



Civil Justice Subcommittee

Tuesday, March 29, 2011

12:00 PM

404 HOB

Action Packet

**Dean Cannon
Speaker**

**Eric Eisnaugle
Chair**

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

Summary:

Civil Justice Subcommittee

Tuesday March 29, 2011 12:00 pm

HB 291	Favorable With Committee Substitute	Yeas: 13	Nays: 0
CS/HB 599	Favorable With Committee Substitute	Yeas: 13	Nays: 0
CS/HB 907	Favorable With Committee Substitute	Yeas: 13	Nays: 0
HJR 1471	Favorable	Yeas: 8	Nays: 4
PCS for HB 1195	Favorable With Amendments	Yeas: 13	Nays: 0

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Eric Eisnaugle (Chair)			X
Mack Bernard	X		
Clay Ford	X		
Matt Gaetz	X		
Bill Hager	X		
Shawn Harrison	X		
Martin Kiar	X		
Larry Metz	X		
Kathleen Passidomo	X		
Darren Soto	X		
Cynthia Stafford	X		
Kelli Stargel	X		
Richard Steinberg	X		
W. Gregory Steube	X		
Michael Weinstein	X		
Totals:	14	0	1

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

HB 291 : Residential Tenancies

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Klar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube			X		
Michael Weinstein	X				
Eric Eisnaugle (Chair)			X		
Total Yeas: 13		Total Nays: 0			

Appearances:

HB 291

McCarty, Jess (Lobbyist) - Opponent

Miami-Dade County

111 NW 1st St

Miami FL 33128

Phone: (305)375-1634

HB 291

Vickers, Alice (Lobbyist) - Opponent

Florida Legal Services

2425 Torreya Drive

Tallahassee FL 32303

Phone: 850-385-7900

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 291 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN	—	(Y/N)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

*Favorable
3-29-11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Artiles offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (1) of section 48.021, Florida
7 Statutes, is amended to read:

8 48.021 Process; by whom served.—

9 (1) All process shall be served by the sheriff of the
10 county where the person to be served is found, except initial
11 nonenforceable civil process, criminal witness subpoenas, and
12 criminal summonses may be served by a special process server
13 appointed by the sheriff as provided for in this section or by a
14 certified process server as provided for in ss. 48.25-48.31.
15 Civil witness subpoenas may be served by any person authorized
16 by rules of civil procedure. A writ of possession in an action
17 for possession of real property under s. 83.62 may be served by
18 a certified process server as provided in s. 48.27.

Amendment No. 1

19 Section 2. Subsection (2) of section 48.27, Florida
20 Statutes, is amended to read:

21 48.27 Certified process servers.—

22 (2) (a) The addition of a person's name to the list
23 authorizes him or her to serve initial nonenforceable civil
24 process on a person found within the circuit where the process
25 server is certified when a civil action has been filed against
26 such person in the circuit court or in a county court in the
27 state. Upon filing an action in circuit or county court, a
28 person may select from the list for the circuit where the
29 process is to be served one or more certified process servers to
30 serve initial nonenforceable civil process.

31 (b) The addition of a person's name to the list authorizes
32 him or her to serve criminal witness subpoenas and criminal
33 summonses on a person found within the circuit where the process
34 server is certified. The state in any proceeding or
35 investigation by a grand jury or any party in a criminal action,
36 prosecution, or proceeding may select from the list for the
37 circuit where the process is to be served one or more certified
38 process servers to serve the subpoena or summons.

39 (c) The addition of a person's name to the list also
40 authorizes him or her to serve a writ of possession in an action
41 for possession of real property under s. 83.62 on a person found
42 within the circuit where the process server is certified.

43 Section 3. Section 83.62, Florida Statutes, is amended to
44 read:

45 83.62 Restoration of possession to landlord.—

Amendment No. 1

46 (1) In an action for possession, after entry of judgment
47 in favor of the landlord, the clerk shall issue a writ to the
48 sheriff, or other person selected by the landlord and authorized
49 by s. 48.27 to serve process, describing the premises and
50 commanding the sheriff to put the landlord in possession after
51 24 hours' notice conspicuously posted on the premises. Upon
52 entry of judgment in favor of the landlord and issuance of a
53 writ by the clerk, the landlord may select from the list for the
54 circuit where the process is to be served one or more certified
55 process servers to serve the writ. Upon the posting of the writ
56 on the premises, the certified process server shall, within 12
57 hours after the posting of the writ, provide written notice to
58 the sheriff including the date and time the writ was posted on
59 the premises.

