatives work with REDI in the review and evaluation of statutes and rules for adverse impact on rural communities.

#### Ad Hoc Committee

The bill authorizes the REDI chair to request the head of any state agency or organization to serve on an ad hoc committee as needed to address issues or projects relating to rural areas of opportunity and economically distressed rural communities. The chair must consider requesting the following individuals, or his or her designee, to serve on an ad hoc committee:

- The executive director of the Fish and Wildlife Conservation Commission;
- The Secretary of State;
- The Secretary of Children and Families;
- The Secretary of Corrections;
- The Secretary of Juvenile Justice;
- The Secretary of Health Care Administration;
- A board member of the Florida Regional Councils.

#### Reporting Requirements

The bill requires that the report of REDI be submitted to the President of the Senate and the Speaker of the House of Representatives by September 1<sup>st</sup> of each year. The information required to be included in the report is expanded to include evaluation of organizational progress towards goals, REDI accomplishments, and issues affecting the performance of REDI programs and activities.

#### Rural Areas of Opportunity (RAO)

The bill revises the definition of RAO to mean a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by severe or chronic economic distress, and faces competitive disadvantages such as low labor force participation, low educational attainment levels, high unemployment, "D" or "F" district grades pursuant to s. 1008.34, F.S., high infant mortality rates, and high diabetes and obesity rates, and which presents a unique economic development opportunity of regional impact.

The bill removes the provision allowing REDI to recommend to the Governor up to three rural areas of opportunity, which in effect removes the limit of RAOs the Governor may designate by executive order.

#### CONFORMING CROSS REFERENCES

The bill corrects cross-references necessary as a result of the changes in the bill.

**B. SECTION DIRECTORY:**

- Section 1** amends s. 163.3177, F.S., conforming cross-references.
- Section 2** amends s. 163.3187, F.S., conforming cross-references.
- Section 3** amends s. 257.193, F.S., conforming cross-references.
- Section 4** amends s. 288.019, F.S., conforming cross-references.
- Section 5** amends s. 288.0656, F.S., related to Rural Economic Development Initiative; revising legislative intent; redefining the term "rural area of opportunity"; revising duties, responsibilities, and membership of the Rural Economic Development Initiative; revising reporting requirements.
- Section 6** amends s. 288.06561, F.S., conforming cross-references.
- Section 7** amends s. 290.0055, F.S., conforming cross-references.
- Section 8** amends s. 290.06561, F.S., conforming cross-references.
- Section 9** amends s. 337.403, F.S., conforming cross-references.
- Section 10** amends s. 339.2818, F.S., conforming cross-references.
- Section 11** amends s. 339.2819, F.S., conforming cross-references.
- Section 12** amends s. 339.63, F.S., conforming cross-references.
- Section 13** amends s. 479.16, F.S., conforming cross-references.
- Section 14** amends s. 627.6699, F.S., conforming cross-references.
- Section 15** provides an effective date of upon becoming law.

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

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

1. Revenues:  
None.
2. Expenditures:  
None.

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

1. Revenues:  
None.
2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

PCS for HB 333

ORIGINAL

YEAR

1                   A bill to be entitled  
 2           An act relating to the Rural Economic Development  
 3           Initiative; amending s. 288.0656, F.S.; revising  
 4           legislative intent relating to the Rural Economic  
 5           Development Initiative; redefining the term "rural  
 6           area of opportunity"; revising the duties,  
 7           responsibilities, and membership of the Rural Economic  
 8           Development Initiative; revising reporting  
 9           requirements; amending ss. 163.3177, 163.3187,  
 10          257.193, 288.019, 288.06561, 290.0055, 290.06561,  
 11          337.403, 339.2818, 339.2819, 339.63, 479.16, and  
 12          627.6699, F.S.; conforming cross-references; providing  
 13          an effective date.

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

16  
 17           Section 1. Paragraph (e) of subsection (7) of section  
 18          163.3177, Florida Statutes, is amended to read:

19           163.3177 Required and optional elements of comprehensive  
 20          plan; studies and surveys.-

21           (7)

22           (e) This subsection does not confer the status of rural  
 23          area of opportunity, or any of the rights or benefits derived  
 24          from such status, on any land area not otherwise designated as  
 25          such pursuant to s. 288.0656(8) ~~s. 288.0656(7)~~.

PCS for HB 333

ORIGINAL

YEAR

26 Section 2. Subsection (3) of section 163.3187, Florida  
 27 Statutes, is amended to read:

28 163.3187 Process for adoption of small-scale comprehensive  
 29 plan amendment.—

30 (3) If the small scale development amendment involves a  
 31 site within a rural area of opportunity as defined under s.  
 32 288.0656(3)(d) ~~s. 288.0656(2)(d)~~ for the duration of such  
 33 designation, the 10-acre limit listed in subsection (1) shall be  
 34 increased by 100 percent to 20 acres. The local government  
 35 approving the small scale plan amendment shall certify to the  
 36 state land planning agency that the plan amendment furthers the  
 37 economic objectives set forth in the executive order issued  
 38 under s. 288.0656(8) ~~s. 288.0656(7)~~, and the property subject to  
 39 the plan amendment shall undergo public review to ensure that  
 40 all concurrency requirements and federal, state, and local  
 41 environmental permit requirements are met.

42 Section 3. Subsection (2) of section 257.193, Florida  
 43 Statutes, is amended to read:

44 257.193 Community Libraries in Caring Program.—

45 (2) The purpose of the Community Libraries in Caring  
 46 Program is to assist libraries in rural communities, as defined  
 47 in s. 288.0656(3) ~~s. 288.0656(2)~~ and subject to the provisions  
 48 of s. 288.06561, to strengthen their collections and services,  
 49 improve literacy in their communities, and improve the economic  
 50 viability of their communities.

PCS for HB 333

ORIGINAL

YEAR

51 Section 4. Section 288.019, Florida Statutes, is amended  
 52 to read:

53 288.019 Rural considerations in grant review and  
 54 evaluation processes.—Notwithstanding any other law, and to the  
 55 fullest extent possible, the member agencies and organizations  
 56 of the Rural Economic Development Initiative (REDI) as defined  
 57 in s. 288.0656(7)(a) ~~s. 288.0656(6)(a)~~ shall review all grant  
 58 and loan application evaluation criteria to ensure the fullest  
 59 access for rural counties as defined in s. 288.0656(3) ~~s.~~  
 60 ~~288.0656(2)~~ to resources available throughout the state.

