

Civil Justice Subcommittee

Monday, March 21, 2011

4:00 PM

404 HOB

**Dean Cannon
Speaker**

**Eric Eisnaugle
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Monday, March 21, 2011 04:00 pm

End Date and Time: Monday, March 21, 2011 06:00 pm

Location: 404 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 927 Adverse Possession by Roberson, K.
HB 941 Construction Liens by Moraitis
HB 1247 Parental Notice of Abortion by Stargel
HB 1373 Condominiums by Sands

Consideration of the following proposed committee bill(s):

PCB CVJS 11-10 -- Supreme Court Provisions
PCB CVJS 11-11 -- Judicial Census Commissions
PCB CVJS 11-12 -- Executive Officer of Circuit Court
PCB CVJS 11-13 -- District Court
PCB CVJS 11-14 -- Offers of Settlement
PCB CVJS 11-15 -- Declaratory Judgment Costs
PCB CVJS 11-16 -- Veteran's Guardianship

NOTICE FINALIZED on 03/17/2011 16:13 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 927 Adverse Possession
SPONSOR(S): Roberson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 918, SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>MB</i>
2) Finance & Tax Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

This bill amends the current statutory process for gaining title to real property via an adverse possession claim without color of title. Specifically, this bill:

- Includes occupation and maintenance as one of the forms of proof of possession of property subject to an adverse possession claim;
- Requires the property appraiser to provide notice to the owner of record that an adverse possession claim was made;
- Specifies that the Department of Revenue must develop a uniform adverse possession return;
- Requires the adverse possessor to provide a "full and complete" legal description on the return;
- Requires the adverse possessor to attest to the truthfulness of the information provided in the return under penalty of perjury;
- Requires an adverse possessor to describe, on the return, how he or she is using the property subject to the adverse possession claim;
- Includes emergency rulemaking authority for the Department of Revenue related to the adverse possession return;
- Prescribes procedures governing an adverse possession claim against a portion of an identified parcel of property, or against property that does not currently have a unique parcel identification number;
- Specifies when the property appraiser may add and remove the adverse possessor to and from the parcel information on the tax roll;
- Requires property appraisers to include a notation of an adverse possession claim in any searchable property database maintained by the property appraiser;
- Provides for priority of property tax payments made by owners of record by allowing for refunds of tax payments made by adverse possessors who submit a payment prior to the owner of record; and
- Provides that tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Adverse Possession

"Adverse possession" is an "actual and visible appropriation of property commenced and continued under a claim of right that is inconsistent with and hostile to the claim of another."¹ It has also been defined as "the open and notorious possession and occupation of real property under an evident claim or color of right, or, in other words, a possession in opposition to the true title and record owner, commenced in wrong and maintained in right."²

In Florida, there are two ways to acquire land by adverse possession, which are prescribed by statute.³ First, an individual adversely occupying property may claim property under color of title if he or she can demonstrate that the claim to title is the derivative of a recorded written document and that he or she has been in possession of the property for at least seven years.⁴ It is irrelevant whether the recorded document is legally valid or is fraudulent or faulty. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.⁵ Alternatively, in the event a person occupies land continuously without any legal document to support a claim for title, the person may seek title to the property by filing a return with the county property appraiser's office within one year of entry onto the property, and paying all property taxes and any assessed liens during the possession of the property for seven consecutive years.⁶ Similar to claims made with color of title, the adverse possessor may demonstrate possession of the property by showing that he or she:

- Protected the property by a substantial enclosure (typically a fence); or
- Cultivated or improved the property.⁷

Florida courts have noted that "[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession."⁸ Adverse possession is not favored, and all doubts relating to the adverse possession claim must be resolved in favor of the property owner of record.⁹ The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.¹⁰ Therefore, the adverse possession claim cannot be "established by loose, uncertain testimony which necessitates resort to mere conjecture."¹¹

Effect of Proposed Changes

Possession of the Property

This bill makes several changes to the current language included in the adverse possession (without color of title) statute for clarity, including a change designed to account for the establishment of "possession" in urban areas, and to make clear that property will be deemed to be possessed by the adverse possessor when:

¹ 2 Fla. Jur 2d Adverse Possession s. 2

² 2 Fla. Jur 2d Adverse Possession s. 2

³ *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So.2d 1231, 1234 (Fla. 1st DCA 2007).

⁴ Section 95.16, F.S.

⁵ Section 95.16, F.S.

⁶ Section 95.18(1), F.S.

⁷ Section 95.18(2), F.S.

⁸ *Candler Holdings Ltd. I*, 947 So.2d at 1234.

⁹ *Candler Holdings Ltd. I*, 947 So.2d at 1234.

¹⁰ *Candler Holdings Ltd. I*, 947 So.2d at 1234.

¹¹ *Id.* (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).

- It is protected by a substantial enclosure;
- It has been usually cultivated or improved; or
- It has been occupied and maintained.

In effect, a person claiming adverse possession may establish possession pursuant to the statute by satisfying any of these three criteria. Because properties subject to adverse possession claims in urban areas may not, in some instances, be amenable to protection by a substantial enclosure, or cultivation or improvement, this bill allows the adverse possessor to establish possession by occupying and maintaining the property.

Adverse Possession Return

This bill makes several changes to the information contained in the adverse possession return submitted by an adverse possessor to initiate the adverse possession claim. This bill requires the Department of Revenue (DOR) to develop a uniform adverse possession return to be used throughout the state. In addition to the information contained on the current form developed by DOR, this bill requires the adverse possessor to provide a "full and complete legal description of the property" on the return.¹² The adverse possessor must also attest to the truthfulness of the information contained on the form under penalty of perjury.¹³ Finally, this bill requires the adverse possessor to provide a description of his or her use of the property in the return.

Emergency Rulemaking Authority

This bill grants the DOR the authority to adopt emergency rules related to the changes to the adverse possession return. This bill provides that the executive director of DOR is authorized to adopt emergency rules for the purpose of implementing the additions and changes to the adverse possession return form. These emergency rules may remain in effect for six months after the rules are adopted and may be renewed during the pendency of procedures to adopt final rules addressing the adverse possession return.

Notice to Owner of Record

This bill requires the property appraiser to provide notice to the owner of record that an adverse possession return was submitted. The property appraiser must send to the owner of record a copy of the return, via regular mail. The property appraiser is also required to inform the owner of record that any tax payment made by the owner of record prior to April 1 following the year in which the tax is assessed will have priority over any tax payment made by the adverse possessor.

Property Appraiser's Administration of the Return

Upon submission of the return, the property appraiser must complete a receipt acknowledging submission of the return. This bill authorizes the property appraiser to refuse to accept a return if it fails to comply with the requirements prescribed in this bill. This bill requires the property appraiser to add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been initiated upon receipt of the adverse possession return¹⁴ The property

¹² DOR created a sample form return for use by property appraisers, which includes the following information: date of filing; date of entering into possession of the property; name and address of the claimant; legal description of the property; notarization clause; and receipt (to be completed by the property appraiser or a designated representative upon submission of the return). See Florida Dep't of Revenue, Form DR-452, *Form for Return of Real Property in Attempt to Establish Adverse Possession without Color of Title* (rev. Aug. 1993).

