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# **Criminal & Civil Justice Policy Council**

**Tuesday March 16, 2010**

**10:15 AM**

**404 HOB**

**Larry Cretul  
Speaker**

**William Snyder  
Chair**

**Council Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Criminal & Civil Justice Policy Council**

**Start Date and Time:** Tuesday, March 16, 2010 10:15 am

**End Date and Time:** Tuesday, March 16, 2010 12:00 pm

**Location:** 404 HOB

**Duration:** 1.75 hrs

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

HB 11 Crimes Against Homeless Persons by Porth, Rogers

CS/HB 109 Excise Tax on Documents by Finance & Tax Council, Jenne

CS/HB 183 Special Investigators by Criminal & Civil Justice Appropriations Committee, Pafford

HB 259 Capital Felonies by Weinstein

HB 261 Parole Interview Dates for Certain Inmates by Evers

HB 327 Community Associations by Robaina

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

PCB CCJP 10-06 -- Conflict Counsel

**NOTICE FINALIZED on 03/12/2010 16:14 by Jones.Missy**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 11 Crimes Against Homeless Persons

SPONSOR(S): Porth and others

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N	Kramer	Cunningham
2)	Policy Council	14 Y, 1 N	Varn	Ciccone
3)	Criminal & Civil Justice Policy Council		Cunningham <i>SW</i>	Havlicak <i>RH</i>
4)				
5)				

SUMMARY ANALYSIS

Currently, section 775.085, F.S., provides that the penalty for any felony or misdemeanor offense must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly known as the "hate crime" statute.

HB 11 amends this statute to include offenses evidencing prejudice based on the homeless status of the victim. This will have the effect of increasing the maximum sentence that can be imposed for an offense against a homeless person where the commission of the offense evidences prejudice based on the homeless status of the victim.

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill takes effect on October 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

*Hate Crime Statute:* Currently, section 775.085, F.S., provides that the penalty for any felony or misdemeanor offense must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly referred to as a "hate crime" statute. Offenses are reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.

Reclassification of an offense has the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is 60 days in jail and a \$500 fine; for a first degree misdemeanor is one year in jail and a \$1,000 fine; for a third degree felony is five years imprisonment and a \$5,000 fine; for a second degree felony is fifteen years imprisonment and a \$10,000 fine; and for a first degree felony is thirty years imprisonment and a \$10,000 fine.<sup>1</sup>

There is currently no section of statute that specifically applies to criminal offenses committed against a homeless person. In 2009, Maryland became the first state to amend their hate crime statute to specifically include homeless status.<sup>2</sup>

The bill amends section 775.085, F.S., the "hate crime" statute, to reclassify the felony or misdemeanor degree of a criminal offense if the commission of the offense evidences prejudice based on the *homeless status* of the victim.

The bill defines the term "homeless status" to mean that the victim:

1. lacks a fixed, regular, and adequate nighttime residence or

<sup>1</sup> ss. 775.082 and 775.083 F.S.

<sup>2</sup> Maryland Criminal Law s. 10-304

2. has a primary nighttime residence that is:
  - a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
  - b. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.085, F.S., relating to evidencing prejudice while committing offenses; reclassification.

Section 2. Provides an effective date of October 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

HB 11

2010

1                                   A bill to be entitled  
 2           An act relating to crimes against homeless persons;  
 3           amending s. 775.085, F.S.; reclassifying offenses  
 4           evidencing prejudice based on the homeless status of the  
 5           victim; providing a definition; providing an effective  
 6           date.

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

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 10           Section 1. Subsection (1) of section 775.085, Florida  
 11   Statutes, is amended to read:

12           775.085   Evidencing prejudice while committing offense;  
 13   reclassification.--

14           (1)(a)   The penalty for any felony or misdemeanor shall be  
 15   reclassified as provided in this subsection if the commission of  
 16   such felony or misdemeanor evidences prejudice based on the  
 17   race, color, ancestry, ethnicity, religion, sexual orientation,  
 18   national origin, homeless status, mental or physical disability,  
 19   or advanced age of the victim:

20           1.   A misdemeanor of the second degree is reclassified to a  
 21   misdemeanor of the first degree.

22           2.   A misdemeanor of the first degree is reclassified to a  
 23   felony of the third degree.

24           3.   A felony of the third degree is reclassified to a  
 25   felony of the second degree.

26           4.   A felony of the second degree is reclassified to a  
 27   felony of the first degree.

28           5.   A felony of the first degree is reclassified to a life



29 felony.

30 (b) As used in paragraph (a), the term:

31 1. "Mental or physical disability" means that the victim  
 32 suffers from a condition of physical or mental incapacitation  
 33 due to a developmental disability, organic brain damage, or  
 34 mental illness, and has one or more physical or mental  
 35 limitations that restrict the victim's ability to perform the  
 36 normal activities of daily living.

37 2. "Advanced age" means that the victim is older than 65  
 38 years of age.

39 3. "Homeless status" means that the victim:

40 a. Lacks a fixed, regular, and adequate nighttime  
 41 residence; or

42 b. Has a primary nighttime residence that is:

43 (I) A supervised publicly or privately operated shelter  
 44 designed to provide temporary living accommodations; or

45 (II) A public or private place not designed for, or  
 46 ordinarily used as, a regular sleeping accommodation for human  
 47 beings.

48 Section 2. This act shall take effect October 1, 2010.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 109 Excise Tax on Documents
SPONSOR(S): Finance & Tax Council; Jenne and others
TIED BILLS: IDEN./SIM. BILLS: CS/CS/SB 234

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Finance & Tax Council, 14 Y, 0 N, As CS, Wilson, Langston. Row 2: Criminal & Civil Justice Policy Council, Havlicak, RH, Havlicak, RH.

SUMMARY ANALYSIS

CS/HB 109 clarifies the law governing the calculation of documentary stamp tax due on "short sale" real estate transactions. Due to ambiguous language in the existing statute, there has been uncertainty about what is included in determining the amount of consideration subject to the tax.

This bill provides that in short sale transactions, when the lender cancels indebtedness to the seller, the cancellation of debt is not consideration used to determine documentary stamp tax. CS/HB 109 codifies the conclusion of a Department of Revenue technical assistance advisement stating that the Department would not collect documentary stamp tax on the cancellation of debt in certain circumstances.

The bill defines a short sale as a purchase and sale of real property where:

- The seller's interest in the real property is encumbered by a mortgage in an amount greater than the purchase price paid by the buyer.
A mortgagee releases the real property from its mortgage for an amount less than the outstanding mortgage indebtedness.
The releasing mortgagee does not receive, directly or indirectly, any interest in the property transferred.
The releasing mortgagee is not controlled by or related to the seller or the buyer.

On February 24, 2010, the Revenue Estimating Conference adopted an estimate that the provisions of this bill would not have a fiscal impact on either state or local government revenues because the bill codifies existing Department procedures.

This bill will take effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 201.02(1), F.S., currently imposes documentary stamp tax on documents that transfer an interest in Florida real property. The tax is calculated based on the "consideration" of the transfer. Consideration includes money paid or to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance. The current tax on deeds and other documents related to real property is \$0.70 for each \$100 of consideration.

Subsections (6) through (9) of s. 201.02, F.S., provide exemptions and limitations to imposition of the documentary stamp tax. These include:

- Transfers of real property from a nonprofit organization to specified governmental entities;
- Transfers of a marital home between spouses or former spouses as part of an action for dissolution of marriage; and
- Contracts to sell the residence of an employee relocating at his or her employer's direction, when the sales contract is between the employer and the employee, or the employee and a person providing employee relocation services.

There is also a limitation applied to certain judicial sales of real property under a foreclosure order. The certificate of title issued by the clerk of court is subject to the tax; however, the amount of the tax is computed based on the amount of the highest and best bid received at the foreclosure sale.

For fiscal year 2008-2009, total documentary stamp tax collections were approximately \$1.12 billion, a 42.6 percent drop from FY 2007-2008. Revenue from the documentary stamp tax is distributed between the General Revenue Fund and various trust funds.<sup>1</sup>

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<sup>1</sup> Office of Economic and Demographic Research, The Florida Legislature et al., *Florida Tax Handbook, Including Fiscal Impact of Potential Changes* (2010), available at <http://edr.state.fl.us/taxhandbooks/taxhandbook2010.pdf> (last visited Feb. 28, 2010).