61 (1) Each REDI agency and organization shall review all  
 62 evaluation and scoring procedures and develop modifications to  
 63 those procedures which minimize the impact of a project within a  
 64 rural area.

65 (2) Evaluation criteria and scoring procedures must  
 66 provide for an appropriate ranking based on the proportionate  
 67 impact that projects have on a rural area when compared with  
 68 similar project impacts on an urban area.

69 (3) Evaluation criteria and scoring procedures must  
 70 recognize the disparity of available fiscal resources for an  
 71 equal level of financial support from an urban county and a  
 72 rural county.

73 (a) The evaluation criteria should weight contribution in  
 74 proportion to the amount of funding available at the local  
 75 level.

PCS for HB 333

ORIGINAL

YEAR

76 (b) In-kind match should be allowed and applied as  
 77 financial match when a county is experiencing financial distress  
 78 through elevated unemployment at a rate in excess of the state's  
 79 average by 5 percentage points or because of the loss of its ad  
 80 valorem base.

81 (4) For existing programs, the modified evaluation  
 82 criteria and scoring procedure must be delivered to the  
 83 department for distribution to the REDI agencies and  
 84 organizations. The REDI agencies and organizations shall review  
 85 and make comments. Future rules, programs, evaluation criteria,  
 86 and scoring processes must be brought before a REDI meeting for  
 87 review, discussion, and recommendation to allow rural counties  
 88 fuller access to the state's resources.

89 Section 5. Section 288.0656, Florida Statutes, is amended  
 90 to read:

91 288.0656 Rural Economic Development Initiative.—

92 (1)~~(a)~~ Recognizing that rural communities and regions  
 93 continue to face extraordinary challenges in their efforts to  
 94 significantly improve their quality of life and economies,  
 95 specifically in terms of personal income, education,  
 96 infrastructure, access to healthcare, and job creation, ~~average~~  
 97 ~~wages, and strong tax bases,~~ it is the intent of the Legislature  
 98 to encourage and facilitate:

99 (a) Job creation through the location and expansion of  
 100 ~~major economic development projects of significant scale in such~~

101 ~~rural communities.~~

102 (b) Improved community infrastructure, including, but not  
 103 limited to, roads, utilities, water and sewer, and broadband.

104 (c) The development and expansion of a skilled workforce.

105 (d) Improved access to healthcare.

106 (2)~~(b)~~ The Rural Economic Development Initiative, known as  
 107 "REDI," is created within the Department of Economic  
 108 Opportunity, and the participation of state and regional  
 109 agencies in this initiative is authorized.

110 (3)~~(2)~~ As used in this section, the term:

111 (a) "Catalyst project" means a business locating or  
 112 expanding in a rural area of opportunity to serve as an economic  
 113 generator of regional significance for the growth of a regional  
 114 target industry cluster. The project must provide capital  
 115 investment on a scale significant enough to affect the entire  
 116 region and result in the development of high-wage and high-skill  
 117 jobs.

118 (b) "Catalyst site" means a parcel or parcels of land  
 119 within a rural area of opportunity that has been prioritized as  
 120 a geographic site for economic development through partnerships  
 121 with state, regional, and local organizations. The site must be  
 122 reviewed by REDI and approved by the department for the purposes  
 123 of locating a catalyst project.

124 (c) "Economic distress" means conditions affecting the  
 125 fiscal and economic viability of a rural community, including



PCS for HB 333

ORIGINAL

YEAR

126 such factors as low per capita income, low per capita taxable  
 127 values, high unemployment, high underemployment, low weekly  
 128 earned wages compared to the state average, low housing values  
 129 compared to the state average, high percentages of the  
 130 population receiving public assistance, high poverty levels  
 131 compared to the state average, and a lack of year-round stable  
 132 employment opportunities.

133 (d) "Rural area of opportunity" means a rural community,  
 134 or a region composed of rural communities, designated by the  
 135 Governor, which has been adversely affected by ~~an extraordinary~~  
 136 ~~economic event,~~ severe or chronic economic distress, and faces  
 137 competitive disadvantages such as low labor force participation,  
 138 low educational attainment levels, high unemployment, "D" or "F"  
 139 district grades pursuant to s. 1008.34, high infant mortality  
 140 rates, and high diabetes and obesity rates, and which ~~or a~~  
 141 ~~natural disaster or that~~ presents a unique economic development  
 142 opportunity of regional impact.

143 (e) "Rural community" means:

- 144 1. A county with a population of 75,000 or fewer.
- 145 2. A county with a population of 125,000 or fewer which is  
 146 contiguous to a county with a population of 75,000 or fewer.
- 147 3. A municipality within a county described in  
 148 subparagraph 1. or subparagraph 2.
- 149 4. An unincorporated federal enterprise community or an  
 150 incorporated rural city with a population of 25,000 or fewer and

151 an employment base focused on traditional agricultural or  
 152 resource-based industries, located in a county not defined as  
 153 rural, which has at least three or more of the economic distress  
 154 factors identified in paragraph (c) and verified by the  
 155 department.

156  
 157 For purposes of this paragraph, population shall be determined  
 158 in accordance with the most recent official estimate pursuant to  
 159 s. 186.901.

160 (4)~~(3)~~ REDI ~~is shall be~~ responsible for coordinating and  
 161 focusing the efforts and resources of state and regional  
 162 agencies on the challenges of the state's rural areas of  
 163 opportunity and economically distressed rural communities. REDI  
 164 shall work ~~problems which affect the fiscal, economic, and~~  
 165 ~~community viability of Florida's economically distressed rural~~  
 166 ~~communities, working~~ with local governments, community-based  
 167 organizations, and private organizations that have an interest  
 168 in the renewed prosperity and competitiveness of growth and  
 169 ~~development of these communities to find ways to balance~~  
 170 ~~environmental and growth management issues with local needs.~~

171 (5)~~(4)~~ REDI shall review and evaluate the impact of  
 172 statutes and rules on rural communities and shall work to  
 173 minimize any adverse impact and undertake outreach and capacity-  
 174 building efforts to improve rural communities' ability to  
 175 compete in a global economy.

176        ~~(6)(5)~~ REDI shall facilitate better access to state  
 177 resources by promoting direct access and referrals to  
 178 appropriate state and regional agencies and statewide  
 179 organizations. ~~REDI may undertake outreach, capacity building,~~  
 180 ~~and other advocacy efforts to improve conditions in rural~~  
 181 ~~communities. These activities may include sponsorship of~~  
 182 ~~conferences and achievement awards.~~

183        (7) (a) REDI shall consist of the following members:

184        1. The executive director of the Department of Economic  
 185 Opportunity or his or her designee, who shall serve as the  
 186 chair.