¹³ A person who knowingly made a false declaration on the return would be guilty of the crime of perjury by false written declaration, which is a third-degree felony, punishable by imprisonment not to exceed five years and a fine not to exceed \$5,000. Section 92.525(3), F.S.

¹⁴ . Until a bulletin by DOR advised otherwise, some property appraisers were adding the adverse possessor as an additional "owner" on the tax roll. Florida Dep't of Revenue, *Florida Department of Revenue Property Tax Information Bulletin: Return of Real Property in Attempt to Establish Adverse Possession without Color of Title, Form DR-452* (Jan. 25, 2010).

appraiser is also required to maintain the adverse possession return in the property appraiser's records.

Claim Against a Portion of a Parcel or Against Property Without a Parcel Number

This bill prescribes procedures when an adverse possession claim is made against a *portion* of property with a unique parcel identification number. The person claiming adverse possession must provide a legal description of the portion sufficient for the property appraiser to identify the portion. If property appraiser cannot identify the portion of property from the description, the person must obtain a survey of the portion of property. If the whole property already has been assigned a parcel identification number, the property appraiser may not assign a new parcel number to the portion of the property subject to the claim. The property appraiser shall assign a fair and just value to the portion of the property subject to the claim.

This bill also prescribes procedures when an adverse possession claim is made against property that does not yet have a parcel identification number. The person claiming adverse possession shall provide a legal description of the property sufficient for the property appraiser to identify it. If the property appraiser cannot identify the property from the description, the person must obtain a survey of the property. The property appraiser shall assign a parcel identification number to the property and assign a fair and just value to the property.

Removal of Notation from Parcel Information

This bill also delineates when the property appraiser may remove the adverse possessor from the parcel information contained in the tax roll. This bill requires the property appraiser to remove the notation to the legal description on the tax roll that an adverse possession return has been submitted if:

- The adverse possessor notifies the property appraiser in writing that he or she is withdrawing the claim;
- The owner of record provides a certified copy of a court order, entered after the date of the submission of the return, establishing title in the owner of record;
- The property appraiser receives a recorded deed, filed after the date of the submission of the return, transferring title of the same property subject to the claim from the adverse possessor to the owner of record; or
- The tax collector or owner of record submits to the property appraiser a receipt demonstrating that the owner of record has made an annual tax payment for the property subject to the adverse possession claim during the period that the person is claiming adverse possession.

If any one of these events occurs, the property appraiser must also remove the adverse possession return from the property appraiser's records.

Adverse Possession Filing Notation

This bill requires every property appraiser who maintains a public searchable database to provide a clear and obvious notation in the parcel information of the database maintained by the property appraiser that an adverse possession return has been submitted for the particular parcel. Those property appraisers who do not currently offer a searchable database to the public are not subject to this requirement, unless they offer a searchable database to the public in the future.

Tax Payments

This bill provides for priority of property tax payments made by owners of record whose property is subject to an adverse possession claim. Current law provides that if an adverse possessor makes a tax payment prior to the owner of record, the tax collector is not authorized to accept a subsequent payment by the owner of record. This bill provides that if an adverse possessor makes an annual tax payment on property subject to the adverse possession claim, and the owner of record subsequently makes a tax payment prior to April 1, the tax collector is required to accept the owner of record's

payment. Within 60 days, the tax collector must refund the adverse possessor's tax payment. This bill specifies that the refund to the adverse possessor is not subject to approval from the DOR.¹⁵

This bill also specifies that, upon receipt of a subsequent payment for the same annual tax assessment for a particular parcel, the tax collector must determine if an adverse possession return has been submitted on the particular parcel. If a return has been submitted, the tax collector must refund the payment made by the adverse possessor and afford the owner of record priority of payment as specified in this bill.

In addition, this bill sets forth the tax-payment and refund procedures when only a portion of an identified parcel of property is subject to an adverse possession claim.

This bill excludes properties subject to adverse possession claims from the minimum tax bill provision. Therefore, tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

Effective Date

This bill has an effective date of July 1, 2011, and applies to adverse possession claims in which the return was submitted on or after that date, except for the procedural provisions governing the property appraiser's administration of the adverse possession claims included in proposed s. 95.18(4)(c) and (d) (requiring the property appraiser to add a notation of the adverse possession filing and maintain a copy of the return) and s. 95.18(7), F.S. (delineating when the property appraiser may remove the adverse possession notation). These provisions will apply to adverse possession claims in which the return was submitted before, on, or after July 1, 2011.

Other Issues

Establishment of priority of tax payments made by owners of record whose properties are subject to an adverse possession claim would represent policy shift that could effectively preclude an adverse possessor from obtaining title to property because the adverse possessor may be unable to satisfy the tax-payment element of the adverse possession statute. The current statutory framework contemplates that the tax payment is a necessary step for the person claiming adverse possession to gain title to the property. Therefore, current practice by tax collectors is to accept a payment made by an adverse possessor if made prior to a payment by the owner of record.

B. SECTION DIRECTORY:

Section 1 amends s. 95.18, F.S., relating to adverse possession without color of title.

Section 2 amends s. 197.212, F.S., relating to minimum tax bill.

Section 3 creates s. 197.3335, F.S., relating to tax payments when property is subject to adverse possession.

Section 4 provides an effective date of July 1, 2011, and providing for retroactive application of procedural provisions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁵ Currently, certain refunds of \$400 or more must be approved by the Department of Revenue prior to the tax collector's remittance of the refund. See s. 197.182(1)(i), F.S.

1. Revenues:

None.

2. Expenditures:

The Department of Revenue does not anticipate significant additional costs to implement this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Property appraisers will incur costs to comply with the notice requirements and to comply with the requirement that searchable databases be updated. The amount is unknown but is not expected to be significant. There are only a small number of adverse possession returns filed each year.