60 (2) At the time the ~~sheriff executes the writ of~~
61 possession is executed or at any time thereafter, the landlord
62 or the landlord's agent may remove any personal property found
63 on the premises to or near the property line. Subsequent to
64 executing the writ of possession, the landlord may request the
65 sheriff to stand by to keep the peace while the landlord changes
66 the locks and removes the personal property from the premises.
67 When such a request is made, the sheriff may charge a reasonable
68 hourly rate, and the person requesting the sheriff to stand by
69 to keep the peace shall be responsible for paying the reasonable
70 hourly rate set by the sheriff. Neither the sheriff nor the
71 landlord or the landlord's agent shall be liable to the tenant
72 or any other party for the loss, destruction, or damage to the
73 property after it has been removed.

Amendment No. 1

74 Section 4. This act shall take effect July 1, 2011.

75

76

77

78

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

79

Remove the entire title and insert:

80

An act relating to service of process; amending ss. 48.021 and

81

48.27, F.S.; authorizing certified process servers to serve

82

writs of possession in actions for possession of residential

83

property; amending s. 83.62, F.S.; authorizing a landlord to

84

select a certified process server to serve a writ of possession;

85

requiring a certified process server to provide notice of the

86

posting of the writ to the sheriff; conforming provisions;

87

providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 291 (2011)

Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

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

*favorable
3-29-11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Steube offered the following:

3
4 **Amendment to Amendment (1) by Representative Artiles (with**
5 **title amendment)**

6 Remove line 42 and insert:
7 within the circuit where the process server is certified. This
8 paragraph applies only to a county as defined in s. 125.011.
9

10
11
12
13
14
15

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

Remove line 81 and insert:
48.27, F.S.; authorizing certified process servers in certain
counties to serve

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

CS/HB 599 : Uniform Prudent Management of Institutional Funds

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube			X		
Michael Weinstein	X				
Eric Eisnaugle (Chair)			X		
Total Yeas: 13		Total Nays: 0			

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 599 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

*Favorable
3-29-11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Passidomo offered the following:

3

4 **Amendment**

5 Remove line 272 and insert:

6 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

CS/HB 907 : Transfer of Tax Liability

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube			X		
Michael Weinstein	X				
Eric Eisnaugle (Chair)			X		
Total Yeas: 13		Total Nays: 0			

Appearances:

CS/HB 907

Wiley, William (Lobbyist) - Waive In Support

Florida Bar Business Law Section, The

651 E Jefferson St

Tallahassee FL 32399-2300

Phone: (850)545-9438

CS/HB 907

DiMarco, Anthony (Lobbyist) - Waive In Support

Florida Bankers Association

1001 Thomasville Rd Ste 201

Tallahassee FL 32302-1360

Phone: (850)224-2265

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 907 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

*Favorable
3-29-11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Wood offered the following:

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

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 213.758, Florida Statutes, is amended
7 to read:

8 213.758 Transfer of tax liabilities.-

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

10 (a) "Business" means any activity regularly engaged in by
11 any person, or caused to be engaged in by any person, for the
12 purpose of private or public gain, benefit, or advantage. The
13 term does not include occasional or isolated sales or
14 transactions involving property or services by a person who does
15 not hold himself or herself out as engaged in business. A
16 discrete division or portion of a business is not a separate
17 business and must be aggregated with all other divisions or
18 portions that constitute a business if the division or portion
19 is not a separate legal entity.

Amendment No. 1

20 (b) "Financial institution" means a financial institution
21 as defined in s. 655.005 and any person who controls, is
22 controlled by, or is under common control with a financial
23 institution as defined in s. 655.005.

24 (c) "Insider" means a person as defined in s. 726.102(7),
25 and a manager of, a managing member of, a person who controls a
26 limited liability company or a relative thereof as defined in s.
27 726.102(11).