187        2. The Secretary of Transportation or his or her designee.

188        3. The Secretary of Environmental Protection or his or her  
 189 designee.

190        4. The Commissioner of Agriculture or his or her designee.

191        5. The State Surgeon General or his or her designee.

192        6. The Commissioner of Education or his or her designee.

193        7. The chair of the board of directors of CareerSource  
 194 Florida, Inc., or his or her designee.

195        8. The chair of the board of the regional economic  
 196 development organization for each of the rural areas of  
 197 opportunity or his or her designee.

198        9. Five members from the private sector, three of whom  
 199 shall be appointed by the executive director of the Department  
 200 of Economic Opportunity, one of whom shall be appointed by the

201 President of the Senate, and one of whom shall be appointed by  
 202 the Speaker of the House of Representatives.

203 (b) In making their appointments, the executive director,  
 204 the President of the Senate, and the Speaker of the House of  
 205 Representatives shall ensure that the appointments reflect the  
 206 diversity of Florida's business community and are representative  
 207 of the economic development goals in subsection (1).

208 (c) The executive director, the President of the Senate,  
 209 and the Speaker of the House of Representatives shall consider  
 210 appointees who reflect the state's racial, ethnic, and gender  
 211 diversity, and who are from rural communities.

212 (d) Each appointed member shall be appointed to a 2-year  
 213 term.

214 (e) Initial appointments shall be made by July 1. Member  
 215 terms shall expire on June 30.

216 (f) A vacancy shall be filled for the remainder of an  
 217 unexpired term and filled in the same manner as the original  
 218 appointment.

219 (g) An appointed member may be removed by the appointing  
 220 officer for cause. Absence of a member from three consecutive  
 221 meetings results in automatic removal.

222 (h) The chair may request the head of any state agency or  
 223 organization to serve on an ad hoc committee as needed to  
 224 address issues or projects relating to rural areas of  
 225 opportunity and economically distressed rural communities. The

226 | chair shall consider requesting the following individuals to  
 227 | serve on an ad hoc committee:

228 |     1. The executive director of the Fish and Wildlife  
 229 | Conservation Commission or his or her designee.

230 |     2. The Secretary of State or his or her designee.

231 |     3. The Secretary of Children and Families or his or her  
 232 | designee.

233 |     4. The Secretary of Corrections or his or her designee.

234 |     5. The Secretary of Juvenile Justice or his or her  
 235 | designee.

236 |     6. The Secretary of Health Care Administration or his or  
 237 | her designee.

238 |     7. A board member of the Florida Regional Councils  
 239 | Association or his or her designee.

240 |     ~~(6) (a) By August 1 of each year, the head of each of the~~  
 241 | ~~following agencies and organizations shall designate a deputy~~  
 242 | ~~secretary or higher level staff person from within the agency or~~  
 243 | ~~organization to serve as the REDI representative for the agency~~  
 244 | ~~or organization:~~

245 |     ~~1. The Department of Transportation.~~

246 |     ~~2. The Department of Environmental Protection.~~

247 |     ~~3. The Department of Agriculture and Consumer Services.~~

248 |     ~~4. The Department of State.~~

249 |     ~~5. The Department of Health.~~

250 |     ~~6. The Department of Children and Families.~~

- 251 ~~7. The Department of Corrections.~~
- 252 ~~8. The Department of Education.~~
- 253 ~~9. The Department of Juvenile Justice.~~
- 254 ~~10. The Fish and Wildlife Conservation Commission.~~
- 255 ~~11. Each water management district.~~
- 256 ~~12. Enterprise Florida, Inc.~~
- 257 ~~13. CareerSource Florida, Inc.~~
- 258 ~~14. VISIT Florida.~~
- 259 ~~15. The Florida Regional Planning Council Association.~~
- 260 ~~16. The Agency for Health Care Administration.~~
- 261 ~~17. The Institute of Food and Agricultural Sciences~~
- 262 ~~(IFAS).~~

263

264 ~~An alternate for each designee shall also be chosen, and the~~  
 265 ~~names of the designees and alternates shall be sent to the~~  
 266 ~~executive director of the department.~~

267 (i)(b) Each REDI member from a state agency or  
 268 organization representative must have comprehensive knowledge of  
 269 his or her agency's functions, both regulatory and service in  
 270 nature, and of the state's economic goals, policies, and  
 271 programs. This person shall be the primary point of contact for  
 272 his or her agency with REDI on issues and projects relating to  
 273 rural areas of opportunity and economically distressed rural  
 274 communities and with regard to expediting project review, shall  
 275 ensure a prompt effective response to problems arising with

276 regard to rural issues, and shall work closely with the other  
 277 REDI members ~~representatives~~ in the identification of  
 278 opportunities for preferential awards of program funds and  
 279 allowances and waiver of program requirements when necessary to  
 280 encourage and facilitate long-term private capital investment  
 281 and job creation. The member shall also ensure that each  
 282 district office or facility of his or her agency or organization  
 283 is informed about REDI and shall provide assistance throughout  
 284 the agency in the implementation of REDI activities.

285 ~~(c) The REDI representatives shall work with REDI in the~~  
 286 ~~review and evaluation of statutes and rules for adverse impact~~  
 287 ~~on rural communities and the development of alternative~~  
 288 ~~proposals to mitigate that impact.~~

289 ~~(d) Each REDI representative shall be responsible for~~  
 290 ~~ensuring that each district office or facility of his or her~~  
 291 ~~agency is informed about the Rural Economic Development~~  
 292 ~~Initiative and for providing assistance throughout the agency in~~  
 293 ~~the implementation of REDI activities.~~

294 ~~(8)(7)(a) REDI may recommend to the Governor up to three~~  
 295 ~~rural areas of opportunity.~~ The Governor may by executive order  
 296 designate ~~up to three~~ rural areas of opportunity which will  
 297 establish these areas as priority assignments for REDI. ~~as well~~  
 298 ~~as to allow~~ The Governor may, acting through REDI, ~~to~~ waive  
 299 criteria, requirements, or similar provisions of any economic  
 300 development incentive. ~~Such incentives shall include, but are~~

301 ~~not limited to, the Qualified Target Industry Tax Refund Program~~  
 302 ~~under s. 288.106, the Quick Response Training Program under s.~~  
 303 ~~288.047, the Quick Response Training Program for participants in~~  
 304 ~~the welfare transition program under s. 288.047(8),~~  
 305 ~~transportation projects under s. 339.2821, the brownfield~~  
 306 ~~redevelopment bonus refund under s. 288.107, and the rural job~~  
 307 ~~tax credit program under ss. 212.098 and 220.1895.~~

308 (b) Designation as a rural area of opportunity under this  
 309 subsection shall be contingent upon the execution of a  
 310 memorandum of agreement among the department; the governing body  
 311 of the county; and the governing bodies of any municipalities to  
 312 be included within a rural area of opportunity. Such agreement  
 313 shall specify the terms and conditions of the designation,  
 314 including, but not limited to, the duties and responsibilities  
 315 of the county and any participating municipalities to take  
 316 actions designed to facilitate the retention and expansion of  
 317 existing businesses in the area, as well as the recruitment of  
 318 new businesses to the area.