## Short Sales

A “short sale” is the sale of real property in which the purchase price is less than the outstanding debt secured by the property (i.e. a mortgage). In most short sale situations, the seller either is, or is likely to soon be, in default and the property securing the debt has decreased in value. In order to avoid foreclosure, the seller wants to sell the property as soon as possible.<sup>2</sup> Due to the recent downturn in the economy and limited availability to credit, the real estate market in Florida has experienced an increase in the number of short sales.

In the majority of real estate transactions, the lender receives full payment of the loan obligation and agrees to release its lien on the secured property upon the sale of the property. In these transactions, the amount paid by the purchaser for the property is consideration and subject to documentary stamp tax.<sup>3</sup>

However, in short sale transactions because the purchase price of the property is less than the outstanding loan balance, the lender agrees to receive partial satisfaction of the loan obligation with the remaining debt cancelled. This cancelled debt has value to the seller because the seller is repaying less than what the seller borrowed to purchase the property. Under this scenario, the issue arises as to whether the amount of cancelled debt should be treated as consideration for the transfer and therefore included in calculations for documentary stamp tax purposes under s. 201.02, F.S.<sup>4</sup>

On September 23, 2008, the Department of Revenue (Department) issued a technical assistance advisement in response to a request for guidance in determining the correct tax on deeds for short sales in Florida. The Department concluded, “[W]hen the lender cancels indebtedness of the seller, that cancellation is not included in determining the amount of consideration subject to tax under s 201.02, Florida Statutes.”<sup>5</sup> In reaching this conclusion, the Department reasoned:

The lender’s agreement to satisfy its lien and cancel a portion of the seller’s debt is a separate, unrelated transaction between the seller and the lender. The seller and purchaser alone have entered into their contract for the transfer of real property. The lender is not related to either one of those parties and is not bound by any aspect of the contract between the seller and the purchaser.

Independently, the lender has agreed to satisfy its lien and cancel a portion of the seller’s debt. The lender is not related to or controlled in any way by either other party, and neither the lender nor any of its related parties is receiving any interest in the real property. The lender has merely evaluated its risk as a creditor of the seller and the decreasing value of the seller’s collateral, and the lender has made a business decision to cancel a portion of the seller’s debt in return for the current payment of a lesser amount. Section 201.02(1), Florida Statutes, does not clearly impose tax merely because the seller happens to be a party to both transactions.

Unlike other situations where an obligation is discharged in exchange for real property, ... it is, at best, unclear whether the Legislature intended to impose tax on the amount cancelled by the lender. When the application of a taxing provision is unclear or ambiguous, the Department is bound to construe that taxing statute narrowly, against the imposition of tax. See, e.g., State ex. rel. Seaboard A.L.R. Co. v. Gay, 160 Fla. 445 (Fla. 1948). Thus, we construe the statute to

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<sup>2</sup> Florida Dep’t of Revenue, *Technical Assistance Advisement No. 08B4-006, Documentary Stamp Tax – “Short Sales” of Florida Real Property*, 1 (Sept. 23, 2008), available at <https://taxlaw.state.fl.us/wordfiles/DOC%20TAA%2008B4-006.pdf> (last visited Feb. 28, 2010).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 4.

not include the lender's cancellation of debt as consideration in the instant case. However, the Legislature may choose to clarify the application of the statute through legislation.<sup>6</sup>

### **Effect of proposed changes**

This bill will clarify the law governing the calculation of documentary stamp tax owed when real property is conveyed via short sale. CS/HB 109 creates s. 201.02(11), F.S., to provide that consideration does not include the unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the property. The bill defines a short sale as the purchase and sale of real property in which:

- The grantor's (seller's) interest in the real property is encumbered by a mortgage or mortgages securing indebtedness in an aggregate amount greater than the purchase price paid by the grantee (buyer).
- A mortgagee releases the real property from its mortgage in exchange for a partial payment of less than the outstanding mortgage indebtedness owing to the releasing mortgagee.
- The releasing mortgagee does not receive, directly or indirectly, any interest in the property transferred.
- The releasing mortgagee is not controlled by or related to the grantor or the grantee.

This bill codifies the Department's advisement conclusion that in a short sale transaction, cancellation of debt is not consideration used to determine documentary stamp tax.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 201.02, F.S., relating to tax on deeds and other instruments relating to real property or interest in real property.

**Section 2:** Provides an effective date of July 1, 2010.

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

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

1. Revenues:

No Impact. (See FISCAL NOTES)

2. Expenditures:

None.

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

1. Revenues:

No Impact. (See FISCAL NOTES)

2. Expenditures:

None.

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

None.

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<sup>6</sup> Id at 3-4.

**D. FISCAL COMMENTS:**

On February 24, 2010, the Revenue Estimating Conference adopted an estimate that the provisions of this bill would not have a fiscal impact on either state or local government revenues because the bill codifies existing Department procedures.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

Not applicable. This bill does not appear to affect county or municipal government.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 3, 2010, the Finance & Tax Council adopted an amendment that removed redundant language and clarified that the releasing mortgagee is not controlled by or related to the grantor or the grantee in Section 1. The amendment also removed unnecessary rule-making authority provided to the Department of Revenue in Section 2.

1                                   A bill to be entitled  
 2           An act relating to the excise tax on documents; amending  
 3           s. 201.02, F.S.; excluding certain unpaid indebtedness  
 4           from the taxable consideration for short sales of real  
 5           property; defining the term "short sale"; providing an  
 6           effective date.

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

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 10           Section 1. Subsection (11) is added to section 201.02,  
 11   Florida Statutes, to read:

12           201.02 Tax on deeds and other instruments relating to real  
 13   property or interests in real property.-

14           (11) The taxable consideration for a short sale transfer  
 15   does not include unpaid indebtedness that is forgiven or  
 16   released by a mortgagee holding a mortgage on the grantor's  
 17   interest in the property. For purposes of this subsection, the  
 18   term "short sale" means a purchase and sale of real property in  
 19   which all of the following apply:

20           (a) The grantor's interest is encumbered by a mortgage or  
 21   mortgages securing indebtedness in an aggregate amount greater  
 22   than the purchase price paid by the grantee.

23           (b) A mortgagee releases the real property from its  
 24   mortgage in exchange for a partial payment of less than the  
 25   total of the outstanding mortgage indebtedness owed to the  
 26   releasing mortgagee.

27           (c) The releasing mortgagee does not receive, directly or  
 28   indirectly, any interest in the property transferred.



CS/HB 109

2010

29            (d) The releasing mortgagee is not controlled by or  
30 related to the grantor or the grantee.

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





## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Section 27.251, F.S., authorizes the state attorney of each judicial circuit to employ any municipal or county police officer or sheriff's deputy on a full-time basis as an investigator for the state attorney's office with full powers of arrest throughout the judicial circuit provided such investigator serves on a special task force to investigate matters involving organized crime. Consent from the county, sheriff or municipality must be given in order for the municipal or county police officer or sheriff's deputy to become an investigator for the state attorney. The salary of such municipal or county police officer or sheriff's deputy is paid by the city, county, or sheriff by which the investigator is principally employed.

The arrest powers granted by this section are only in the furtherance of the conduct of the business of the special task force to which the municipal or county police officer or sheriff's deputy is assigned by the employing state attorney.

Section 27.255, F.S., provides that a special investigator appointed by a state attorney pursuant to the provisions of s. 27.251, F.S., is a certified Florida law enforcement officer under the direction and control of the employing state attorney and is authorized to make arrests and serve arrest and search warrants and other documents as specified in the section.