28 (d) ~~(a)~~ "Involuntary transfer" means a transfer of a
29 business, assets of a business or stock of goods of a business
30 made without the consent of the transferor, including, but not
31 limited to, a transfer:

32 1. That occurs due to the foreclosure of a security
33 interest issued to a person who is not an insider ~~as defined in~~
34 ~~s. 726.102;~~

35 2. That results from an eminent domain or condemnation
36 action;

37 3. Pursuant to chapter 61, chapter 702, or the United
38 States Bankruptcy Code;

39 4. To a financial institution, ~~as defined in s. 655.005,~~
40 if the transfer is made to satisfy the transferor's debt to the
41 financial institution; or

42 5. To a third party to the extent that the proceeds are
43 used to satisfy the transferor's indebtedness to a financial
44 institution ~~as defined in s. 655.005.~~ If the third party
45 receives assets worth more than the indebtedness, the transfer
46 of the excess may not be deemed an involuntary transfer.

Amendment No. 1

47 (e) "Stock of goods" means the inventory of a business
48 held for sale to customers in the ordinary course of business.

49 (f) "Tax" means any tax, interest, penalty, surcharge, or
50 fee administered by the department pursuant to chapter 443 or
51 any of the chapters specified in s. 213.05, excluding chapter
52 220, the corporate income tax code.

53 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
54 with or without consideration, of disposing of or parting with a
55 business, assets of the business, or stock of goods of the
56 business, and includes, but is not limited to, assigning,
57 conveying, demising, gifting, granting, or selling, other than
58 to customers in the ordinary course of business, to a transferee
59 or to a group of transferees who are acting in concert. A
60 business is considered transferred when there is a transfer of
61 more than 50 percent of:-

- 62 1. The business;
- 63 2. The assets of the business; or
- 64 3. The stock of goods of the business.

65 (2) A taxpayer engaged in a business who is liable for any
66 tax arising from the operation of that business, ~~interest,~~
67 ~~penalty, surcharge, or fee administered by the department~~
68 ~~pursuant to chapter 443 or described in s. 72.011(1), excluding~~
69 ~~corporate income tax,~~ and who quits the a business without the
70 benefit of a purchaser, successor, or assignee, or without
71 transferring the business, assets of the business, or stock of
72 goods of a business to a transferee, must file a final return
73 for the business and make full payment of all taxes arising from
74 the operation of that business within 15 days after quitting the

Amendment No. 1

75 ~~business. A taxpayer who fails to file a final return and make~~
76 ~~payment may not engage in any business in this state until the~~
77 ~~final return has been filed and all taxes, interest, or~~
78 ~~penalties due have been paid.~~ The Department of Legal Affairs
79 may seek an injunction at the request of the department to
80 prevent further business activity of a taxpayer who fails to
81 file a final return and make payment of the taxes associated
82 with the operation of the business until such taxes tax,
83 ~~interest, or penalties~~ are paid. A temporary injunction
84 enjoining further business activity shall ~~may~~ be granted by a
85 circuit court with jurisdiction over the taxpayer if the
86 department has provided at least 20 days prior written notice to
87 the taxpayer without notice.

88 (3) A taxpayer who is liable for taxes with respect to a
89 ~~business, interest, or penalties levied under chapter 443 or any~~
90 ~~of the chapters specified in s. 213.05, excluding corporate~~
91 ~~income tax,~~ who transfers the taxpayer's business, assets of the
92 business, or stock of goods of the business, must file a final
93 return and make full payment within 15 days after the date of
94 transfer.

95 (4) (a) A transferee, or a group of transferees acting in
96 concert, of more than 50 percent of a business, assets of a
97 business, or stock of goods of a business is liable for any
98 unpaid tax, interest, or penalties owed by the transferor
99 arising from the operation of that business unless:

100 1.a. The transferor provides a receipt or certificate of
101 compliance from the department to the transferee showing that
102 the transferor has not received a notice of audit and the

Amendment No. 1

103 transferor has filed all required tax returns and has paid all
104 tax arising is not liable for taxes, interest, or penalties from
105 the operation of the business identified on the returns filed;
106 and

107 b. There were no insiders in common between the transferor
108 and the transferee at the time of the transfer; or

109 2. The department finds that the transferor is not liable
110 for taxes, interest, or penalties after an audit of the
111 transferor's books and records. The audit may be requested by
112 the transferee or the transferor and, if not done pursuant to
113 the certified audit program under s. 213.285, must be completed
114 by the department within 90 days after the records are made
115 available to the department. The department may charge a fee for
116 the cost of the audit if it has not issued a notice of intent to
117 audit by the time the request for the audit is received.