319 (c) Each rural area of opportunity may designate catalyst  
 320 projects, provided that each catalyst project is specifically  
 321 recommended by REDI, ~~identified as a catalyst project by~~  
 322 ~~Enterprise Florida, Inc.,~~ and confirmed as a catalyst project by  
 323 the department. All state agencies and departments shall use all  
 324 available tools and resources to the extent permissible by law  
 325 to promote the creation and development of each catalyst project



326 and the development of catalyst sites.

327 (9)~~(8)~~ Before September 1 of each year, REDI shall submit  
 328 ~~a report~~ to the department, the Governor, the President of the  
 329 Senate, and the Speaker of the House of Representatives a  
 330 complete and detailed report, including, but not limited to ~~on~~  
 331 ~~all REDI activities for the previous fiscal year as a supplement~~  
 332 ~~to the department's annual report required under s. 20.60. This~~  
 333 ~~supplementary report must include:~~

334 (a) A description of the operations of ~~status report on~~  
 335 all projects currently being coordinated through REDI, the  
 336 number of preferential awards and allowances made pursuant to  
 337 this section, the dollar amount of such awards, ~~and~~ the names of  
 338 the recipients, and an evaluation of progress toward achieving  
 339 organizational goals and specific performance outcomes, as  
 340 established by the department.

341 (b) A description of the accomplishments of REDI and  
 342 identification of major trends, initiatives, or developments  
 343 affecting the performance of a program or activity coordinated  
 344 through REDI.

345 (c) A description of all waivers of program requirements  
 346 granted.

347 (d)~~(e)~~ Information as to the economic impact of the  
 348 projects coordinated by REDI.

349 (e)~~(d)~~ Recommendations based on the review and evaluation  
 350 of statutes and rules having an adverse impact on rural

351 communities and proposals to mitigate such adverse impacts.

352 Section 6. Section 288.06561, Florida Statutes, is amended  
353 to read:

354 288.06561 Reduction or waiver of financial match  
355 requirements.—Notwithstanding any other law, the member agencies  
356 and organizations of the Rural Economic Development Initiative  
357 (REDI), as defined in s. 288.0656(7)(a) ~~s. 288.0656(6)(a)~~, shall  
358 review the financial match requirements for projects in rural  
359 areas as defined in s. 288.0656(3) ~~s. 288.0656(2)~~.

360 (1) Each agency and organization shall develop a proposal  
361 to waive or reduce the match requirement for rural areas.

362 (2) Agencies and organizations shall ensure that all  
363 proposals are submitted to the department for review by the REDI  
364 agencies.

365 (3) These proposals shall be delivered to the department  
366 for distribution to the REDI agencies and organizations. A  
367 meeting of REDI agencies and organizations must be called within  
368 30 days after receipt of such proposals for REDI comment and  
369 recommendations on each proposal.

370 (4) Waivers and reductions must be requested by the county  
371 or community, and such county or community must have three or  
372 more of the factors identified in s. 288.0656(3)(c) ~~s.~~  
373 ~~288.0656(2)(c)~~.

374 (5) Any other funds available to the project may be used  
375 for financial match of federal programs when there is fiscal

376 hardship, and the match requirements may not be waived or  
 377 reduced.

378 (6) When match requirements are not reduced or eliminated,  
 379 donations of land, though usually not recognized as an in-kind  
 380 match, may be permitted.

381 (7) To the fullest extent possible, agencies and  
 382 organizations shall expedite the rule adoption and amendment  
 383 process if necessary to incorporate the reduction in match by  
 384 rural areas in fiscal distress.

385 (8) REDI shall include in its annual report an evaluation  
 386 on the status of changes to rules, number of awards made with  
 387 waivers, and recommendations for future changes.

388 Section 7. Paragraph (d) of subsection (6) of section  
 389 290.0055, Florida Statutes, is amended to read:

390 290.0055 Local nominating procedure.-

391 (6)

392 (d)1. The governing body of a jurisdiction which has  
 393 nominated an application for an enterprise zone that is at least  
 394 15 square miles and less than 20 square miles and includes a  
 395 portion of the state designated as a rural area of opportunity  
 396 under s. 288.0656(8) ~~s. 288.0656(7)~~ may apply to the department  
 397 to expand the boundary of the existing enterprise zone by not  
 398 more than 3 square miles.

399 2. The governing body of a jurisdiction which has  
 400 nominated an application for an enterprise zone that is at least

PCS for HB 333

ORIGINAL

YEAR

401 20 square miles and includes a portion of the state designated  
 402 as a rural area of opportunity under s.288.0656(8) ~~s.~~  
 403 ~~288.0656(7)~~ may apply to the department to expand the boundary  
 404 of the existing enterprise zone by not more than 5 square miles.

405 3. An application to expand the boundary of an enterprise  
 406 zone under this paragraph must be submitted by December 31,  
 407 2013.

408 4. Notwithstanding the area limitations specified in  
 409 subsection (4), the department may approve the request for a  
 410 boundary amendment if the area continues to satisfy the  
 411 remaining requirements of this section.

412 5. The department shall establish the initial effective  
 413 date of an enterprise zone designated under this paragraph.