Staff of the State Attorney for the 15th Judicial Circuit has described how special investigators are used and the benefits accruing from such use:

Currently, State Attorneys use state attorney investigators to assist and supplement other investigative law enforcement efforts in developing and prosecuting cases in their respective jurisdictions. State attorneys are authorized and employ their own staff of law enforcement officers. See Fl. Stat. 27.255. However, state attorneys also use specially sworn investigators pursuant to Fl. Stat. 27.251 in any matter involving "organized crime." Of course, "organized crime" is a broad term which can include a wide range of criminal activities which involve a degree of organization and structure. The special investigators perform duties in furtherance of the task force under the direction of the state attorney, but remain paid by their respective local agencies. The advantage of this practice is that the State Attorney can guide and coordinate important investigative matters while not having to bear the financial burden of employing the investigators full-time on a permanent basis. The arrangement works well and is fiscally responsible.<sup>1</sup>

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<sup>1</sup> E-mail from Nicky Solimene, State Attorney's Office, 15<sup>th</sup> Judicial Circuit, to House staff, dated December 2, 2009.

## **Proposed changes**

CS/HB 183 amends s. 27.251, F.S., to allow for broader use of special investigator appointments by specifying that special investigators may investigate criminal activities (not just special organized crime) where the use of a task force may be beneficial. The bill also provides that officers could be employed on a full-time or part-time basis.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 27.251, F.S.; relating to special investigators.

Section 2. Provides for an effective date of July 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

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

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

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

None.

### **D. FISCAL COMMENTS:**

This bill does not appear to have a fiscal impact on state attorneys. Considering the bill expands current use of investigator appointments, it would have a fiscal impact on local law enforcement agencies or counties or municipalities to the extent that they consent to appoint any additional officers or deputies as a special investigator with the state attorney's office.

## **III. COMMENTS**

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

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 4, 2010, the Criminal & Civil Justice Appropriations Committee adopted an amendment to the bill that would not limit the investigations to matters just involving "organized crime" nor limit the investigators to just full-time employment.

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A bill to be entitled  
An act relating to special investigators; amending s.  
27.251, F.S.; deleting a requirement that investigators be  
employed on a full-time basis; specifying matters that may  
be investigated by special investigators; providing an  
effective date.

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

Section 1. Section 27.251, Florida Statutes, is amended to  
read:

27.251 Special ~~organized crime~~ investigators.—The state  
attorney of each judicial circuit is authorized to employ any  
municipal or county police officer or sheriff's deputy ~~on a~~  
~~full-time basis~~ as an investigator for the state attorney's  
office with full powers of arrest throughout the judicial  
circuit provided such investigator serves on a special task  
force to investigate matters involving criminal activity the  
detection of which might benefit from a special task force  
~~organized crime,~~ and, provided further, that the salary of such  
municipal or county police officer or sheriff's deputy shall be  
paid by the city, county, or sheriff by which the investigator  
is principally employed, and with the consent of the county,  
sheriff, or municipality. The arrest powers granted in this  
section may herein shall be exercised only in the furtherance of  
the conduct of the business of the special task force to which  
such municipal or county police officer or sheriff's deputy is  
assigned by the ~~said~~ state attorney.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CS/HB 183

2010

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





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 259 Capital Felonies

**SPONSOR(S):** Weinstein and others

**TIED BILLS:** IDEN./SIM. BILLS:

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Kramer	Cunningham
2)	Criminal & Civil Justice Appropriations Committee	13 Y, 0 N	McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council		Cunningham <i>SM</i>	Havlicak <i>RH</i>
4)				
5)				

**SUMMARY ANALYSIS**

When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment. After hearing evidence, the jury renders an advisory sentence to the judge based on whether sufficient aggravating circumstances exist, whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances; and based on these considerations, whether the defendant should be sentenced to life imprisonment or death. The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.

The bill adds to the list of aggravating circumstances that can be considered by the jury and judge in the sentencing phase of a capital case that the capital felony was committed by a person subject to an injunction for protection against repeat violence, sexual violence or dating violence or a foreign domestic violence injunction, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

The Criminal Justice Impact Conference met February 23, 2010, and found the bill would have no prison bed impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

*Capital sentencing:* Section 921.141, F.S., is Florida's death penalty statute. When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment.<sup>1</sup> After hearing evidence, the jury renders an advisory sentence to the judge based on the following factors:

- Whether sufficient aggravating circumstances exist;
- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.<sup>2</sup>

The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.<sup>3</sup>

The aggravating factors that may be considered are limited by statute. Section 921.141(5), F.S., provides:

(5) AGGRAVATING CIRCUMSTANCES.--Aggravating circumstances shall be limited to the following:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit,

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<sup>1</sup> s. 921.141(1), F.S.

<sup>2</sup> s. 921.141(2), F.S.

<sup>3</sup> s. 921.141(3), F.S.

any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03, F.S.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21, F.S., or a person previously designated as a sexual predator who had the sexual predator designation removed.

Mitigating factors are not limited by statute but may include:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.

- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.<sup>4</sup>

*Protective injunctions:* Section 784.046, F.S. provides criteria for the issuance by a judge of an injunction for protection against repeat violence,<sup>5</sup> sexual violence<sup>6</sup> or dating violence<sup>7</sup> upon the filing of a petition by the victim. When it appears to the court that an immediate and present danger of violence exists, the court may issue a temporary injunction which may be granted without the respondent being present.<sup>8</sup> The temporary injunction is effective for not more than 15 days unless the judge finds that there is good cause to continue the injunction. A full hearing must be held before the temporary injunction expires. Any final injunction issued after the full hearing remains in effect until it is modified or dissolved by the judge.<sup>9</sup>

Section 741.315, F.S. provides that an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court.

*Changes made by bill:* The bill amends s. 921.141, F.S. to include an additional aggravating circumstance that can be considered by the jury and judge in the sentencing phase of a capital case when the capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

## B. SECTION DIRECTORY:

Section 1: Amends s. 921.141, F.S. relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

Section 2: Provides effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

<sup>4</sup> s. 91.141(6), F.S.

<sup>5</sup> "Repeat violence" is defined to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

<sup>6</sup> Sexual violence" is defined to mean any one incident of:

1. Sexual battery, as defined in chapter 794, F.S.;
2. A lewd or lascivious act, as defined in chapter 800, F.S., committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787, F.S.;
4. Sexual performance by a child, as described in chapter 827, F.S.; or
5. Any other forcible felony wherein a sexual act is committed or attempted,

regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

<sup>7</sup> "Dating violence" is defined to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

<sup>8</sup> s. 784.046(6), F.S.

<sup>9</sup> s. 784.046(7)(c), F.S.

1. Revenues:

None.

2. Expenditures:

The State Attorneys have reported that the additional aggravating factor created by the bill would not create any significant workload or constitutional issue of concern. Similarly, according to the Office of the State Court Administrator, such workload increases will likely be minimal. The Public Defenders, however, state the bill would have an indeterminate impact on their workload.

The Criminal Justice Impact Conference met on February 23, 2010, and found the bill would have no prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted the bill adds an aggravating factor to the death penalty statute when the capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, F.S. Section 784.046, F.S. relates generally to a petition for protection from repeat violence, sexual violence, or dating violence. *Domestic violence* injunctions are referenced in chapter 741. The bill refers to section 741.315, F.S. which relates to protective orders issued in other states but not in this state. If the intent was to create an aggravating circumstance for a person who was the subject of a domestic violence injunction issued in this state, a reference to section 741.30 should be included in the bill.

The bill has an effective date of July 1, 2010. It may be preferable to have a later effective date to provide sufficient time to train judges, prosecutors and defense counsel on the changes made by the bill.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to capital felonies; amending s. 921.141,  
 3           F.S.; providing that it shall be an aggravating  
 4           circumstance for the purpose of determining sentence if a  
 5           capital felony was committed by a person subject to an  
 6           injunction or protection order against the petitioner who  
 7           obtained that injunction or order or any of certain  
 8           related persons; providing an effective date.

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

11  
 12           Section 1. Paragraph (p) is added to subsection (5) of  
 13           section 921.141, Florida Statutes, to read:

14           921.141 Sentence of death or life imprisonment for capital  
 15           felonies; further proceedings to determine sentence.--

16           (5) AGGRAVATING CIRCUMSTANCES.--Aggravating circumstances  
 17           shall be limited to the following:

18           (p) The capital felony was committed by a person subject  
 19           to an injunction issued pursuant to s. 784.046, or a foreign  
 20           protection order accorded full faith and credit pursuant to s.  
 21           741.315, and was committed against the petitioner who obtained  
 22           the injunction or protection order or any spouse, child,  
 23           sibling, or parent of the petitioner.