118 (b) A transferee may withhold a portion of the
119 consideration for a business, assets of the business, or stock
120 of goods of the business to pay the tax taxes, interest, or
121 penalties owed to the state by the transferor taxpayer arising
122 from the operation of the business. The transferee shall pay the
123 withheld consideration to the state within 30 days after the
124 date of the transfer. If the consideration withheld is less than
125 the transferor's liability, the transferor remains liable for
126 the deficiency.

127 (c) ~~A transferee who acquires the business or stock of~~
128 ~~goods and fails to pay the taxes, interest, or penalties due may~~
129 ~~not engage in any business in the state until the taxes,~~
130 ~~interest, or penalties are paid.~~ The Department of Legal Affairs

Amendment No. 1

131 may seek an injunction at the request of the department to
132 prevent further business activity of a transferee who is liable
133 for unpaid tax of a transferor and who fails to pay or cause to
134 be paid the transferee's maximum liability for such tax due
135 until such maximum liability for the tax is, ~~interest, or~~
136 penalties are paid. A temporary injunction enjoining further
137 business activity shall ~~may~~ be granted by a circuit court with
138 jurisdiction over the transferee if: ~~without notice.~~

139 1. The assessment against the transferee is final and
140 either:

141 a. The time for filing a contest under s.72.011 has
142 expired, or

143 b. Any contest filed pursuant to s. 72.011 resulted in a
144 final and non-appealable judgment sustaining any part of the
145 assessment, and

146 2. The department has provided at least 20 days' prior
147 written notice to the transferee of its intention to seek an
148 injunction.

149 (5) The transferee, or transferees acting in concert, of
150 more than 50 percent of a business, assets of the business, or
151 stock of goods of a business who are liable for any tax pursuant
152 to this section shall be ~~are~~ jointly and severally liable with
153 the transferor for the payment of the tax ~~taxes, interest, or~~
154 ~~penalties~~ owed to the state from the operation of the business
155 by the transferor up to the transferee's or transferees' maximum
156 liability for such tax due.

157 (6) The maximum liability of a transferee pursuant to this
158 section is equal to the fair market value of the business,

Amendment No. 1

159 assets of the business or stock of goods of the business
160 ~~property~~ transferred to the transferee or the total purchase
161 price paid by the transferee for the business, assets of the
162 business, or stock of goods of the business, whichever is
163 greater.

164 (a) The fair market value must be determined net of any
165 liens or liabilities, with the exception of liens or liabilities
166 owed to insiders.

167 (b) The total purchase price must be determined net of
168 liens and liabilities against the assets, with the exception of:

169 1. Liens or liabilities owed to insiders.

170 2. Liens or liabilities assumed by the transferee that are
171 not liens or liabilities owed to insiders.

172 (7) After notice by the department of transferee liability
173 under this section, the transferee has 60 days within which to
174 file an action as provided in chapter 72.

175 (8) This section does not impose liability on a transferee
176 of a business, assets of a business or stock of goods of a
177 business pursuant to an involuntary transfer.

178 (9) The department may adopt rules necessary to administer
179 and enforce this section.

180 Section 2. Subsection (17) of section 213.053, Florida
181 Statutes, is amended to read:

182 213.053 Confidentiality and information sharing.—

183 (17) The department may provide to the person against whom
184 transferee liability is being asserted pursuant to s.213.758 ~~s.~~
185 ~~212.10(1)~~ information relating to the basis of the claim.

186 Section 3. Section 202.31, Florida Statutes, is repealed.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 907 (2011)

Amendment No. 1

187 Section 4. Section 212.10, Florida Statutes, is repealed.

188 Section 5. This act shall take effect July 1, 2011.

189

190

191

192

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

193

Remove the entire title and insert:

194

An act relating to the transfer of tax liability; amending s.

195

213.758, F.S.; amending s. 213.053, F.S.; repealing s. 202.31,

196

F.S., relating to sale of business; liability for tax;

197

procedures; penalty for violations; repealing s. 212.10, F.S.,

198

relating to sale of business; liability for tax, procedure,

199

penalty for violation; providing an effective date.