414 Section 8. Section 290.06561, Florida Statutes, is amended  
 415 to read:

416 290.06561 Designation of rural enterprise zone as catalyst  
 417 site.—Notwithstanding s. 290.0065(1), the Department of Economic  
 418 Opportunity, upon request of the host county, shall designate as  
 419 a rural enterprise zone any catalyst site as defined in s.  
 420 288.0656(3)(b) ~~s. 288.0656(2)(b)~~ that was approved before  
 421 January 1, 2010, and that is not located in an existing rural  
 422 enterprise zone. The request from the host county must include  
 423 the legal description of the catalyst site and the name and  
 424 contact information for the county development authority  
 425 responsible for managing the catalyst site. The designation

426 shall provide businesses locating within the catalyst site the  
 427 same eligibility for economic incentives and other benefits of a  
 428 rural enterprise zone designated under s. 290.0065. The  
 429 reporting criteria for a catalyst site designated as a rural  
 430 enterprise zone under this section are the same as for other  
 431 rural enterprise zones. Host county development authorities may  
 432 enter into memoranda of agreement, as necessary, to coordinate  
 433 their efforts to implement this section.

434 Section 9. Paragraph (h) of subsection (1) of section  
 435 337.403, Florida Statutes, is amended to read:

436 337.403 Interference caused by utility; expenses.-

437 (1) If a utility that is placed upon, under, over, or  
 438 within the right-of-way limits of any public road or publicly  
 439 owned rail corridor is found by the authority to be unreasonably  
 440 interfering in any way with the convenient, safe, or continuous  
 441 use, or the maintenance, improvement, extension, or expansion,  
 442 of such public road or publicly owned rail corridor, the utility  
 443 owner shall, upon 30 days' written notice to the utility or its  
 444 agent by the authority, initiate the work necessary to alleviate  
 445 the interference at its own expense except as provided in  
 446 paragraphs (a)-(j). The work must be completed within such  
 447 reasonable time as stated in the notice or such time as agreed  
 448 to by the authority and the utility owner.

449 (h) If a municipally owned utility or county-owned utility  
 450 is located in a rural area of opportunity, as defined in s.

PCS for HB 333

ORIGINAL

YEAR

451 288.0656(3) ~~s. 288.0656(2)~~, and the department determines that  
 452 the utility is unable, and will not be able within the next 10  
 453 years, to pay for the cost of utility work necessitated by a  
 454 department project on the State Highway System, the department  
 455 may pay, in whole or in part, the cost of such utility work  
 456 performed by the department or its contractor.

457 Section 10. Subsection (7) of section 339.2818, Florida  
 458 Statutes, is amended to read:

459 339.2818 Small County Outreach Program.—

460 (7) Subject to a specific appropriation in addition to  
 461 funds annually appropriated for projects under this section, a  
 462 municipality within a rural area of opportunity or a rural area  
 463 of opportunity community designated under s. 288.0656(8)(a) ~~s.~~  
 464 ~~288.0656(7)(a)~~ may compete for the additional project funding  
 465 using the criteria listed in subsection (4) at up to 100 percent  
 466 of project costs, excluding capacity improvement projects.

467 Section 11. Paragraph (c) of subsection (4) of section  
 468 339.2819, Florida Statutes, is amended to read:

469 339.2819 Transportation Regional Incentive Program.—

470 (4)

471 (c) The department shall give priority to projects that:

472 1. Provide connectivity to the Strategic Intermodal System  
 473 developed under s. 339.64.

474 2. Support economic development and the movement of goods  
 475 in rural areas of opportunity designated under s. 288.0656(8) ~~s.~~

PCS for HB 333

ORIGINAL

YEAR

476 ~~288.0656(7).~~

477           3. Are subject to a local ordinance that establishes  
478 corridor management techniques, including access management  
479 strategies, right-of-way acquisition and protection measures,  
480 appropriate land use strategies, zoning, and setback  
481 requirements for adjacent land uses.

482           4. Improve connectivity between military installations and  
483 the Strategic Highway Network or the Strategic Rail Corridor  
484 Network.

485

486 The department shall also consider the extent to which local  
487 matching funds are available to be committed to the project.

488           Section 12. Paragraph (b) of subsection (5) of section  
489 339.63, Florida Statutes, is amended to read:

490           339.63 System facilities designated; additions and  
491 deletions.—

492           (5)

493           (b) A facility designated part of the Strategic Intermodal  
494 System pursuant to paragraph (a) that is within the jurisdiction  
495 of a local government that maintains a transportation  
496 concurrency system shall receive a waiver of transportation  
497 concurrency requirements applicable to Strategic Intermodal  
498 System facilities in order to accommodate any development at the  
499 facility which occurs pursuant to a building permit issued on or  
500 before December 31, 2017, but only if such facility is located:

501 1. Within an area designated pursuant to s. 288.0656(8) ~~s.~~  
 502 ~~288.0656(7)~~ as a rural area of opportunity;

503 2. Within a rural enterprise zone as defined in s.  
 504 290.004(5); or

505 3. Within 15 miles of the boundary of a rural area of  
 506 opportunity or a rural enterprise zone.

507 Section 13. Subsection (16) of section 479.16, Florida  
 508 Statutes, is amended to read:

509 479.16 Signs for which permits are not required.—The  
 510 following signs are exempt from the requirement that a permit  
 511 for a sign be obtained under this chapter but are required to  
 512 comply with s. 479.11(4)-(8), and subsections (15)-(20) may not  
 513 be implemented or continued if the Federal Government notifies  
 514 the department that implementation or continuation will  
 515 adversely affect the allocation of federal funds to the  
 516 department:

517 (16) Signs placed by a local tourist-oriented business  
 518 located within a rural area of opportunity as defined in s.  
 519 288.0656(3) ~~s. 288.0656(2)~~ which are:

520 (a) Not more than 8 square feet in size or more than 4  
 521 feet in height;

522 (b) Located only in rural areas on a facility that does  
 523 not meet the definition of a limited access facility, as defined  
 524 in s. 334.03;

525 (c) Located within 2 miles of the business location and at



PCS for HB 333

ORIGINAL

YEAR

526 | least 500 feet apart;

527 |       (d) Located only in two directions leading to the  
528 | business; and

529 |       (e) Not located within the road right-of-way.  
530 |

531 | A business placing such signs must be at least 4 miles from any  
532 | other business using this exemption and may not participate in  
533 | any other directional signage program by the department.  
534 |

535 | If the exemptions in subsections (15)-(20) are not implemented  
536 | or continued due to notification from the Federal Government  
537 | that the allocation of federal funds to the department will be  
538 | adversely impacted, the department shall provide notice to the  
539 | sign owner that the sign must be removed within 30 days after  
540 | receipt of the notice. If the sign is not removed within 30 days  
541 | after receipt of the notice by the sign owner, the department  
542 | may remove the sign, and the costs incurred in connection with  
543 | the sign removal shall be assessed against and collected from  
544 | the sign owner.