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





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Parole Interview Dates for Certain Inmates

SPONSOR(S): Evers and others

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Krol	Cunningham
2)	Criminal & Civil Justice Appropriations Committee	11 Y, 0 N	McAuliffe	Davis
3)	Criminal & Civil Justice Policy Council		Krol TK	Havlicak RN
4)				
5)				

SUMMARY ANALYSIS

This bill extends the period between parole interview dates from five to seven years for inmates convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or for inmates serving a 25-year minimum mandatory sentence. This would result in the Parole Commission being required to meet less frequently to consider whether to grant parole to such inmates.

This bill provides a workload reduction for the Parole Commission which could result in savings of approximately \$26,968 or 0.5 FTE. The bill will also have an indeterminate cost savings to local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Parole is not available for most crimes that were committed on or after October 1, 1983.<sup>1</sup> There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,826 Florida inmates still eligible for parole consideration with about 450 under supervision in the community.<sup>2</sup>

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a hearing examiner reviews the inmate's file and makes an initial recommendation. The PPRD is the tentative date set for the offender to come before the commission to determine if they will be released on parole or continue to serve their prison sentence. An inmate may request one review of the initial PPRD within 60 days after notification. Otherwise, the PPRD is not reviewed until a hearing examiner interviews the inmate. The date of the initial interview depends upon the length and type of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of seven to fifteen years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. Therefore, under this example the inmate's initial interview would be after six years of the sentence has been served.

Under certain circumstances, the PPRD may be more than two years after the date of the initial interview. In such cases a hearing examiner must interview the inmate to review the PPRD within two years after the initial interview and every two years thereafter. The statute also provides for less frequent reviews for inmates whose PPRD is more than five years from the date of the initial interview or if an inmate was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S.<sup>3</sup> In such cases, the interview and subsequent interview may be conducted every five years if the commission makes a written finding that it is not reasonable to expect that parole will be granted. For any inmate within

<sup>1</sup> The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

<sup>2</sup> Parole Commission 2010 Analysis of HB 261.

<sup>3</sup> Section 947.16(4)(g), F.S.

seven years of their tentative release date, the commission may establish an interview date prior to the five year schedule.

These interviews are limited to determining whether or not information has been gathered that might affect the PPRD.<sup>4</sup> The department is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as current progress reports, psychological reports, and disciplinary reports.<sup>5</sup> In consultation with the department, the commission has developed guidelines defining unsatisfactory institutional record and has defined what constitutes a satisfactory release plan and verification of the plan prior to release.<sup>6</sup>

After the interview is conducted the hearing examiner sends their report and recommendation to the commission. The inmate's case is then added to the docket of the next available parole hearing date where the commission will hear testimony and make a final decision regarding the possibility of parole. Inmates are not permitted to attend parole hearings. At parole hearings victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission. The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings. If a victim or the victim's family is unable to attend a hearing Victim Services can address the commission on their behalf.

If parole is granted, the commission determines the terms and conditions of parole. Statutorily, conditions of parole are not specific, except for provisions that require:

- The offender to submit to random substance abuse testing, if the offender's conviction was for a controlled substance violation.
- The offender to not knowingly associate with other criminal gang members or associates, if the offender's conviction was for a crime that involved criminal gang activity.
- The offender to pay debt due and owing to the state under s. 960.17, F.S., or attorney's fees and costs due and owing to the state under s. 938.29, F.S.<sup>7</sup>
- The offender to pay victim restitution.<sup>8</sup>
- The offender to apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded.<sup>9</sup>

### **Proposed Changes**

HB 261 would extend the period between parole interview dates from five to seven years for inmates convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or for inmates serving a 25-year minimum mandatory sentence. This would result in the commission being required to meet less frequently to consider whether to grant parole to such inmates.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 2. Amends s. 947.174, F.S., relating to subsequent interviews.

Section 3. Amends s. 947.1745, F.S., relating to establishment of effective parole release date.

Section 4. Provides an effective date of July 1, 2010.

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<sup>4</sup> Section 947.174(1)(c), F.S.

<sup>5</sup> Section 947.174(3), F.S.

<sup>6</sup> Section 947.174(5), F.S.

<sup>7</sup> Section 947.18, F.S.

<sup>8</sup> Section 947.181, F.S.

<sup>9</sup> Section 947.185, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Moving the interview dates from five to seven years, equates to a workload reduction of 29% for this activity. According to the Parole Commission, in 2009 there were 272 five-year interviews conducted by 45 parole examiners, and on average, 1.23 percent of a parole examiner's total workload is dedicated annually to the five-year interviews. The Parole Commission stated that this workload is the equivalent of 0.5 FTE. Based on the average salaries and benefits of a parole examiner, this could result in savings of \$26,968.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

Judges, prosecutors, and law enforcement officers will not have to expend resources to attend or provide input for the parole hearings as often.

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

Victims and their families or other interested parties would not be required to travel as frequently to testify at parole hearings.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

On June 1, 1997, the Legislature enacted ch. 97-289, Laws of Florida, that changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years. According

to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.<sup>10</sup>

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>10</sup> *Tuff v. State*, 732 So.2d 461 (3<sup>rd</sup> DCA 1999).



29 any felony involving the use of a firearm or other deadly weapon  
 30 or the use of intentional violence, at the time of sentencing  
 31 the judge may enter an order retaining jurisdiction over the  
 32 offender for review of a commission release order. This  
 33 jurisdiction of the trial court judge is limited to the first  
 34 one-third of the maximum sentence imposed. When any person is  
 35 convicted of two or more felonies and concurrent sentences are  
 36 imposed, then the jurisdiction of the trial court judge as  
 37 provided herein applies to the first one-third of the maximum  
 38 sentence imposed for the highest felony of which the person was  
 39 convicted. When any person is convicted of two or more felonies  
 40 and consecutive sentences are imposed, then the jurisdiction of  
 41 the trial court judge as provided herein applies to one-third of  
 42 the total consecutive sentences imposed.

43 (g) The decision of the original sentencing judge or, in  
 44 her or his absence, the chief judge of the circuit to vacate any  
 45 parole release order as provided in this section is not  
 46 appealable. Each inmate whose parole release order has been  
 47 vacated by the court shall be reinterviewed within 2 years after  
 48 the date of receipt of the vacated release order and every 2  
 49 years thereafter, or earlier by order of the court retaining  
 50 jurisdiction. However, each inmate whose parole release order  
 51 has been vacated by the court and who has been:

- 52 1. Convicted of murder or attempted murder;
- 53 2. Convicted of sexual battery or attempted sexual  
 54 battery; or
- 55 3. Sentenced to a 25-year minimum mandatory sentence  
 56 previously provided in s. 775.082,



57  
58 shall be reinterviewed once within 7 ~~5~~ years after the date of  
59 receipt of the vacated release order and once every 7 ~~5~~ years  
60 thereafter, if the commission finds that it is not reasonable to  
61 expect that parole would be granted during the following years  
62 and states the bases for the finding in writing. For any inmate  
63 who is within 7 years of his or her tentative release date, the  
64 commission may establish a reinterview date prior to the 7-year  
65 ~~5-year~~ schedule.

66 Section 2. Paragraph (b) of subsection (1) of section  
67 947.174, Florida Statutes, is amended to read:

68 947.174 Subsequent interviews.--

69 (1)

70 (b) For any inmate convicted of murder, attempted murder,  
71 sexual battery, attempted sexual battery, or who has been  
72 sentenced to a 25-year minimum mandatory sentence previously  
73 provided in s. 775.082, and whose presumptive parole release  
74 date is more than 7 ~~5~~ years after the date of the initial  
75 interview, a hearing examiner shall schedule an interview for  
76 review of the presumptive parole release date. Such interview  
77 shall take place once within 7 ~~5~~ years after the initial  
78 interview and once every 7 ~~5~~ years thereafter if the commission  
79 finds that it is not reasonable to expect that parole will be  
80 granted at a hearing during the following years and states the  
81 bases for the finding in writing. For any inmate who is within 7  
82 years of his or her tentative release date, the commission may  
83 establish an interview date prior to the 7-year ~~5-year~~ schedule.