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:

This bill grants the Department of Revenue the authority to adopt emergency rules related to the changes to the adverse possession return. This bill provides that the executive director of the Department of Revenue is authorized to adopt emergency rules for the purpose of implementing the additions and changes to the adverse possession return form created by the Department. These emergency rules may remain in effect for six months after the rules are adopted and may be renewed during the pendency of procedures to adopt final rules addressing the adverse possession return.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to adverse possession; amending s. 95.18,
 3 F.S.; specifying that occupation and maintenance of
 4 property satisfies the requirements for possession for
 5 purposes of gaining title to property via adverse
 6 possession without color of title; requiring a person
 7 seeking property by adverse possession to use a uniform
 8 adverse possession return provided by the Department of
 9 Revenue; requiring the property appraiser to notify the
 10 owner of record of an adverse possession claim; requiring
 11 that a person claiming adverse possession attest to the
 12 truthfulness of the information provided in the return
 13 under penalty of perjury; authorizing the Department of
 14 Revenue to adopt emergency rules; requiring that the
 15 property appraiser add certain information related to the
 16 adverse possession claim to the parcel information on the
 17 tax roll and prescribing conditions for removal of that
 18 information; prescribing procedures and requirements for
 19 adverse possession claims against a portion of an
 20 identified parcel or against property to which the
 21 property appraiser has not assigned a parcel number;
 22 requiring the property appraiser to include a notation of
 23 an adverse possession filing in any searchable property
 24 database maintained by the property appraiser; amending s.
 25 197.212, F.S.; excluding property subject to adverse
 26 possession claims without color of title from provisions
 27 authorizing the tax collector not to send a tax notice for
 28 minimum tax bills; creating s. 197.3335, F.S.; requiring

29 | the tax collector to determine whether a duplicate tax
 30 | payment is made by an adverse possessor; providing for
 31 | priority of tax payments made by an owner of record who is
 32 | subject to an adverse possession claim; providing for a
 33 | refund of tax payments under certain conditions; providing
 34 | for retroactive application of certain provisions
 35 | governing procedures for administering a claim of adverse
 36 | possession and establishing tax priority for owners of
 37 | record; providing an effective date.

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

40 |
 41 | Section 1. Section 95.18, Florida Statutes, is amended to
 42 | read:

43 | 95.18 Real property actions; adverse possession without
 44 | color of title.—

45 | (1) When the occupant has, or those under whom the
 46 | occupant claims have, been in actual continued occupation of
 47 | real property for 7 years under a claim of title exclusive of
 48 | any other right, but not founded on a written instrument,
 49 | judgment, or decree, the property actually occupied is ~~shall be~~
 50 | held adversely if the person claiming adverse possession made a
 51 | return, as required under subsection (3), of the property by
 52 | proper legal description to the property appraiser of the county
 53 | where it is located within 1 year after entering into possession
 54 | and has subsequently paid, subject to s. 197.3335, all taxes and
 55 | matured installments of special improvement liens levied against
 56 | the property by the state, county, and municipality.

57 (2) For the purpose of this section, property is ~~shall be~~
 58 deemed to be possessed if the property has been in the following
 59 ~~cases only:~~

60 (a) ~~When it has been~~ Protected by substantial enclosure;~~-~~

61 (b) ~~When it has been usually~~ Cultivated or improved in a
 62 usual manner; or-

63 (c) Occupied and maintained.

64 (3) A person claiming adverse possession under this
 65 section must make a return of the property by providing to the
 66 property appraiser a uniform return on a form provided by the
 67 Department of Revenue. The return must include all of the
 68 following:

69 (a) The name and address of the person claiming adverse
 70 possession.

71 (b) The date that the person claiming adverse possession
 72 entered into possession of the property.

73 (c) A full and complete legal description of the property
 74 that is subject to the adverse possession claim.

75 (d) A notarized attestation clause that states:
 76 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ
 77 THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT
 78 ARE TRUE AND CORRECT.

79 (e) A description of the use of the property by the person
 80 claiming adverse possession.

81 (f) A receipt to be completed by the property appraiser.

82
 83 The property appraiser shall refuse to accept a return if it
 84 does not comply with this subsection. The executive director of

85 the Department of Revenue is authorized, and all conditions are
 86 deemed met, to adopt emergency rules under ss. 120.536(1) and
 87 120.54(4) for the purpose of implementing this subsection. The
 88 emergency rules shall remain in effect for 6 months after
 89 adoption and may be renewed during the pendency of procedures to
 90 adopt rules addressing the subject of the emergency rules.

91 (4) Upon the submission of a return, the property
 92 appraiser shall:

93 (a) Send, via regular mail, a copy of the return to the
 94 owner of record of the property that is subject to the adverse
 95 possession claim, as identified by the property appraiser's
 96 records.

97 (b) Inform the owner of record that, under s. 197.3335,
 98 any tax payment made by the owner of record before April 1
 99 following the year in which the tax is assessed will have
 100 priority over any tax payment made by an adverse possessor.

101 (c) Add a notation at the beginning of the first line of
 102 the legal description on the tax roll that an adverse possession
 103 claim has been submitted.

104 (d) Maintain the return in the property appraiser's
 105 records.

106 (5) (a) If a person makes a claim of adverse possession
 107 under this section against a portion of a parcel of property
 108 identified by a unique parcel identification number in the
 109 property appraiser's records:

110 1. The person claiming adverse possession shall include in
 111 the return submitted under subsection (3) a full and complete
 112 legal description of the property sufficient to enable the

113 property appraiser to identify the portion of the property
 114 subject to the adverse possession claim.

115 2. The property appraiser may refuse to accept the return
 116 if the portion of the property subject to the claim cannot be
 117 identified by the legal description provided in the return, and
 118 the person claiming adverse possession must obtain a survey of
 119 the portion of the property subject to the claim in order to
 120 submit the return.

121 (b) Upon submission of the return, the property appraiser
 122 shall follow the procedures under subsection (4), and may not
 123 create a unique parcel identification number for the portion of
 124 property subject to the claim.

125 (c) The property appraiser shall assign a fair and just
 126 value to the portion of the property, as provided in s. 193.011,
 127 and provide this value to the tax collector to facilitate tax
 128 payment under s. 197.3335(3).

129 (6) (a) If a person makes a claim of adverse possession
 130 under this section against property to which the property
 131 appraiser has not assigned a parcel identification number:

132 1. The person claiming adverse possession must include in
 133 the return submitted under subsection (3) a full and complete
 134 legal description of the property which is sufficient to enable
 135 the property appraiser to identify the property subject to the
 136 adverse possession claim.

137 2. The property appraiser may refuse to accept a return if
 138 the property subject to the claim cannot be identified by the
 139 legal description provided in the return, and the person
 140 claiming adverse possession must obtain a survey of the property

141 subject to the claim in order to submit the return.

142 (b) Upon submission of the return, the property appraiser
 143 shall:

144 1. Assign a parcel identification number to the property
 145 and assign a fair and just value to the property as provided in
 146 s. 193.011;

147 2. Add a notation at the beginning of the first line of
 148 the legal description on the tax roll that an adverse possession
 149 claim has been submitted; and

150 3. Maintain the return in the property appraiser's
 151 records.