545 |       Section 14. Paragraph (d) of subsection (14) of section  
546 | 627.6699, Florida Statutes, is amended to read:

547 |       627.6699 Employee Health Care Access Act.—

548 |       (14) SMALL EMPLOYERS ACCESS PROGRAM.—

549 |       (d) Eligibility.—

550 |       1. Any small employer that is actively engaged in

PCS for HB 333

ORIGINAL

YEAR

551 business, has its principal place of business in this state,  
552 employs up to 25 eligible employees on business days during the  
553 preceding calendar year, employs at least 2 employees on the  
554 first day of the plan year, and has had no prior coverage for  
555 the last 6 months may participate.

556 2. Any municipality, county, school district, or hospital  
557 employer located in a rural community as defined in s.  
558 288.0656(3) ~~s. 288.0656(2)~~ may participate.

559 3. Nursing home employers may participate.

560 4. Each dependent of a person eligible for coverage is  
561 also eligible to participate.

562

563 Any employer participating in the program must do so until the  
564 end of the term for which the carrier providing the coverage is  
565 obligated to provide such coverage to the program. Coverage for  
566 a small employer group that ceases to meet the eligibility  
567 requirements of this section may be terminated at the end of the  
568 policy period for which the necessary premiums have been paid.

569 Section 15. This act shall take effect upon becoming a  
570 law.

571

572



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1241 Subdivided Lands  
**SPONSOR(S):** Eagle  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee		Thompson	Smith
2) Appropriations Committee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Antiquated subdivisions are subdivisions that were platted prior to the development of current state and local comprehensive plans and land development regulations, and thus, are not suitable for development under modern planning techniques. Currently, Florida does not provide a statutory mechanism to address the state's 2.1 million vacant lots due to antiquated subdivisions.

The bill establishes a prioritized funding mechanism to provide assistance to local governments and other stakeholders to mitigate the effects of antiquated subdivisions. Specifically, the bill provides that a "legacy community" means lands under a recorded plat which were registered as subdivided lands on or before July 1, 1985 under former chapter 498, F.S., or former chapter 478, F.S. The bill requires each state agency and each public or private entity or corporation that administers a dedicated grant program or trust fund and receives legislative appropriations to fund grants or to provide financial assistance for community development or redevelopment, environmental protection or preservation, local improvements, concurrency, or management and development of real property in this state, to award a portion of those grants or trust funds on a prioritized basis as follows:

- **First Priority:** Incorporated municipalities in which any portion of their land consists of a legacy community;
- **Second Priority:** Special districts, municipal services taxing units, and municipal services benefit units, any portion of which is comprised of a legacy community; and
- **Third Priority:** Applicants for projects other than the projects identified in the above two tiers (see projects list below) only if funds remain after the entities in the first two tiers have been funded.

The entities in the first two tiers are to use the assistance as follows:

- To fund electrical, natural gas, water, or wastewater utility service infrastructure projects;
- To fund transportation infrastructure projects;
- To construct public schools, libraries, public safety facilities, or governmental facilities;
- To vacate or replat a previously recorded plat, or take land management actions to concentrate or aggregate lot owners in the areas of the legacy community that need updated or more efficient municipal services; and
- To acquire, dedicate, or set aside portions of the legacy community to protect potable water supplies or water resources, or to create conservation easements, parks, or recreational areas in the legacy community.

The fiscal impact of the bill on the state, local governments and the private sector is indeterminate. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for discussion.

The effective date of the bill is July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### ***Antiquated Subdivisions***

Current law defines a “Plat or replat” as a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirements of part I of chapter 177, F.S., relating to the platting of land boundaries, and of any local ordinances.<sup>1</sup> A “Subdivision” means the division of land into three or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land, and includes the establishment of new streets and alleys, additions, and resubdivisions, and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.<sup>2</sup>

Generally, antiquated subdivisions (also known as pre-platted subdivisions, obsolete subdivisions, or platted lands) are those subdivisions of land that were recorded or otherwise approved prior to the enactment of land development regulations and Florida’s Growth Management Act,<sup>3</sup> and that are not suitable for development as originally platted. The sale of such properties proliferated in the 1950s due to land speculators mass-marketing small parcels within large tracts of land sight-unseen to buyers nationwide as vacation and retirement home sites.<sup>4</sup> It has been estimated that, historically, 2.1 million vacant lots were sold in approximately 2,600 antiquated subdivisions in Florida.<sup>5</sup>

In 2003, the Florida Legislative Committee on Intergovernmental Relations (LCIR) issued a report entitled “Platted Lands.” According to the report, Florida’s population growth has resulted in an increased need for land development and often antiquated subdivisions are unsuitable for such development. The report describes platted lands as usually exhibiting one or more of the following: “fiscally unsound, or lack of, service delivery; housing developments with no lands set aside for parks, schools, or commercial sites; lack of cohesive character in an area with no ability to ensure sound planning; lack of environmental sensitivity; inadequate planning for emergency management and evacuation, and; serious infrastructure deficits, such as water and wastewater systems.”

##### ***Growth Management***

Prior to the 1970s, growth planning and land development were not addressed at the state or local level in a comprehensive manner in Florida. In 1972, the Legislature passed the Environmental Land and Water Management Act,<sup>6</sup> which created a program to designate areas of critical ecological concern, and a program to provide increased regulation and regional and state oversight for a “development of regional impact” (DRI).<sup>7</sup> However, due to a low number of submittals under the DRI system, and a vesting<sup>8</sup> procedure that protected existing subdivisions, local comprehensive plans were adopted, but often went unenforced.<sup>9</sup>

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<sup>1</sup> s. 177.031(14), F.S.

<sup>2</sup> s. 177.031(18), F.S.

<sup>3</sup> ch. 85-55, Laws of Fla.; codified in ch. 163, pt. II, F.S.

<sup>4</sup> The Florida Legislative Committee on Intergovernmental Relations, *Platted Lands* (Feb. 2003), p. i, available at: <http://www.spikowski.com/documents-LehighAcres/LCIR-PlattedLands-February2003.pdf> (last visited Mar. 23, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> ss. 380.012-380.10 (Supp. 1973).

<sup>7</sup> s. 380.06, F.S., defines the term “development of regional impact,” as any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

<sup>8</sup> s. 380.06(20), F.S., provides for vesting of developments that received certain approvals prior to 1973 and developers that agree to convey property to the local government or the state as a prerequisite for a zoning change approval.