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

HJR 1471 : Religious Freedom

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard		X			
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar		X			
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford		X			
Kelli Stargel				X	
Richard Steinberg		X			
W. Gregory Steube			X		
Michael Weinstein	X				
Eric Eisnagle (Chair)			X		
Total Yeas: 8		Total Nays: 4			

Appearances:

HJR 1471

Adams, Nathan (General Public) - Proponent
Holland & Knight

HJR 1471

Katz, Meir (General Public) - Proponent
Legal Fellow, Becket Fund
3000 K Street, NW, Suite 220
Washington DC 20007
Phone: 202-538-3696

HJR 1471

Prendergast, Danielle (Lobbyist) - Opponent
American Civil Liberties Union of Florida
540 Beverly Court
Tallahassee FL

HJR 1471

Ahern, Maureen - Waive In Support
3201 70th Way N
St Petersburg FL
Phone: (727) 381-2166

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

HJR 1471

Barkey, David (Lobbyist) - Opponent

Anti-Defamation League

621 NW 53rd St # 450

Boca Raton FL 33487

Phone: (561)988-2912

HJR 1471

Watson, Kevin (Lobbyist) - Opponent

Florida Education Association

213 S Adams St

Tallahassee FL 32301

Phone: (850)224-2078

HJR 1471

Sheedy, Michael (Lobbyist) - Proponent

Florida Catholic Conference

201 W Park Ave

Tallahassee FL 32301-7715

Phone: (850)222-3803

HJR 1471

Peshek, Adam (Lobbyist) - Waive In Support

Foundation for Florida's Future

215 S Monroe St Ste 100

Tallahassee FL 32301

Phone: (850)391-3070

Bunkley, William (Lobbyist) - Waive In Support

Florida Baptist Convention

1639 Jaclif Ct

Tallahassee FL 32308

Phone: (813)264-2977

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

PCS for HB 1195 : Community Associations

Favorable With Amendments

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Mack Bernard	X				
Clay Ford	X				
Matt Gaetz	X				
Bill Hager	X				
Shawn Harrison	X				
Martin Kiar	X				
Larry Metz	X				
Kathleen Passidomo	X				
Darren Soto	X				
Cynthia Stafford	X				
Kelli Stargel	X				
Richard Steinberg	X				
W. Gregory Steube			X		
Michael Weinstein	X				
Eric Eisnaugle (Chair)			X		
Total Yeas: 13		Total Nays: 0			

Appearances:

PCS for HB 1195

Dunbar, Peter (Lobbyist) - Waive In Support
Real Property, Probate & Trust Law Section
c/o The Florida Bar 651 E Jefferson St
Tallahassee FL 32399
Phone: (850)222-3533

PCS for HB 1195

Vickers, Alice (Lobbyist) - Opponent
Florida Legal Services
2425 Torreya Drive
Tallahassee FL 32303
Phone: 850-385-7900

PCS for HB 1195

Book, Ronald (Lobbyist) - Waive In Support
Florida Apartment Association
1133 W Morse Blvd Ste 201
Winter Park FL 32789
Phone: (305)935-1866

PCS for HB 1195

Moore, Travis (Lobbyist) - Information Only
Community Association Leadership Lobby
3111 Stirling Rd
Ft Lauderdale FL 33312-6525
Phone: (727)421-6902

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

3/29/2011 12:00:00PM

Location: 404 HOB

PCS for HB 1195

Anderson, Mark (Lobbyist) - Information Only

Chief Executive Officers of Management Companies

5901 Sun Blvd Ste 203

St Petersburg FL 33715

Phone: (813)205-0658

Committee meeting was reported out: Tuesday, March 29, 2011 3:07:12PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

*favorable
3-29-11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Moraitis offered the following:

Amendment

5 Remove lines 130-256 and insert:

6 mailing addresses and facsimile telephone numbers are not
7 accessible to unit owners ~~must be removed from association~~
8 ~~records~~ if consent to receive notice by electronic transmission
9 is not provided in accordance with subparagraph (c)5 ~~revoked~~.
10 However, the association is not liable for an inadvertent
11 ~~erroneous~~ disclosure of the electronic mail address or facsimile
12 ~~the~~ number for receiving electronic transmission of notices.