152 (7) A property appraiser must remove the notation to the
 153 legal description on the tax roll that an adverse possession
 154 claim has been submitted and shall remove the return from the
 155 property appraiser's records if:

156 (a) The person claiming adverse possession notifies the
 157 property appraiser in writing that the adverse possession claim
 158 is withdrawn;

159 (b) The owner of record provides a certified copy of a
 160 court order, entered after the date the return was submitted to
 161 the property appraiser, establishing title in the owner of
 162 record;

163 (c) The property appraiser receives a certified copy of a
 164 recorded deed, filed after the date of the submission of the
 165 return, from the person claiming adverse possession to the owner
 166 of record transferring title of property along with a legal
 167 description describing the same property subject to the adverse
 168 possession claim; or

169 (d) The owner of record or the tax collector provides to
 170 the property appraiser a receipt demonstrating that the owner of
 171 record has paid the annual tax assessment for the property
 172 subject to the adverse possession claim during the period that
 173 the person is claiming adverse possession.

174 (8) The property appraiser shall include a clear and
 175 obvious notation in the legal description of the parcel
 176 information of any public searchable property database
 177 maintained by the property appraiser that an adverse possession
 178 return has been submitted to the property appraiser for a
 179 particular parcel.

180 Section 2. Section 197.212, Florida Statutes, is amended
 181 to read:

182 197.212 Minimum tax bill.—On the recommendation of the
 183 county tax collector, the board of county commissioners may
 184 adopt a resolution instructing the collector not to mail tax
 185 notices to a taxpayer if ~~when~~ the amount of taxes shown on the
 186 tax notice is less than an amount up to \$30. The resolution
 187 shall also instruct the property appraiser that he or she may
 188 ~~shall~~ not make an extension on the tax roll for any parcel for
 189 which the tax would amount to less than an amount up to \$30. The
 190 minimum tax bill so established may not exceed an amount up to
 191 \$30. This section does not apply to a parcel of property that is
 192 subject to an adverse possession claim pursuant to s. 95.18.

193 Section 3. Section 197.3335, Florida Statutes, is created
 194 to read:

195 197.3335 Tax payments when property is subject to adverse
 196 possession; refunds.—

197 (1) Upon the receipt of a subsequent payment for the same
 198 annual tax assessment for a particular parcel of property, the
 199 tax collector must determine whether an adverse possession
 200 return has been submitted on the particular parcel. If an
 201 adverse possession return has been submitted, the tax collector
 202 must comply with subsection (2).

203 (2) If a person claiming adverse possession under s. 95.18
 204 pays an annual tax assessment on a parcel of property before the
 205 assessment is paid by the owner of record, and the owner of
 206 record subsequently makes a payment of that same annual tax
 207 assessment before April 1 following the year in which the tax is
 208 assessed, the tax collector shall accept the payment made by the
 209 owner of record and refund within 60 days any payment made by
 210 the person claiming adverse possession. Such refunds do not
 211 require approval from the department.

212 (3) For claims of adverse possession for a portion of a
 213 parcel of property as provided in s. 95.18(5), the tax collector
 214 may accept a tax payment, based upon the value of the property
 215 assigned by the property appraiser under s. 95.18(5)(c), from a
 216 person claiming adverse possession for the portion of the
 217 property subject to the claim. If the owner of record makes a
 218 payment of the annual tax assessment for the whole parcel before
 219 April 1 following the year in which the tax is assessed, the tax
 220 collector shall refund within 60 days any payment previously
 221 made for the portion of the parcel subject to the claim by the
 222 person claiming adverse possession.

223 Section 4. This act shall take effect July 1, 2011, and
 224 applies to adverse possession claims in which the return was

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225 | submitted on or after that date, except for the procedural
226 | provisions governing the property appraiser's administration of
227 | adverse possession claims included in s. 95.18(4)(c) and (d) and
228 | (7), Florida Statutes, and the provisions governing the payment
229 | of taxes included in s. 197.3335, Florida Statutes, as created
230 | by this act, which apply to adverse possession claims for which
231 | the return was submitted before, on, or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941 Construction Liens
SPONSOR(S): Moraitis
TIED BILLS: None IDEN./SIM. BILLS: SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn <i>W</i>	Bond <i>MB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

The construction lien law allows persons who are enhancing an owner's property to file a lien for the value of the improvement. In certain circumstances, a construction lien may be placed against a lessor's property for work done on behalf of a lessee. However, a lessor may limit or prohibit such liens provided the lessor includes a prohibition in the lease and records notice thereof in the public records.

Related to construction liens against leased property, this bill:

- Adds an additional means by which the lessor may record notice in the public records, namely by recording a memorandum of a lease.
- Provides that a blanket limitation on liens need not apply to all leaseholds within the property.
- Requires a lessor claiming that leases prohibit liens to provide a copy of the relevant portions of the lease within 30 days, upon demand of a potential lienor.
- Amends the notice of commencement form to require adding the name of a lessee when the lessee is making improvements.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Construction Liens

Chapter 965, F.S., provides that a record of a conveyance of real property, a mortgage of real property, or any other related document affecting title to real property, is valid when recorded with the clerk of the court (or county recorder) in the county in which the real property lies. These documents are recorded with the clerk in order to provide actual¹ or constructive notice² to the public regarding the status real property. These documents may include various liens and mortgages that are placed on the real property. One form of a lien is a construction lien.

A construction lien is an equitable device designed to protect the persons who are enhancing an owner's property. There are different statutory requirements for lienors that are in privity and those that are not in direct privity³ with the owner⁴ (such as subcontractors, sub-subcontractors, laborers and suppliers of material who remain unpaid after the owner has paid the contractor directly).⁵ The lien law protects subcontractors, sub-subcontractors, laborers, and suppliers of materials by allowing them to place a lien on the property receiving their services to ensure payment. Another purpose of construction liens is to protect owners by requiring subcontractors to provide a notice of possible liens, thereby preventing double payments to contractors and subcontractors, material suppliers, or laborers for the same services or materials.

The construction lien statutes set forth a right of action that did not exist at common law,⁶ and thus construction liens are purely statutory.⁷ Florida's Construction Lien Law is found in ch. 713, pt. I, F.S.

Chapter 713, pt. I, F.S., requires various notices, demands and requests to be provided in writing to the owner, contractor, subcontractor, lender, and building officials. It requires that the notices, demands and requests be in a statutory form. Notices include: Notice of Commencement, Notice to Owner, Claim of Lien, Notice of Termination, Waiver and Release of Lien, Notice of Contest of Lien, Contractor's Final Payment Affidavit, and Demands of Written Statement of Account. The procedure that an owner follows in paying for improvements under part I of ch. 713, F.S., determines whether a payment is proper or improper. Making a payment that is improper may result in the owner paying twice for the same improvement.⁸

Construction Liens and Leased Property

If a lessee contracts for renovations or improvements to the property he or she leased and does not pay, the lessor may be liable for construction liens placed on the property by subcontractors.⁹ A court will look to the lease to see if the improvement was made by the lessee in accordance with the agreement with the lessor. If, "the renovations and improvements contemplated by the parties at the

¹ Actual notice, "or 'express' notice is based on 'direct information' leading to 'actual knowledge of the fact in question.'" *Winn Dixie Stores, Inc., v. DolgenCorp, Inc.*, 964 So.2d 261, 265 (Fla. 4th DCA 2007)(quoting *Sapp v. Warner*, 141 So. 124, 127 (Fla. 1932)). A third type of notice is also recognized called "implied actual notice," which is defined "as notice inferred from the fact that the person had means of knowledge, which it was his duty to use and which he did not use." *DolgenCorp, Inc.*, at 265-66.