Consequently, the Legislature in 1985 passed the Growth Management Act, known officially as “The Local Government Comprehensive Planning and Land Development Regulation Act” (the Act).<sup>10</sup> The Act required every city and county to create and implement a comprehensive plan to guide future development.<sup>11</sup> This led to the planning techniques and requirements used in the state today. A local government’s comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A development that does not conform to the comprehensive plan may not be approved by a local government unless the local government first amends its comprehensive plan.<sup>12</sup>

### **Land Sales Practices**

Prior to Florida’s comprehensive land development regulations and the Growth Management Act, the Uniform Land Sales Practices Law, previously called the Florida Installment Land Sales Law<sup>13</sup> addressed the offer and disposition of subdivided lands to the public.<sup>14</sup> The law provided a registration program to protect consumers from fraud and abuse in the sale or lease of vacant subdivided lands.<sup>15</sup>

Originally administered by the Florida Land Sales Board<sup>16</sup> and later by the Division of Florida Land Sales, Condominiums, and Mobile Homes within the Department of Business Regulation,<sup>17</sup> the law included the authority to issue cease and desist orders,<sup>18</sup> civil remedies,<sup>19</sup> and penalties for fraudulent practices regarding land sales.<sup>20</sup> However, the law was more permissive and did not actually require an action to be brought in order to enforce violations.<sup>21</sup> The law also exempted sales of fewer than 50 separate lots, parcels, units or interests in subdivided lands that were made during the course of a year.<sup>22</sup> In addition, subdivisions containing 100 or less properties were exempted in certain circumstances if they were marketed and sold to persons in the local community.<sup>23</sup>

In 2008, the sale of subdivided lands under the Uniform Land Sales Practices Law was deregulated.<sup>24</sup> The deregulation was due in part to the increased regulation of new developments by local government and the federal regulation of interstate land sales.<sup>25</sup> At the time of the deregulation, most sellers were either exempt or under the jurisdiction of the federal Interstate Land Sales Full Disclosure Act<sup>26</sup> regulated by the United States Department of Housing and Urban Development (HUD).<sup>27</sup>

Although Florida has enacted comprehensive legislation for the improved management of land development and rapid population growth, current law does not provide a mechanism to address the state’s 2.1 million vacant lots due to antiquated subdivisions.

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<sup>9</sup> Hubert B. Stroud & William M. Spikowski, *Planning in the Wake of Florida Land Scams*, Association of Collegiate Schools of Planning Journal of Planning Education and Research (1998), at p. 9.

<sup>10</sup> ch. 85-55, Laws of Fla.; codified in ch. 163, pt. II, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *See* s. 163.3163, F.S.

<sup>13</sup> ch. 478, F.S. (1963).

<sup>14</sup> ss. 498.001-498.063, F.S. (2007).

<sup>15</sup> ch. 478, F.S. (1967).

<sup>16</sup> s. 478.031, F.S. (1963).

<sup>17</sup> s. 498.005(6), F.S. (1983).

<sup>18</sup> s. 478.171, F.S. (1967).

<sup>19</sup> s. 478.191, F.S. (1967).

<sup>20</sup> s. 478.211, F.S. (1967).

<sup>21</sup> s. 498.007, F.S. (1983).

<sup>22</sup> s. 478.221(1), F.S. (1967).

<sup>23</sup> s. 478.041(7), F.S. (1967).

<sup>24</sup> ch. 2008-240, Laws of Fla.

<sup>25</sup> Florida House of Representatives Bill Analysis 2008 CS/CS/HB 601, p. 3 (Apr. 15, 2008).

<sup>26</sup> 15 U.S.C. §1701.

<sup>27</sup> *Id.*

## Effect of Proposed Changes

The bill creates s. 163.10, F.S., to establish a prioritized funding mechanism to provide assistance to local governments and other stakeholders to mitigate the effects of antiquated subdivisions.

Specifically, the bill provides that for purposes of this law, the term "legacy community" means lands under a recorded plat which were registered as subdivided lands on or before July 1, 1985 under former chapter 498, F.S., or former chapter 478, F.S.

The bill provides the following Legislative findings:

- a) Since the early days of the twentieth century, developers have subdivided large tracts of undeveloped and unincorporated land in the state with the vision of marketing and selling those subdivisions for small home or commercial sites.
- b) The recorded plats of these subdivisions created vested rights in the purchasers before the creation and implementation of current subdivision, environmental, development, and comprehensive planning standards.
- c) Legacy communities (as defined) have antiquated development patterns that can create significant conflicts with current planning, infrastructure development and financing, and environmental protection laws.
- d) Without assistance to mitigate the effects of these antiquated development patterns, legacy communities will remain at a financial disadvantage relative to other communities in the state, with a disproportionate burden being placed on residential ad valorem tax revenues to provide necessary services in the community.

The bill requires each state agency and each public or private entity or corporation that administers a dedicated grant program or trust fund and receives legislative appropriations to fund grants or to provide financial assistance for community development or redevelopment, environmental protection or preservation, local improvements, concurrency, or management and development of real property in this state, to award a portion of those grants or trust funds to entities that have filed an application, on a prioritized basis as follows:

- **First priority:** Any incorporated municipality in which any portion of its land consists of a legacy community, only for assistance with the following:
  - To fund electrical, natural gas, water, or wastewater utility service infrastructure projects.
  - To fund transportation infrastructure projects.
  - To construct public schools, libraries, public safety facilities, or governmental facilities.
  - To vacate or replat a previously recorded plat, or take land management actions to concentrate or aggregate lot owners in the areas of the legacy community that need updated or more efficient municipal services.
  - To acquire, dedicate, or set aside portions of the legacy community to protect potable water supplies or water resources, or to create conservation easements, parks, or recreational areas in the legacy community.
- **Second priority:** Any special district, municipal services taxing units (MSTUs),<sup>28</sup> and municipal services benefit units (MSBUs),<sup>29</sup> any portion of which is comprised of a legacy community, only for assistance with the following:
  - To fund electrical, natural gas, water, or wastewater utility service infrastructure projects.
  - To fund transportation infrastructure projects.
  - To construct public schools, libraries, public safety facilities, or governmental facilities.
  - To vacate or replat a previously recorded plat, or take land management actions to concentrate or aggregate lot owners in the areas of the legacy community that need updated or more efficient municipal services.

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<sup>28</sup> s. 125.01(1)(q), F.S.