13 8. All current insurance policies of the association and
14 condominiums operated by the association.

15 9. A current copy of any management agreement, lease, or
16 other contract to which the association is a party or under
17 which the association or the unit owners have an obligation or
18 responsibility.

Amendment No. 1

19 10. Bills of sale or transfer for all property owned by
20 the association.

21 11. Accounting records for the association and separate
22 accounting records for each condominium that ~~which~~ the
23 association operates. All accounting records must ~~shall~~ be
24 maintained for at least 7 years. Any person who knowingly or
25 intentionally defaces or destroys such ~~accounting~~ records
26 ~~required to be created and maintained by this chapter during the~~
27 ~~period for which such records are required to be maintained,~~ or
28 who knowingly or intentionally fails to create or maintain such
29 records, with the intent of causing harm to the association or
30 one or more of its members, is personally subject to a civil
31 penalty pursuant to s. 718.501(1)(d). The accounting records
32 must include, but are not limited to:

33 a. Accurate, itemized, and detailed records of all
34 receipts and expenditures.

35 b. A current account and a monthly, bimonthly, or
36 quarterly statement of the account for each unit designating the
37 name of the unit owner, the due date and amount of each
38 assessment, the amount paid on ~~upon~~ the account, and the balance
39 due.

40 c. All audits, reviews, accounting statements, and
41 financial reports of the association or condominium.

42 d. All contracts for work to be performed. Bids for work
43 to be performed are also considered official records and must be
44 maintained by the association.

45 12. Ballots, sign-in sheets, voting proxies, and all other
46 papers relating to voting by unit owners, which must be

Amendment No. 1

47 maintained for 1 year from the date of the election, vote, or
48 meeting to which the document relates, notwithstanding paragraph
49 (b).

50 13. All rental records if the association is acting as
51 agent for the rental of condominium units.

52 14. A copy of the current question and answer sheet as
53 described in s. 718.504.

54 15. All other records of the association not specifically
55 included in the foregoing which are related to the operation of
56 the association.

57 16. A copy of the inspection report as described ~~provided~~
58 in s. 718.301(4) (p).

59 (c) The official records of the association are open to
60 inspection by any association member or the authorized
61 representative of such member at all reasonable times. The right
62 to inspect the records includes the right to make or obtain
63 copies, at the reasonable expense, if any, of the member. The
64 association may adopt reasonable rules regarding the frequency,
65 time, location, notice, and manner of record inspections and
66 copying. The failure of an association to provide the records
67 within 10 working days after receipt of a written request
68 creates a rebuttable presumption that the association willfully
69 failed to comply with this paragraph. A unit owner who is denied
70 access to official records is entitled to the actual damages or
71 minimum damages for the association's willful failure to comply.
72 Minimum damages are ~~shall be~~ \$50 per calendar day for up to 10
73 days, beginning ~~the calculation to begin~~ on the 11th working day
74 after receipt of the written request. The failure to permit

Amendment No. 1

75 | ~~inspection of the association records as provided herein~~
76 | entitles any person prevailing in an enforcement action to
77 | recover reasonable attorney's fees from the person in control of
78 | the records who, directly or indirectly, knowingly denied access
79 | to the records. Any person who knowingly or intentionally
80 | defaces or destroys accounting records that are required by this
81 | chapter to be maintained during the period for which such
82 | records are required to be maintained, or who knowingly or
83 | intentionally fails to create or maintain accounting records
84 | that are required to be created or maintained, with the intent
85 | of causing harm to the association or one or more of its
86 | members, is personally subject to a civil penalty pursuant to s.
87 | 718.501(1)(d). The association shall maintain an adequate number
88 | of copies of the declaration, articles of incorporation, bylaws,
89 | and rules, and all amendments to each of the foregoing, as well
90 | as the question and answer sheet as described ~~provided for~~ in s.
91 | 718.504 and year-end financial information required under ~~in~~
92 | this section, on the condominium property to ensure their
93 | availability to unit owners and prospective purchasers, and may
94 | charge its actual costs for preparing and furnishing these
95 | documents to those requesting the documents. Notwithstanding ~~the~~
96 | ~~provisions of~~ this paragraph, the following records are not
97 | accessible to unit owners:

98 | 1. Any record protected by the lawyer-client privilege as
99 | described in s. 90.502; and any record protected by the work-
100 | product privilege, including a ~~any~~ record prepared by an
101 | association attorney or prepared at the attorney's express
102 | direction, + which reflects a mental impression, conclusion,

Amendment No. 1

103 litigation strategy, or legal theory of the attorney or the
104 association, and which was prepared exclusively for civil or
105 criminal litigation or for adversarial administrative
106 proceedings, or which was prepared in anticipation of such
107 ~~imminent civil or criminal~~ litigation or ~~imminent adversarial~~
108 ~~administrative~~ proceedings until the conclusion of the
109 litigation or ~~adversarial administrative~~ proceedings.