84 Section 3. Subsection (6) of section 947.1745, Florida  
 85 Statutes, is amended to read:

86 947.1745 Establishment of effective parole release  
 87 date.--If the inmate's institutional conduct has been  
 88 satisfactory, the presumptive parole release date shall become  
 89 the effective parole release date as follows:

90 (6) Within 90 days before the effective parole release  
 91 date interview, the commission shall send written notice to the  
 92 sentencing judge of any inmate who has been scheduled for an  
 93 effective parole release date interview. If the sentencing judge  
 94 is no longer serving, the notice must be sent to the chief judge  
 95 of the circuit in which the offender was sentenced. The chief  
 96 judge may designate any circuit judge within the circuit to act  
 97 in the place of the sentencing judge. Within 30 days after  
 98 receipt of the commission's notice, the sentencing judge, or the  
 99 designee, shall send to the commission notice of objection to  
 100 parole release, if the judge objects to such release. If there  
 101 is objection by the judge, such objection may constitute good  
 102 cause in exceptional circumstances as described in s. 947.173,  
 103 and the commission may schedule a subsequent review within 2  
 104 years, extending the presumptive parole release date beyond that  
 105 time. However, for an inmate who has been:

106 (a) Convicted of murder or attempted murder;

107 (b) Convicted of sexual battery or attempted sexual  
 108 battery; or

109 (c) Sentenced to a 25-year minimum mandatory sentence  
 110 previously provided in s. 775.082,

111

112 | the commission may schedule a subsequent review under this  
 113 | subsection once every 7 ~~5~~ years, extending the presumptive  
 114 | parole release date beyond that time if the commission finds  
 115 | that it is not reasonable to expect that parole would be granted  
 116 | at a review during the following years and states the bases for  
 117 | the finding in writing. For any inmate who is within 7 years of  
 118 | his or her release date, the commission may schedule a  
 119 | subsequent review prior to the 7-year ~~5-year~~ schedule. With any  
 120 | subsequent review the same procedure outlined above will be  
 121 | followed. If the judge remains silent with respect to parole  
 122 | release, the commission may authorize an effective parole  
 123 | release date. This subsection applies if the commission desires  
 124 | to consider the establishment of an effective release date  
 125 | without delivery of the effective parole release date interview.  
 126 | Notice of the effective release date must be sent to the  
 127 | sentencing judge, and either the judge's response to the notice  
 128 | must be received or the time period allowed for such response  
 129 | must elapse before the commission may authorize an effective  
 130 | release date.

131 | Section 4. This act shall take effect July 1, 2010.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 327  
**SPONSOR(S):** Robaina  
**TIED BILLS:** None

Community Associations

**IDEN./SIM. BILLS:** SB 840

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	10 Y, 0 N	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee	11 Y, 1 N	Marra	Cooper
3)	Criminal & Civil Justice Policy Council		Bond	Havlicak
4)				
5)				

**SUMMARY ANALYSIS**

The Florida Condominium Act defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." Persons who would seek to buy a number of condominium units in a distressed condominium are deterred from doing so because, by being defined as a developer, such persons incur potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.

The bill amends the Condominium Act to create Part VII to Chapter 718, F.S., known as the "Distressed Condominium Relief Act." The bill amends the definition of a developer, limits the liability of a person buying a number of condominium units and provides protection for the interests of lenders, unit owners, and the condominium association.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.<sup>1</sup>

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase, because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including a foreclosing mortgagee.<sup>2</sup> The bill provides a statement of legislative intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

#### Definitions

The bill amends the definition of "developer," s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than

<sup>1</sup> Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

<sup>2</sup> For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to the condominium project, completed construction, and, while holding itself out as developer and owner of the project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in the entire condominium project, and for breach of any applicable warranties due to defects in portions of the project completed by the lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines "bulk buyer" as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of the Department of Business and Professional Regulation (DBPR) over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

### **Assignment and Assumption of Developer Rights**

The bill creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.
- Funding converter reserves for a unit not acquired by the bulk assignee.
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.
- Providing a cumulative audit of income and expenses during the period prior to assignment.
- Any actions taken by the board prior to the bulk assignee appointing a majority of the board.
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer, if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.<sup>3</sup>

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

### **Transfer to Unit Owner-Controlled Board**

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turn over items and documents that the bulk assignee actually has. A bulk assignee has the duty to attempt to obtain turnover materials from the original developer and must list materials that the bulk assignee was unable to obtain.

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<sup>3</sup> The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

## **Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer**

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer. Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes within the DBPR:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 718.103, F.S., amending the definition of "developer."

Section 2 creates Part VII of ch. 718, F.S., relating to distressed condominium relief.

Section 3 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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.



29 Regulation before offering any units for sale or lease in  
 30 excess of a specified term; requiring that a copy of such  
 31 information be provided to a prospective purchaser;  
 32 requiring that certain contracts and disclosure statements  
 33 contain specified statements; requiring that a bulk  
 34 assignee or bulk buyer comply with certain disclosure  
 35 requirements; prohibiting a bulk assignee from taking  
 36 certain actions on behalf of an association while the bulk  
 37 assignee is in control of the board of administration of  
 38 the association and requiring that such bulk assignee  
 39 comply with certain requirements; requiring that a bulk  
 40 assignee or bulk buyer comply with certain requirements  
 41 regarding certain contracts; providing unit owners with  
 42 specified protections regarding certain contracts;  
 43 requiring that a bulk buyer comply with certain  
 44 requirements regarding the transfer of a unit; prohibiting  
 45 a person from being classified as a bulk assignee or bulk  
 46 buyer unless condominium parcels were acquired before a  
 47 specified date; providing for the determination of the  
 48 date of acquisition of a parcel; providing that the  
 49 assignment of developer rights to a bulk assignee or bulk  
 50 buyer does not release a developer from certain  
 51 liabilities; preserving certain liabilities for certain  
 52 parties; providing an effective date.

53  
 54  
 55  
 56

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

Section 1. Subsection (16) of section 718.103, Florida

57 Statutes, is amended to read:

58 718.103 Definitions.--As used in this chapter, the term:

59 (16) "Developer" means a person who creates a condominium  
60 or offers condominium parcels for sale or lease in the ordinary  
61 course of business, but does not include:

62 (a) An owner or lessee of a condominium or cooperative  
63 unit who has acquired the unit for his or her own occupancy;  
64 ~~nor does it include~~

65 (b) A cooperative association that ~~which~~ creates a  
66 condominium by conversion of an existing residential cooperative  
67 after control of the association has been transferred to the  
68 unit owners if, following the conversion, the unit owners will  
69 be the same persons who were unit owners of the cooperative and  
70 no units are offered for sale or lease to the public as part of  
71 the plan of conversion;

72 (c) A bulk assignee or bulk buyer as defined in s.  
73 718.703; or

74 (d) A state, county, or municipal entity ~~is not a~~  
75 ~~developer for any purposes under this act when it is~~ acting as a  
76 lessor and not otherwise named as a developer in the declaration  
77 of condominium association.

78 Section 2. Part VII of chapter 718, Florida Statutes,  
79 consisting of sections 718.701, 718.702, 718.703, 718.704,  
80 718.705, 718.706, 718.707, and 718.708, is created to read:

81 PART VII

82 DISTRESSED CONDOMINIUM RELIEF

83 718.701 Short title.--This part may be cited as the  
84 "Distressed Condominium Relief Act."

85 718.702 Legislative intent.--

86 (1) The Legislature acknowledges the massive downturn in  
 87 the condominium market which has transpired throughout the state  
 88 and the impact of such downturn on developers, lenders, unit  
 89 owners, and condominium associations. Numerous condominium  
 90 projects have either failed or are in the process of failing,  
 91 whereby the condominium has a small percentage of third-party  
 92 unit owners as compared to the unsold inventory of units. As a  
 93 result of the inability to find purchasers for this inventory of  
 94 units, which results in part from the devaluing of real estate  
 95 in this state, developers are unable to satisfy the requirements  
 96 of their lenders, leading to defaults on mortgages.  
 97 Consequently, lenders are faced with the task of finding a  
 98 solution to the problem in order to be paid for their  
 99 investments.