² Constructive notice has been defined as, "notice imputed to a person not having actual notice; for example, such as would be imputed under the recording statutes to persons dealing with property subject to those statutes." *Sapp v. Warner*, 141 So. 124, 127 (Fla. 1932).

³ Privity of contract is the relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so. *Black's Law Dictionary* (9th Edition 2009), "privity."

⁴ *Hiers v. Thomas*, 458 So.2d 322 (Fla. 2nd DCA 1984).

⁵ *Stunkel v. Gazebo Landscaping Design, Inc.*, 660 So.2d 623 (Fla. 1995).

⁶ *Fleitas v. Julson, Inc.* 580 So.2d 636 (Fla. 3rd DCA 1991).

⁷ *Home Elec. of Dade County, Inc. v. Gonas*, 547 So.2d 109 (Fla. 1989).

⁸ See Fred R. Dudley, *Florida Construction Liens: Representing the Residential Owner*, 79 Fla. Bar J. 34 (Dec. 2005).

⁹ See Section 713.10, F.S.; for purposes of this analysis, "subcontractor" includes sub-subcontractors, laborers and suppliers of material.

inception of the lease constituted the pith of the lease,"¹⁰ then the lessor is liable and a subcontractor may place a valid construction lien against the lessor's property. Section 713.10, F.S., provides two procedures that a lessor may follow to be exempt from a subcontractor's ability to place a lien on the lessor's property. These procedures include:

1. Recording the lease or a short form of the lease at the clerk's office;¹¹ if the lease terms expressly provide that the interest of the lessor is not subject to liens made for improvements that were authorized by lessee;¹² or
2. All of the leases entered into by a lessor for the rental of premises on a parcel of land prohibit such liability and a notice which sets forth the following is recorded by the lessor in the public records of the county in which the parcel of land is located.¹³
 1. The name of the lessor.¹⁴
 2. The legal description of the parcel of land to which the notice applies.¹⁵
 3. The specific language contained in the various leases prohibiting such liability;¹⁶ and
 4. A statement that all leases entered into for premises on the parcel of land contain the language identified.¹⁷

A lessor of a mobile home lot is also not subject to a construction lien if the lessee is a mobile home owner.¹⁸

The recording of the lease or short-form of the lease in the county records gives actual or constructive notice to any subcontractor that the lessor is not liable for any construction liens that result from the non-payment by the lessee.

Notice of Commencement

Section 713.13, F.S., provides that the recording of a Notice of Commencement (NOC) gives actual and constructive notice that claims of lien may be recorded and will have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time the notice is recorded. However, any conveyance, encumbrance or demand recorded prior to the time the notice is recorded and any proceeds thereof, regardless of when disbursed, shall have priority over liens.

The NOC must be recorded with the clerk of the court where the property is located by the owner or the owner's agent before a contractor actually begins an improvement to real property or recommences completion of any improvement after default or abandonment. A certified copy of the recorded notice or a notarized statement of filing and a copy must be posted at the jobsite. The NOC must include the legal description of the property, the street address and the tax folio number, if available. It must also include a general description of the improvement, the name and address of the owner, the name and address of the contractor, the name and address of any person designated to receive notices, and the anticipated expiration date if different from one year. The form for the NOC is provided in s. 713.13(1)(d), F.S.

One of the purposes of the NOC is to give subcontractors notification of who owns the property the subcontractor is improving and where that owner is located.

¹⁰ See *A.N. Drew, Inc. v. Frenchy's World Famous Cajun Café, Inc.*, 517 So.2d 766, 767 (Fla. 1st DCA 1988).

¹¹ The short form lease must also include the language disclaiming liability. See *14th & Heinberg, L.L.C. v. Henriksen & Co., Inc.*, 877 So.2d 34 (Fla. 1st DCA 2004).

¹² Section 713.10(1), F.S.

¹³ Section 713.10(2), F.S.

¹⁴ Section 713.10(2)(a), F.S.

¹⁵ Section 713.10(2)(b), F.S.

¹⁶ Section 713.10(2)(c), F.S.

¹⁷ Section 713.10(2)(d), F.S.

¹⁸ Section 713.10(3), F.S.

Effect of the Bill

The bill amends s. 713.10(1), F.S., to add that a lessor may record, in the county that the property is located, a memorandum of a lease that contains the specific language in the lease that prohibits liability for improvements to the property in lieu of filing the actual lease or a short form of the lease. The bill also requires that the recording of the lease, short form of the lease or memorandum of the lease must be recorded prior to the recording of a notice of commencement to be effective.

The bill amends s. 713.10(2), F.S., to provide that, where the lessor has multiple tenants and elects to record a statement regarding lease terms prohibiting liens, the lessor need only have the clause in a majority of the leases entered into for premises on the parcel of land.

The bill amends s. 713.10(3), F.S., to provide that:

- Any contractor or lienor under contract to furnish improvements being made by a lessee may serve written demand on the lessor for a copy of the provision in the lease prohibiting liability for improvements made by the lessee, and
- If the lessor does not serve a verified copy¹⁹ of the lease within thirty days he or she may be subject to a lien by the contractor or lienor if the contractor or lienor is otherwise entitled to a lien and did not have actual or constructive notice that the property was not subject to a lien.
- A demand for a copy of the pertinent portion of the lease must contain a warning to the lessor regarding the thirty days to respond. The warning must be in conspicuous type and be in substantially the following form: YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

The bill amends s. 713.13(1), F.S., to provide that a lessee who contracts for the improvement is an owner²⁰ for purposes of the notice of commencement and must be listed as owner on the notice of commencement form.

B. SECTION DIRECTORY:

Section 1 amends s. 713.10, F.S., regarding construction liens.

Section 2 amends s. 713.13, F.S., regarding notice of commencement.

Section 3 provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹⁹ Pursuant to s. 92.525, F.S., which provides the methods in which a document may be verified including being notarized.

²⁰ As defined in s. 713.01(23), F.S., "'Owner' means a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property. The term includes a condominium association pursuant to chapter 718 as to improvements made to association property or common elements. The term does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity."