<sup>29</sup> *Id.*

- To acquire, dedicate, or set aside portions of the legacy community to protect potable water supplies or water resources, or to create conservation easements, parks, or recreational areas in the legacy community.
- **Third priority:** Applicants for projects other than those identified in the first and second priority groups but only if funds remain after the priorities in the first and second priority groups have been funded.

To become eligible for the funding, the bill requires an entity to apply to the appropriate state agency or public or private entity or corporation annually for funding for the following state fiscal year, identifying with particularity the amount of funding requested and the project or program to be funded.

The bill provides that the requirements of these funding priorities do not apply to state agencies that administer the Stan Mayfield Working Waterfronts program under s. 380.5105, F.S.<sup>30</sup>

**B. SECTION DIRECTORY:**

**Section 1** creates s. 163.10, F.S., Legacy Communities; related to subdivided lands.

**Section 2** provides an effective date of July 1, 2017.

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

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

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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

See Fiscal Comments.

**D. FISCAL COMMENTS:**

The fiscal impact on the state, local governments and the private sector is indeterminate. The bill establishes funding priorities for state agencies, and public or private entities or corporations that administer a dedicated grant program or trust fund and receive legislative appropriations to fund grants or to provide financial assistance for community development or redevelopment, environmental

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<sup>30</sup> In 2008, the Legislature created the Stan Mayfield Working Waterfronts Program (SMWWP) to provide money to local governments or designated groups to buy waterfront property to provide access in perpetuity for commercial fishing, aquaculture, and ancillary businesses. The program is funded through the Florida Forever land acquisition program and administered by the Department of Environmental Protection, Office of Operations, Land and Recreation Grants Program, Florida Communities Trust (FCT).



protection or preservation, local improvements, concurrency, or management and development of real property in this state.

The bill does not appropriate additional funds to these entities or require these entities to award additional funds.

The bill does not specify a limitation on the amount of funds that may be applied for or awarded.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

None.

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

1                   A bill to be entitled  
 2           An act relating to subdivided lands; creating s.  
 3           163.10, F.S.; providing findings; providing a  
 4           definition; establishing priorities for use by certain  
 5           entities when awarding grants or financial assistance  
 6           under certain circumstances for legacy community  
 7           projects and programs; requiring a portion of  
 8           specified grant funds or financial assistance to be  
 9           awarded to entities who have submitted applications;  
 10          providing an exception; providing an effective date.

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

13  
 14           Section 1. Section 163.10, Florida Statutes, is created to  
 15 read:

16           163.10 Legacy Communities.—

17           (1) The Legislature finds that:

18           (a) Since the early days of the twentieth century,  
 19 developers have subdivided large tracts of undeveloped and  
 20 unincorporated land in the state with the vision of marketing  
 21 and selling those subdivisions for small home or commercial  
 22 sites.

23           (b) The recorded plats of these subdivisions created  
 24 vested rights in the purchasers before the creation and  
 25 implementation of current subdivision, environmental,

26 development, and comprehensive planning standards.

27 (c) Legacy communities, as defined in this section, have  
 28 antiquated development patterns that can create significant  
 29 conflicts with current planning, infrastructure development and  
 30 financing, and environmental protection laws.

31 (d) Without assistance to mitigate the effects of these  
 32 antiquated development patterns, legacy communities will remain  
 33 at a financial disadvantage relative to other communities in the  
 34 state, with a disproportionate burden being placed on  
 35 residential ad valorem tax revenues to provide necessary  
 36 services in the community.

37 (2) For purposes of this section, the term "legacy  
 38 community" means lands under a recorded plat which were  
 39 registered as subdivided lands on or before July 1, 1985 under  
 40 former chapter 498 or former chapter 478.

41 (3) Each state agency and each public or private entity or  
 42 corporation that administers a dedicated grant program or trust  
 43 fund and receives legislative appropriations to fund grants or  
 44 to provide financial assistance for community development or  
 45 redevelopment, environmental protection or preservation, local  
 46 improvements, concurrency, or management and development of real  
 47 property in this state, shall award a portion of those grants or  
 48 trust funds to entities that have filed an application as set  
 49 forth in subsection (4), according to the following priorities:

50 (a) First priority shall be given to any incorporated

51 municipality in which any portion of its land consists of a  
 52 legacy community, only for assistance with the following:

53 1. To fund electrical, natural gas, water, or wastewater  
 54 utility service infrastructure projects.

55 2. To fund transportation infrastructure projects.

56 3. To construct public schools, libraries, public safety  
 57 facilities, or governmental facilities.

58 4. To vacate or replat a previously recorded plat, or take  
 59 land management actions to concentrate or aggregate lot owners  
 60 in the areas of the legacy community that need updated or more  
 61 efficient municipal services.

62 5. To acquire, dedicate, or set aside portions of the  
 63 legacy community to protect potable water supplies or water  
 64 resources, or to create conservation easements, parks, or  
 65 recreational areas in the legacy community.

66 (b) Second priority shall be given to any special  
 67 district, municipal services taxing unit, or municipal services  
 68 benefit unit, any portion of which is comprised of a legacy  
 69 community, only for assistance with the following:

70 1. To fund electrical, natural gas, water, or wastewater  
 71 utility service infrastructure projects.

72 2. To fund transportation infrastructure projects.

73 3. To construct public schools, libraries, public safety  
 74 facilities, or governmental facilities.

75 4. To vacate or replat a previously recorded plat, or take

76 land management actions to concentrate or aggregate lot owners  
 77 in the areas of the legacy community that need updated or more  
 78 efficient municipal services.

79 5. To acquire, dedicate, or set aside portions of the  
 80 legacy community to protect potable water supplies or water  
 81 resources, or to create conservation easements, parks, or  
 82 recreational areas in the legacy community.

83 (c) Third priority shall be given to applicants for  
 84 projects other than those identified in paragraphs (a) or (b)  
 85 but only if funds remain after the priorities in paragraphs (a)  
 86 and (b) have been funded.

87  
 88 The requirements of this subsection do not apply to state  
 89 agencies that administer the Stan Mayfield Working Waterfronts  
 90 program under s. 380.5105.

91 (4) To become eligible for funding under subsection (3),  
 92 an entity must apply to the appropriate state agency or public  
 93 or private entity or corporation annually for funding for the  
 94 following state fiscal year, identifying with particularity the  
 95 amount of funding requested and the project or program to be  
 96 funded.

97 Section 2. This act shall take effect July 1, 2017.