100 (2) The Legislature recognizes that all of the factors  
 101 listed in this section lead to condominiums becoming distressed,  
 102 resulting in detriment to the unit owners and the condominium  
 103 association on account of the resulting shortage of assessment  
 104 moneys available to support the financial requirements for  
 105 proper maintenance of the condominium. Such shortage and the  
 106 resulting lack of proper maintenance further erode property  
 107 values. The Legislature finds that individuals and entities  
 108 within Florida and in other states have expressed interest in  
 109 purchasing unsold inventory in one or more condominium projects,  
 110 but are reticent to do so because of the potential of  
 111 accompanying liabilities inherited from the original developer,  
 112 which are potentially by definition imputed to the successor

113 purchaser, including a foreclosing mortgagee. This results in  
 114 the potential purchaser having unknown and unquantifiable risks,  
 115 and potential successor purchasers are unwilling to accept such  
 116 risks. The result is that condominium projects stagnate, leaving  
 117 all parties involved at an impasse without the ability to find a  
 118 solution.

119 (3) The Legislature finds and declares that it is the  
 120 public policy of this state to protect the interests of  
 121 developers, lenders, unit owners, and condominium associations  
 122 with regard to distressed condominiums, and that there is a need  
 123 for relief from certain provisions of the Florida Condominium  
 124 Act geared toward enabling economic opportunities within these  
 125 condominiums for successor purchasers, including foreclosing  
 126 mortgagees, while at the same time clarifying the ambiguity in  
 127 the law. Such relief would benefit existing unit owners and  
 128 condominium associations. The Legislature further finds and  
 129 declares that this situation cannot be open-ended without  
 130 potentially prejudicing the rights of unit owners and  
 131 condominium associations, and thereby declares that the  
 132 provisions of this part shall be used by purchasers of  
 133 condominium inventory for a specific and defined period.

134 718.703 Definitions.--As used in this part, the term:

135 (1) "Bulk assignee" means a person who:

136 (a) Acquires more than seven condominium parcels in a  
 137 single condominium as set forth in s. 718.707; and

138 (b) Receives an assignment of all or substantially all of  
 139 the rights of the developer as are set forth in the declaration  
 140 of condominium or in this chapter by a written instrument

141 recorded as an exhibit to the deed or as a separate instrument  
 142 in the public records of the county in which the condominium is  
 143 located.

144 (2) "Bulk buyer" means a person who acquires more than  
 145 seven condominium parcels in a single condominium as set forth  
 146 in s. 718.707 but who does not receive an assignment of any  
 147 developer rights other than, at the bulk buyer's option, the  
 148 right to conduct sales, leasing, and marketing activities within  
 149 the condominium; the right to be exempt from the payment of  
 150 working capital contributions to the condominium association  
 151 arising out of or in connection with the bulk buyer's  
 152 acquisition of a bulk number of units; and the right to be  
 153 exempt from any rights of first refusal which may be held by the  
 154 condominium association and would otherwise be applicable to  
 155 subsequent transfers of title from the bulk buyer to any third-  
 156 party purchaser concerning one or more units.

157 718.704 Assignment of developer rights to and assumption  
 158 of developer rights by bulk assignee; bulk buyer.--

159 (1) A bulk assignee shall be deemed to have assumed and is  
 160 liable for all duties and responsibilities of a developer under  
 161 the declaration and this chapter, except:

162 (a) Warranties of a developer under s. 718.203(1) or s.  
 163 718.618, except for design, construction, development, or repair  
 164 work performed by or on behalf of such bulk assignee.

165 (b) The obligation to:

166 1. Fund converter reserves under s. 718.618 for a unit  
 167 that was not acquired by the bulk assignee; or

168 2. Provide converter warranties on any portion of the

169 condominium property except as may be expressly provided by the  
 170 bulk assignee in the contract for purchase and sale executed  
 171 with a purchaser and pertaining to any design, construction,  
 172 development, or repair work performed by or on behalf of the  
 173 bulk assignee.

174 (c) The requirement to provide the association with a  
 175 cumulative audit of the association's finances from the date of  
 176 formation of the condominium association as required by s.  
 177 718.301. However, the bulk assignee shall provide an audit for  
 178 the period for which the bulk assignee elects a majority of the  
 179 members of the board of administration.

180 (d) Any liability arising out of or in connection with  
 181 actions taken by the board of administration or the developer-  
 182 appointed directors before the bulk assignee elects a majority  
 183 of the members of the board of administration.

184 (e) Any liability for or arising out of the developer's  
 185 failure to fund previous assessments or to resolve budgetary  
 186 deficits in relation to a developer's right to guarantee  
 187 assessments, except as otherwise provided in subsection (2).

188  
 189 Further, the bulk assignee is responsible for delivering  
 190 documents and materials in accordance with s. 718.705(3). A bulk  
 191 assignee may expressly assume some or all of the obligations of  
 192 the developer described in paragraphs (a)-(e).

193 (2) A bulk assignee receiving the assignment of the rights  
 194 of the developer to guarantee the level of assessments and fund  
 195 budgetary deficits pursuant to s. 718.116 shall be deemed to  
 196 have assumed and is liable for all obligations of the developer



197 with respect to such guarantee, including any applicable funding  
 198 of reserves to the extent required by law, for as long as the  
 199 guarantee remains in effect. A bulk assignee not receiving an  
 200 assignment of the right of the developer to guarantee the level  
 201 of assessments and fund budgetary deficits pursuant to s.  
 202 718.116 or a bulk buyer is not deemed to have assumed and is not  
 203 liable for the obligations of the developer with respect to such  
 204 guarantee, but is responsible for payment of assessments in the  
 205 same manner as all other owners of condominium parcels.

206 (3) A bulk buyer is liable for the duties and  
 207 responsibilities of the developer under the declaration and this  
 208 chapter only to the extent provided in this part, together with  
 209 any other duties or responsibilities of the developer expressly  
 210 assumed in writing by the bulk buyer.

211 (4) An acquirer of condominium parcels is not considered a  
 212 bulk assignee or a bulk buyer if the transfer to such acquirer  
 213 was made prior to the effective date of this Distressed  
 214 Condominium Relief Act or was made with the intent to hinder,  
 215 delay, or defraud any purchaser, unit owner, or the association,  
 216 or if the acquirer is a person who would constitute an insider  
 217 under s. 726.102(7).

218 (5) An assignment of developer rights to a bulk assignee  
 219 may be made by the developer, a previous bulk assignee, or a  
 220 court of competent jurisdiction acting on behalf of the  
 221 developer or the previous bulk assignee. At any particular time,  
 222 there may be no more than one bulk assignee within a  
 223 condominium, but there may be more than one bulk buyer. If more  
 224 than one acquirer of condominium parcels in the same condominium

225 receives an assignment of developer rights from the same person,  
 226 the bulk assignee is the acquirer whose instrument of assignment  
 227 is recorded first in applicable public records.

228 718.705 Board of administration; transfer of control.--

229 (1) For purposes of determining the timing for transfer of  
 230 control of the board of administration of the association to  
 231 unit owners other than the developer under s. 718.301(1)(a) and  
 232 (b), if a bulk assignee is entitled to elect a majority of the  
 233 members of the board, any condominium parcel acquired by the  
 234 bulk assignee shall not be deemed to be conveyed to a purchaser,  
 235 or to be owned by an owner other than the developer, until such  
 236 condominium parcel is conveyed to an owner who is not a bulk  
 237 assignee.

238 (2) Unless control of the board of administration of the  
 239 association has already been relinquished pursuant to s.  
 240 718.301(1), the bulk assignee is obligated to relinquish control  
 241 of the association in accordance with s. 718.301(1) or (2) and  
 242 this part as if the bulk assignee were the developer.