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:

The bill defines the lessee as the owner for purposes of the notice of commencement. That is, a notice of commencement may, where appropriate, list the lessee on the form rather than the underlying lessor/property owner. The notice of commencement is recorded at the local clerk's office, posted on the job site, and used by the contractors and suppliers to know where to provide statutory notices. It may be advisable to have the form include both the lessor and the lessee in order that all parties receive notice and are able to protect their legal interests.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to construction liens; amending s. 713.10,
 3 F.S.; specifying that a lessor's interest in property is
 4 not subject to a construction lien for improvements made
 5 by a lessee if certain documents containing specific
 6 information and meeting certain criteria are recorded in
 7 the official records of the county before the recording of
 8 a notice of commencement; authorizing certain contractors
 9 and lienors to demand that a lessor serve verified copies
 10 of a lease prohibiting liability for improvements made by
 11 a lessee; subjecting the interest of a lessor to a
 12 specified lien for failing to serve such verified copies
 13 or serving a false or fraudulent copy; requiring that the
 14 demand include a specified warning; amending s. 713.13,
 15 F.S.; revising the form for notice of commencement to
 16 include information relating to the obligations of a
 17 lessee who contracts for improvements to property;
 18 providing an effective date.

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

21
 22 Section 1. Section 713.10, Florida Statutes, is amended to
 23 read:

24 713.10 Extent of liens.—

25 (1) Except as provided in s. 713.12, a lien under this
 26 part shall extend to, and only to, the right, title, and
 27 interest of the person who contracts for the improvement as such
 28 right, title, and interest exists at the commencement of the

29 | improvement or is thereafter acquired in the real property. When
 30 | an improvement is made by a lessee in accordance with an
 31 | agreement between such lessee and her or his lessor, the lien
 32 | shall extend also to the interest of such lessor.

33 | (2) (a) When the lease expressly provides that the interest
 34 | of the lessor shall not be subject to liens for improvements
 35 | made by the lessee, the lessee shall notify the contractor
 36 | making any such improvements of such provision or provisions in
 37 | the lease, and the knowing or willful failure of the lessee to
 38 | provide such notice to the contractor shall render the contract
 39 | between the lessee and the contractor voidable at the option of
 40 | the contractor.

41 | (b) The interest of the lessor shall not be subject to
 42 | liens for improvements made by the lessee when:

43 | 1. The lease, or a short form or a memorandum of the lease
 44 | that contains the specific language in the lease prohibiting
 45 | such liability, is recorded in the official records of the
 46 | county where the premises are located before the recording of a
 47 | notice of commencement for improvements to the premises

48 | ~~(1) The lease or a short form thereof is recorded in the~~
 49 | ~~clerk's office and the terms of the lease expressly prohibit~~
 50 | ~~such liability; or~~

51 | 2.(2) The terms All of the lease expressly prohibit such
 52 | liability and a notice advising that leases entered into by a
 53 | ~~lessor~~ for the rental of premises on a parcel of land prohibit
 54 | ~~such liability and a notice which sets forth the following is~~
 55 | has been recorded by the lessor in the official public records
 56 | of the county in which the parcel of land is located before the

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57 recording of a notice of commencement for improvements to the
58 premises and the notice includes the following:

59 a. ~~(a)~~ The name of the lessor.

60 b. ~~(b)~~ The legal description of the parcel of land to which
61 the notice applies.

62 c. ~~(c)~~ The specific language contained in the various
63 leases prohibiting such liability.

64 d. ~~(d)~~ A statement that all or a majority of the leases
65 entered into for premises on the parcel of land expressly
66 prohibit such liability ~~contain the language identified in~~
67 paragraph ~~(c)~~.

68 ~~(3) The lessee is a mobile home owner who is leasing a~~
69 ~~mobile home lot in a mobile home park from the lessor.~~

70 (3) Any contractor or lienor under contract to furnish
71 improvements being made by a lessee may serve written demand on
72 the lessor for a copy of the provision in the lease prohibiting
73 liability for improvements made by the lessee, which copy shall
74 be verified under s. 92.525. The demand must identify the lessee
75 and the premises being improved and must be in a document that
76 is separate from the notice to the owner as provided in s.
77 713.06(2). The interest of any lessor who does not serve a
78 verified copy of the lease provision within 30 days after
79 demand, or who serves a false or fraudulent copy, is subject to
80 a lien under this part by the contractor or lienor who made the
81 demand if the contractor or lienor is otherwise entitled to a
82 lien under this part and did not have actual or constructive
83 notice that the interest of the lessor was not subject to a lien
84 for improvements made by the lessee. The written demand must

85 | include a warning in conspicuous type in substantially the
 86 | following form:

87 | WARNING

88 | YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY
 89 | WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY
 90 | RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF
 91 | LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

92 | Section 2. Paragraphs (a) and (d) of subsection (1) of
 93 | section 713.13, Florida Statutes, are amended to read:

94 | 713.13 Notice of commencement.—

95 | (1) (a) Except for an improvement that is exempt pursuant
 96 | to s. 713.02(5), an owner or the owner's authorized agent before
 97 | actually commencing to improve any real property, or
 98 | recommencing completion of any improvement after default or
 99 | abandonment, whether or not a project has a payment bond
 100 | complying with s. 713.23, shall record a notice of commencement
 101 | in the clerk's office and forthwith post either a certified copy
 102 | thereof or a notarized statement that the notice of commencement
 103 | has been filed for recording along with a copy thereof. The
 104 | notice of commencement shall contain the following information:

105 | 1. A description sufficient for identification of the real
 106 | property to be improved. The description should include the
 107 | legal description of the property and also should include the
 108 | street address and tax folio number of the property if available
 109 | or, if there is no street address available, such additional
 110 | information as will describe the physical location of the real
 111 | property to be improved.

112 | 2. A general description of the improvement.

113 3. The name and address of the owner, the owner's interest
 114 in the site of the improvement, and the name and address of the
 115 fee simple titleholder, if other than such owner. A lessee who
 116 contracts for the improvements is an owner as defined under s.
 117 713.01(23) and must be listed as the owner.

118 4. The name and address of the contractor.

119 5. The name and address of the surety on the payment bond
 120 under s. 713.23, if any, and the amount of such bond.

121 6. The name and address of any person making a loan for
 122 the construction of the improvements.

123 7. The name and address within the state of a person other
 124 than himself or herself who may be designated by the owner as
 125 the person upon whom notices or other documents may be served
 126 under this part; and service upon the person so designated
 127 constitutes service upon the owner.

128 (d) A notice of commencement must be in substantially the
 129 following form:

130

131 Permit No..... Tax Folio No.....

132 NOTICE OF COMMENCEMENT

133 State of....

134 County of....

135

136 The undersigned hereby gives notice that improvement will be
 137 made to certain real property, and in accordance with Chapter
 138 713, Florida Statutes, the following information is provided in
 139 this Notice of Commencement.

140 1. Description of property: ...(legal description of the

141 | property, and street address if available)....

142 | 2. General description of improvement:.....

143 | 3. Owner information (A contracting party who is a lessee

144 | is an owner as defined under section 713.01(23), Florida

145 | Statutes, and must be listed here as the owner):.....

146 | a. Name and address:.....