110 2. Information obtained by an association in connection
111 with the approval of the lease, sale, or other transfer of a
112 unit.

113 3. Personnel records of association or management company
114 employees, including, but not limited to, disciplinary, payroll,
115 health, and insurance records. For purposes of this
116 subparagraph, the term "personnel records" does not include
117 written employment agreements with an association employee, or
118 management company, or budgetary or financial records that
119 indicate the compensation paid to an association employee.

120 4. Medical records of unit owners.

121 5. Social security numbers, driver's license numbers,
122 credit card numbers, e-mail addresses, telephone numbers,
123 facsimile numbers, emergency contact information, any addresses
124 of a unit owner other than as provided to fulfill the
125 association's notice requirements, and other personal
126 identifying information of any person, excluding the person's
127 name, unit designation, mailing address, and property address,
128 and any address, e-mail address, or facsimile number provided to
129 the association to fulfill the association's notice
130 requirements. However, an owner may consent in writing to the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 1

131 | disclosure of protected information described in this
132 | subparagraph. The association is not liable for the inadvertent
133 | disclosure

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

*Favorable
3-29-11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Moraitis offered the following:

3
4
5
6

Amendment

Remove line 451 and insert:
intent to run in order to have his

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

*Favorable
3.29.11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Steinberg offered the following:

Amendment (with title amendment)

5 Remove lines 1070-1074 and insert:
6 association which is more than 90 days delinquent. The
7 suspension ends upon full payment of all obligations currently
8 due or overdue the association. A voting interest or consent
9 right allocated to a unit which has been suspended by the
10 association may not be exercised or considered for any purpose,
11 including, but not limited to, a quorum, an election, or the
12 votes required to approve an action under this chapter or
13 pursuant to the declaration, articles of incorporation, or
14 bylaws. The notice and hearing requirements under

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

19 Remove line 42 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 3

20 | noticed board meeting; revising provisions relating to the
21 | suspension of voting rights of a member; amending s. 718.703,
22 | F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

*Favorable
3.29.11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Steinberg offered the following:

Amendment

5 Remove line 1511 and insert:

6 due or overdue the association. A voting interest or consent
7 right allocated to a unit which has been suspended by the
8 association may not be exercised or considered for any purpose,
9 including, but not limited to, a quorum, an election, or the
10 votes required to approve an action under this chapter or
11 pursuant to the cooperative documents. The notice and hearing
12

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

*favourable
3.29.11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Steinberg offered the following:

Amendment (with title amendment)

Remove line 1674 and insert:

6 delinquent. A voting interest or consent right allocated to a
7 parcel which has been suspended by the association may not be
8 exercised or considered for any purpose, including, but not
9 limited to, a quorum, an election, or the votes required to
10 approve an action under this chapter or pursuant to the
11 governing documents. The notice and hearing requirements under
12 subsection

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

Remove line 72 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 5

19 board meeting; revising provisions relating to the suspension of
20 voting rights of a member; amending s. 720.703, F.S.; specifying
21

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1195 (2011)

Amendment No. 6

COMMITTEE/SUBCOMMITTEE ACTION

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

*favourable
3.29.11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Moraitis offered the following:

3
4 **Amendment**

5 Remove lines 1844-1851 and insert:

6 (a) Any contract entered into by the board may be canceled
7 by a majority of the voting interests present at the next
8 regular or special meeting of the association, whichever occurs
9 first. Any member may make a motion to cancel such contract, but
10 if no motion is made or if such motion fails to obtain the
11 required vote, the contract shall be deemed ratified for the
12 term expressed therein.

13 (b) Any contract entered into by the board must provide,
14 and shall be