243 (3) When a bulk assignee relinquishes control of the board  
 244 of administration, the bulk assignee shall deliver all of those  
 245 items required by s. 718.301(4). However, the bulk assignee is  
 246 not required to deliver items and documents not in the  
 247 possession of the bulk assignee during the period during which  
 248 the bulk assignee was entitled to elect not less than a majority  
 249 of the members of the board of administration. In conjunction  
 250 with the acquisition of condominium parcels, a bulk assignee  
 251 shall undertake a good faith effort to obtain the documents and  
 252 materials required to be provided to the association pursuant to

253 s. 718.301(4). To the extent the bulk assignee is not able to  
 254 obtain all of such documents and materials, the bulk assignee  
 255 shall certify in writing to the association the names or  
 256 descriptions of the documents and materials that were not  
 257 obtainable by the bulk assignee. Delivery of the certificate  
 258 relieves the bulk assignee of responsibility for the delivery of  
 259 the documents and materials referenced in the certificate as  
 260 otherwise required under ss. 718.112 and 718.301 and this part.  
 261 The responsibility of the bulk assignee for the audit required  
 262 by s. 718.301(4) shall commence as of the date on which the bulk  
 263 assignee elected a majority of the members of the board of  
 264 administration.

265 (4) If a conflict arises between the provisions or  
 266 application of this section and s. 718.301, this section shall  
 267 prevail.

268 (5) Failure of a bulk assignee or bulk buyer to  
 269 substantially comply with all the requirements contained in this  
 270 part shall result in the loss of all protections or exemptions  
 271 provided under this part.

272 718.706 Specific provisions pertaining to offering of  
 273 units by a bulk assignee or bulk buyer.--

274 (1) Before offering any units for sale or for lease for a  
 275 term exceeding 5 years, a bulk assignee or a bulk buyer shall  
 276 file the following documents with the division and provide such  
 277 documents to a prospective purchaser or tenant:

278 (a) An updated prospectus or offering circular, or a  
 279 supplement to the prospectus or offering circular, filed by the  
 280 creating developer prepared in accordance with s. 718.504, which

281 shall include the form of contract for purchase and sale in  
 282 compliance with s. 718.503(1)(a);

283 (b) An updated Frequently Asked Questions and Answers  
 284 sheet;

285 (c) The executed escrow agreement if required under s.  
 286 718.202; and

287 (d) The financial information required by s. 718.111(13).

288 However, if a financial information report does not exist for  
 289 the fiscal year before acquisition of title by the bulk assignee  
 290 or bulk buyer, or accounting records cannot be obtained in good  
 291 faith by the bulk assignee or the bulk buyer which would permit  
 292 preparation of the required financial information report, the  
 293 bulk assignee or bulk buyer is excused from the requirement of  
 294 this paragraph. However, the bulk assignee or bulk buyer must  
 295 include in the purchase contract the following statement in  
 296 conspicuous type:

297

298 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER  
 299 SECTION 718.111(13), FLORIDA STATUTES, FOR THE  
 300 IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION  
 301 IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS  
 302 A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE  
 303 ASSOCIATION.

304

305 (2) Before offering any units for sale or for lease for a  
 306 term exceeding 5 years, a bulk assignee shall file with the  
 307 division and provide to a prospective purchaser a disclosure  
 308 statement that must include, but is not limited to:

309 (a) A description of any rights of the developer which  
 310 have been assigned to the bulk assignee;

311 (b) The following statement in conspicuous type:

312  
 313 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE  
 314 DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618,  
 315 FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN,  
 316 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY  
 317 OR ON BEHALF OF SELLER.

318  
 319 (c) If the condominium is a conversion subject to part VI,  
 320 the following statement in conspicuous type:

321  
 322 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER  
 323 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER  
 324 SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF  
 325 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY  
 326 REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE  
 327 AND SALE EXECUTED BY THE SELLER AND THE DEVELOPER AND  
 328 PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT,  
 329 OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE  
 330 SELLER.

331  
 332 (3) In addition to the requirements set forth in  
 333 subsection (1), a bulk assignee or bulk buyer must comply with  
 334 the nondeveloper disclosure requirements set forth in s.  
 335 718.503(2) before offering any units for sale or for lease for a  
 336 term exceeding 5 years.

337 | (4) While in control of the board of administration of the  
 338 | association, a bulk assignee may not authorize, on behalf of the  
 339 | association:

340 | (a) The waiver of reserves or the reduction of funding of  
 341 | the reserves in accordance with s. 718.112(2)(f)2., unless  
 342 | approved by a majority of the voting interests not controlled by  
 343 | the developer, bulk assignee, and bulk buyer; or

344 | (b) The use of reserve expenditures for other purposes in  
 345 | accordance with s. 718.112(2)(f)3., unless approved by a  
 346 | majority of the voting interests not controlled by the  
 347 | developer, bulk assignee, and bulk buyer.

348 | (5) A bulk assignee or bulk buyer shall comply with all  
 349 | the requirements of s. 718.302 regarding any contracts entered  
 350 | into by the association during the period the bulk assignee or  
 351 | bulk buyer maintains control of the board of administration.  
 352 | Unit owners shall be afforded all the protections contained in  
 353 | s. 718.302 regarding agreements entered into by the association  
 354 | before unit owners other than the developer, bulk assignee, or  
 355 | bulk buyer elected a majority of the board of administration.

356 | (6) A bulk buyer shall comply with the requirements  
 357 | contained in the declaration regarding any transfer of a unit,  
 358 | including sales, leases, and subleases. A bulk buyer is not  
 359 | entitled to any exemptions afforded a developer or successor  
 360 | developer under this chapter regarding any transfer of a unit,  
 361 | including sales, leases, or subleases.

362 | 718.707 Time limitation for classification as bulk  
 363 | assignee or bulk buyer.--A person acquiring condominium parcels  
 364 | may not be classified as a bulk assignee or bulk buyer unless

365 the condominium parcels were acquired before July 1, 2012. The  
 366 date of such acquisition shall be determined by the date of  
 367 recording of a deed or other instrument of conveyance for such  
 368 parcels in the public records of the county in which the  
 369 condominium is located or by the date of issuance of a  
 370 certificate of title in a foreclosure proceeding with respect to  
 371 such condominium parcels.

372 718.708 Liability of developers and others.--An assignment  
 373 of developer rights to a bulk assignee or bulk buyer does not  
 374 release the creating developer from any liabilities under the  
 375 declaration or this chapter. This part does not limit the  
 376 liability of the creating developer for claims brought by unit  
 377 owners, bulk assignees, or bulk buyers for violations of this  
 378 chapter by the creating developer, unless specifically excluded  
 379 in this part. Nothing contained within this part waives,  
 380 releases, compromises, or limits the liability of contractors,  
 381 subcontractors, materialmen, manufacturers, architects,  
 382 engineers, or any participant in the design or construction of a  
 383 condominium for any claim brought by an association, unit  
 384 owners, bulk assignees, or bulk buyers arising from the design  
 385 of the condominium, construction defects, misrepresentations  
 386 associated with condominium property, or violations of this  
 387 chapter, unless specifically excluded in this part.

388 Section 3. This act shall take effect upon becoming a law.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CCJP 10-06 Conflict Counsel

SPONSOR(S): Criminal & Civil Justice Policy Council

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council		Mato RAM	Havlicak RH
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill amends two sections relating to the Office of Criminal Conflict and Civil Regional Counsel (OCCCRC). The OCCCRC was created in 2007 to represent indigent defendants when the public defender is unable to provide representation due to a conflict of interest. They also represent indigent parents involved in civil dependency or termination of parental rights proceedings.

The bill amends the section for determination of civil indigent status to make a \$50 fee to be paid by parents in child dependency cases, already in the statute, mandatory. The fee is to be placed in the OCCCRC's Indigent Civil Defense Trust Fund.

The bill also amends the statute relating to the compensation of appointed counsel to allow the OCCCRC to seek reasonable compensation for fees and costs at the end of a civil child dependency case.

The bill will not have any negative fiscal impact on the state or local governments. It is anticipated that the bill will increase the revenue going into the Indigent Civil Defense Trust Fund.

The bill is effective July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background / Current Situation:**

The Governor signed into law CS/SB 1088 on May 24, 2007. This Act<sup>1</sup> created five Offices of Criminal Conflict and Civil Regional Counsel ("OCCCRC") with the primary responsibility to handle criminal conflict cases from the twenty Public Defender Offices. Under the Act, these five regional offices, which share the same geographic boundaries as the five District Courts of Appeal, began operations on October 1, 2007.