147 | b. Interest in property:.....

148 | c. Name and address of fee simple titleholder (if other

149 | than Owner):.....

150 | 4.a. Contractor: ...(name and address)....

151 | b. Contractor's phone number:.....

152 | 5. Surety

153 | a. Name and address:.....

154 | b. Phone number:.....

155 | c. Amount of bond: \$.....

156 | 6.a. Lender: ...(name and address)....

157 | b. Lender's phone number:.....

158 | 7.a. Persons within the State of Florida designated by

159 | Owner upon whom notices or other documents may be served as

160 | provided by Section 713.13(1)(a)7., Florida Statutes: ...(name

161 | and address)....

162 | b. Phone numbers of designated persons:.....

163 | 8.a. In addition to himself or herself, Owner designates

164 | of to receive a copy of the Lienor's

165 | Notice as provided in Section 713.13(1)(b), Florida Statutes.

166 | b. Phone number of person or entity designated by

167 | owner:.....

168 | 9. Expiration date of notice of commencement (the

169 | expiration date is 1 year from the date of recording unless a
 170 | different date is specified).....

171 |

172 | WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 173 | EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 174 | PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 175 | STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 176 | TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 177 | POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 178 | INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 179 | ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 180 | COMMENCEMENT.

181 |

182 | ... (Signature of Owner or Owner's Authorized
 183 | Officer/Director/Partner/Manager/Lessee—a contracting party who
 184 | is a lessee meets the definition of owner under section
 185 | 713.01(23), Florida Statutes, and should sign here as the
 186 | owner)...

187 | ... (Signatory's Title/Office)...

188 |

189 | The foregoing instrument was acknowledged before me this
 190 | day of, ... (year)...., by ... (name of person)... as ... (type
 191 | of authority, . . . e.g. officer, trustee, attorney in fact)...
 192 | for ... (name of party on behalf of whom instrument was
 193 | executed).....

194 |

195 | ... (Signature of Notary Public - State of Florida)...

196 | ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

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197 | Personally Known OR Produced Identification
198 | Type of Identification Produced.....
199 |
200 | Verification pursuant to Section 92.525, Florida Statutes.
201 |
202 | Under penalties of perjury, I declare that I have read the
203 | foregoing and that the facts stated in it are true to the best
204 | of my knowledge and belief.
205 |
206 | ... (Signature of Natural Person Signing Above) ...
207 | Section 3. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1247 Parental Notice of Abortion
SPONSOR(S): Stargel and others
TIED BILLS: None IDEN./SIM. BILLS: SB 1770

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Civil Justice Subcommittee, De La Paz, Bond. Row 2: 2) Judiciary Committee.

SUMMARY ANALYSIS

In 2003, the Florida Supreme Court invalidated the Florida Parental Notice of Abortion Act enacted in 1999 on the grounds that it violated the express right to privacy provision of the Florida Constitution. In 2004, the voters approved an amendment to the Florida Constitution to authorize the Legislature to create a parental notification statute notwithstanding the privacy provision in the state constitution. The 2005 legislature enacted a statute pursuant to that constitutional authority.

Current law provides a means for a minor to receive a judicial waiver of the parental notification. Those petitions are being granted in approximately 95% of the cases.

HB 1247 makes several revisions to the parental notification law including:

- Adding a requirement that constructive notice of a minor's abortion must be mailed to the parent or legal guardian via first class mail in addition to certified mail.
• Requiring that actual notice provided by telephone be followed up with written confirmation.
• Requiring that when abortions are performed due to a medical emergency that the physician make reasonable attempts whenever possible, and without endangering the life of the minor, to contact the parent or legal guardian.
• Requiring follow up notification to the parent or legal guardian after an abortion is performed due to a medical emergency.
• Requiring written waivers of persons entitled to notice to be notarized and dated not more than 30 days prior to the abortion.
• Requiring petitions for judicial waiver to be filed in the circuit court where the minor resides.
• Requiring courts to rule on a minor's petition within 3 business days and to provide for a subsequent hearing within 48 hours if the petition is not ruled on in 3 business days.
• Removing the provision finding that failure of a trial court to rule is considered a granting of the petition and requiring a ruling in each case.
• Providing factors for the court to consider when determining a minor's maturity to decide whether to have an abortion without parental involvement.
• Providing that various financial considerations are not to be included in determining what is in a minor's best interest.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Federal Standard

The United States Supreme Court (Supreme Court) has held that parents may not exercise “an absolute, and possibly arbitrary, veto” over a minor’s decision to terminate her pregnancy.¹ The Supreme Court, however, has consistently recognized the important role parents have in counseling their minor children considering abortion. In review of a parental consent statute the Supreme Court said:

There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.²

The Supreme Court’s jurisprudence on parental notification statutes has left questions concerning the minimum essential components of such statutes in order to pass constitutional muster. The uncertainty stems from the inclusion or “bootstrapping” of constitutional requirements of parental consent statutes into parental notification statutes.

In order to prevent another person from having an absolute veto power over a minor’s abortion decision, a bypass procedure was developed for states electing to require parental consent for minors to have abortions.³ In *Bellotti v. Baird*, the Supreme Court struck down a statute requiring a minor to obtain the consent of both parents before having an abortion, subject to a judicial bypass provision, because the statute’s judicial bypass provision was too restrictive.⁴ The Supreme Court explained that in order to be constitutional, a parental consent statute must contain a bypass provision that does the following:

- Allows the minor to bypass the consent requirement if she establishes that she is mature enough and well enough informed to make the abortion decision independently;
- Allows the minor to bypass the consent requirement if she establishes that the abortion would be in her best interests;
- Ensures the minor’s anonymity; and
- Provides for expeditious bypass procedures.⁵

Since the *Bellotti* opinion, the Supreme Court has reviewed parental notification statutes on four occasions.⁶ In its review of parental notification statutes the Supreme Court has specifically declined to decide whether the judicial bypass procedures of parental consent statutes must be present in parental notification statutes.⁷ Instead the Supreme Court has upheld such statutes reasoning that a parental

¹ *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74-75 (1976).

² *Bellotti v. Baird*, 443 U.S. 622, 640-641 (1979) (Quoting Justice Stewart concurring in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 at 91(1976)).

³ See *Akron*, *supra* at 510-511.

⁴ *Bellotti v. Baird*, 443 U.S. 622 (1979).

⁵ *Id.* at 643-44, (plurality opinion).