Section 27.511(5) provides that when the Office of Public Defender, representing two or more defendants, determines that it has a conflict of interest and the court grants its motion to withdraw, such indigent defendant will then be assigned to the OCCCRC for representation. These appointments constitute the bulk of the OCCCRC's workload. However, part of the OCCCRC's workload also includes representing indigent parents in civil child dependent cases under chapter 39. In both civil and criminal cases, if the regional counsel withdraws from the case for any reason, then an attorney from the circuit's registry of available private counsel is appointed.

Currently, s. 57.082, F.S., creates a process whereby an indigent person may acquire court-appointed counsel in certain civil cases under chapter 39.<sup>2</sup> The applicant must demonstrate an inability to pay based on information the applicant provides the clerk of court in a Supreme Court-approved form.<sup>3</sup> The process includes a \$50 application fee to be paid by the applicant requesting indigent status in chapter 39 cases. The fee is to be paid upon filing the application with the clerk or within seven days after submitting the application.<sup>4</sup> The application fee under this statute is to be collected by the clerk and remitted monthly to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund. No indigent person may be refused counsel. If the indigent person cannot pay the application fee, s. 57.082(1)(d), F.S., requires the clerk to enroll him or her in a payment plan as provided in s. 28.246, F.S.

The OCCCRC reports that the fees currently being collected are negligible amounts. The \$50 fee is already in the statute, but not all courts currently enforce it and not all indigent persons are paying the fee as required.

<sup>1</sup> Chapter 2007-62, Laws of Florida

<sup>2</sup> Examples of a chapter 39 legal proceeding include: a dependency proceeding or a termination of parental rights proceeding.

<sup>3</sup> Section 57.082(1), F.S.

<sup>4</sup> Section 57.082(1)(d), F.S.

Section. 39.0134, F.S., allows an appointed attorney in a dependency proceeding or a termination of parental rights proceeding under chapter 39 to receive compensation in accordance with s. 27.5304, F.S. Additionally, the state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs pursuant to s. 984.08, F.S.<sup>5</sup>

**Effect of the bill:**

The bill amends s. 57.082, F.S., to clarify what qualifies as a chapter 39 proceeding in which case a party may qualify for court-appointed counsel. It adds "a proceeding, at shelter or during the adjudicatory process, during the judicial review process, upon the filing of a termination of parental rights petition, or upon the filing or any appeal, or if an appointed attorney is requested in a re-opened proceeding."

The bill requires that if the \$50 application fee has not been paid within the seven days, the court shall enter an order requiring payment and the clerk shall collect pursuant to s. 28.246, F.S. Similarly, the bill amends s. 57.082(5), F.S., to require the court to order the application fee upon appointing counsel to the indigent party.

The \$50 fee is already in the existing statute. This bill makes it mandatory for the court to impose the fee and for the clerk to collect the fee.

The bill amends s. 39.0134, F.S. to make a parent, who qualifies and receives the services of OCCCRC or any other court appointed attorney under a child dependency case, liable for payment of the assessed application fee under s. 57.082, F.S., along with reasonable attorney's fees and costs as determined by the court. If reasonable attorney's fees are assessed, payment of the fees or costs may be made part of any case plan in the dependency proceeding at the court's discretion. The bill provides that no case plan will remain open for the sole purpose of payment of attorney's fees. However, at the court's discretion, a lien upon court-ordered payment of attorney's fees and costs may be ordered in accordance with s. 984.08, F.S.

The bill also requires the clerk of court to transfer monthly all attorney's fees and costs collected under s. 39.0134, F.S. to the Department of Revenue for deposit in the Indigent Civil Defense Trust Fund.

**B. SECTION DIRECTORY:**

Section 1 – amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 2 – amends s. 39.0134, F.S., relating to appointed counsel; compensation.

Section 3 – provides an effective date of July 1, 2010.

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

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

**1. Revenues:**

The Justice Administrative Commission reports the following amounts were collected and deposited in the OCCCRC's Indigent Civil Defense Trust Fund in FY 2008-09 and YTD for FY 2009-10.

<sup>5</sup> Section 984.08, F.S., provides: "The court may appoint an attorney to represent a parent or legal guardian under this chapter only upon a finding that the parent or legal guardian is indigent pursuant to s. 57.082. If an attorney is appointed, the parent or legal guardian shall be enrolled in a payment plan pursuant to s. 28.246."

CIRCUIT	AMOUNT
01	\$1,660.00
02	\$ 800.00
04	\$ 400.00
<b>FY 2008-09 TOTAL</b>	<b>\$2,860.00</b>

CIRCUIT	AMOUNT
01	\$1,124.89
05	\$ 200.00
<b>FY 2009-10 TOTAL<sup>6</sup></b>	<b>\$1,324.89</b>

It is anticipated that the provisions of the bill that require the court to order and the clerk to collect the payment of the application fee under s. 57.082, F.S., along with reasonable attorney's fees and costs as determined by the court, will increase the revenue going into its Indigent Civil Defense Trust Fund.

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.

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<sup>6</sup> As of March 12, 2010.

### **III. COMMENTS**

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

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

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

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

None.

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

None.

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

None.

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



29 appointed representation, shall pay a \$50 application fee to the  
 30 clerk for each application filed. The applicant shall pay the  
 31 fee within 7 days after submitting the application. If not paid  
 32 within 7 days, the court shall enter an order requiring payment  
 33 and the clerk shall pursue collection under s. 28.246. The clerk  
 34 shall transfer monthly all application fees collected under this  
 35 paragraph to the Department of Revenue for deposit into the  
 36 Indigent Civil Defense Trust Fund, to be used as appropriated by  
 37 the Legislature. The clerk may retain 10 percent of application  
 38 fees collected monthly for administrative costs prior to  
 39 remitting the remainder to the Department of Revenue. A person  
 40 found to be indigent may not be refused counsel. If the person  
 41 cannot pay the application fee, the clerk shall enroll the  
 42 person in a payment plan pursuant to s. 28.246.

43 (5) APPOINTMENT OF COUNSEL.—In appointing counsel after a  
 44 determination that a person is indigent under this section, the  
 45 court shall order that any application fee be paid by each  
 46 person requesting appointment of counsel and first appoint the  
 47 office of criminal conflict and civil regional counsel, as  
 48 provided in s. 27.511, unless specific provision is made in law  
 49 for the appointment of the public defender in the particular  
 50 civil proceeding.

51 Section 2. Section 39.0134, Florida Statutes, is amended  
 52 to read:

53 39.0134 Appointed counsel; compensation.—If counsel is  
 54 entitled to receive compensation for representation pursuant to  
 55 a court appointment in a dependency proceeding or a termination  
 56 of parental rights proceeding pursuant to this chapter,

57 compensation shall be paid in accordance with s. 27.5304. The  
 58 state may acquire and enforce a lien upon court-ordered payment  
 59 of attorney's fees and costs in accordance with s. 984.08.

60 (1) A parent whose child is dependent, whether or not  
 61 adjudication was withheld or whose parental rights are  
 62 terminated and who has received the assistance of the Office of  
 63 Criminal Conflict and Civil Regional Counsel, or any other court  
 64 appointed attorney, or who has received due process services  
 65 after being found indigent for costs under s. 57.082, shall be  
 66 liable for payment of the assessed application fee under s.  
 67 57.082, together with reasonable attorney's fees and costs as  
 68 determined by the court.

69 (2) If reasonable attorney's fees are assessed, payment of  
 70 said fees or costs may be made part of any case plan in  
 71 dependency proceedings at the courts discretion. No case plan  
 72 will remain open for the sole issue of payment of attorney's  
 73 fees or costs. At the courts discretion, a lien upon court-  
 74 ordered payment of attorney's fees and costs may be ordered by  
 75 the court in accordance with s. 984.08.

76 (3) The clerk of the court shall transfer all attorney's  
 77 fees and costs collected under this paragraph monthly to the  
 78 Department of Revenue for deposit in the Indigent Civil Defense  
 79 Trust Fund, subject to legislative appropriations and consistent  
 80 with s. 27.5111.

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