⁶ *H.L. v. Matheson*, 450 U.S. 398, 407 (1981); *Lambert v. Wicklund*, 520 U.S. 292 (1997); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990); and *Hodgson v. Minnesota*, 497 U.S. 417 (1990)

⁷ *Akron*, *supra* at 510; *Wicklund*, *supra* at 295.

notification statute that includes a judicial bypass provision sufficient to satisfy a parental *consent* statute, must necessarily be sufficient for a parental *notification* statute since mere notification does not afford anyone a veto power over a minor's abortion decision.⁸

Florida's Background on Parental Notice Statutes

In 1999, the Legislature passed the "Parental Notice of Abortion Act."⁹ The act required a physician performing or inducing an abortion on a minor to provide the minor's parent or legal guardian at least 48 hours notice.¹⁰ The act provided for limited exceptions, the most substantial of which were in the case of a medical emergency and when the notice requirement was waived by a judge.¹¹ The act was enjoined before it was ever enforced and was subsequently held unconstitutional by the Florida Supreme Court in *North Florida Women's Health and Counseling Services v. State* in July of 2003.¹² The Florida Supreme Court relied exclusively on the express right to privacy provision found in the Florida Constitution to invalidate the act.¹³

In 2004, the Legislature passed HJR 1 to amend the Florida Constitution to authorize the Legislature to create a parental notification statute notwithstanding the express provision in the state constitution regarding the right to privacy. The voters approved the amendment on November 2, 2004.¹⁴ The amendment is found at Article X, Section 22 and provides:

Parental notice of termination of a minor's pregnancy.--The legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

In 2005, the Legislature passed a revised version of its parental notification statute which is currently codified at s. 390.01114, F.S.¹⁵ Several provisions of the 2005 act were challenged in a federal district court but were upheld.¹⁶

Judicial Waiver Statistics

Current law includes a provision to track the number of waiver petitions being filed in court and their disposition.¹⁷ Based on data obtained from the Office of State Courts Administrator for years 2006 through 2009, in response to that reporting requirement, the courts have granted an average of 95% of the petitions of minors seeking to waive the parental notice requirement.¹⁸

Penalties for Violation

Any violation of the current statute by a physician constitutes grounds for disciplinary action under s. 458.331 or s. 459.015, F.S.¹⁹ Disciplinary action may result in the revocation or suspension of the

⁸ *Akron, supra* at 510-511; *Wicklund supra* at 295.

⁹ Chapter 99-322, Laws of Florida, later codified as s. 390.01115, F.S. (1999).

¹⁰ Section 390.01115(3)(a), F.S. (1999).

¹¹ Section 390.01115(3)(b), F.S. (1999).

¹² *North Florida Women's Health and Counseling Services v. State*, 866 So.2d 612 (Fla. 2003).

¹³ *Id.* at 640.

¹⁴ According to the Department of State website, 4,639,635 (64.7%) voted in favor of the amendment and 2,534,910 (35.3%) voted against the amendment. <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2004&DATAMODE=>

¹⁵ Chapter 2005-52, L.O.F.

¹⁶ *Womancare of Orlando v. Agwunobi*, 448 F.Supp.2d 1309 (N.D. Florida 2006).

¹⁷ Section 390.01114(6), F.S.

¹⁸ Office of State Courts Administrator, *Parental Notice of Abortion Act, Petitions Filed and Disposed*, reports dated January 28, 2007; January 30, 2008; January 28, 2009; March 17, 2010.

¹⁹ Section 390.01114(3)(c), F.S.

physician's license to practice and/or the imposition of administrative fines of up to \$10,000 for each violation.²⁰ HB 1247 provides the same penalty provisions for violation of the notification requirements as current law.

Current Law and the Effect of HB 1247

Notification Requirement

Current law requires a physician to notify the parent or legal guardian of a minor at least 48 hours before performing or inducing an abortion on that minor.²¹ The physician must provide "actual notice"²² unless "actual notice is not possible after a reasonable effort has been made," in which case "constructive notice"²³ must be given. "Actual notice" is given directly, in person or by telephone, to a parent or legal guardian of the minor. "Constructive notice" is given in writing, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian.

HB 1247 provides that constructive notice must be given by both first class mail and certified mail. In addition, when actual notice is provided by telephone, it must be followed up with written confirmation by the physician and mailed to the last known address of the parent or legal guardian in the same manner as constructive notice.

Exceptions to the Notification Requirement

Current law provides that notice is not required if (1) in the physician's good-faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirement; (2) the parent or guardian waives notice in writing; (3) the minor is or has been married or has had the disability of nonage removed; (4) the minor has a minor dependent child; or (5) the minor has successfully petitioned a circuit court for a waiver of the notice requirement.²⁴

Medical Emergency Exception

This bill does not amend the definition in current law of medical emergency, and provides the same exceptions under the same circumstances.²⁵ Under the bill, however, whenever a medical emergency exists, this bill adds that the physician "should make reasonable attempts, whenever possible without endangering the life of the minor, to contact the parent or legal guardian."

Current law allows a physician to proceed with an abortion in medical emergencies and requires that the physician document the reasons for the medical necessity in the minor's medical records. This bill adds a requirement that the physician in this situation provide notice of the abortion directly in person or by telephone to the parent or legal guardian of the minor. The notice must include the details of the medical emergency and any additional risks to the minor. If such direct notice has not been provided to the parent or legal guardian within 24 hours after

²⁰ Section 456.072(2)(d), F.S.

²¹ Section 390.01114(3)(a), F.S.

²² Section 390.01114(2)(a), F.S.

²³ For purposes of "constructive notice," delivery is deemed to have occurred after 72 hours have passed. Section 390.01114(2)(c), F.S.

²⁴ Section 390.01114(3)(b), F.S.

²⁵ "Medical Emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function. Section 390.01114(2)(d), F.S.

the abortion, the physician must provide notice in writing which must be delivered in the same manner required for constructive notice.

Written Waiver of Persons Entitled to Notice Exception

Current law provides an exception from the notice requirements of s. 390.01114(3), F.S., if “[n]otice is waived in writing by the person who is entitled to notice.” The section contains no verification requirement to guarantee the authenticity of such written waivers, and so it is possible that minors could provide the physician with forged parental waivers and circumvent the entire notification requirement with a single unverified handwritten note.

This bill requires a written waiver to be notarized and dated no more than 30 days before the abortion. A written waiver must also contain a specific waiver of the parent’s or legal guardian’s right to notice of the minor’s abortion.

Forum for Judicial Waiver

Current law allows a minor to petition for a judicial waiver in any circuit court within the jurisdiction of the District Court of Appeal having jurisdiction over the judicial circuit within which the minor resides. There are five appellate districts in the state with each having jurisdiction over two or more of the twenty judicial circuits statewide. HB 1247 requires a petition for waiver to be filed in any circuit court in the jurisdiction where the minor resides.

Time for Proceedings

Where judicial waiver is sought, current law requires the court to issue its ruling within 48 hours of the filing of the petition. If the court does not rule within 48 hours, the petition is granted by default.

This bill provides that a court has 3 business days to issue a ruling on judicial waiver. The bill also eliminates the provision granting a motion by default. If a court does not rule within 3 business days, the minor may immediately petition the chief judge of the circuit who must ensure that a hearing is held within 48 hours of receipt of the minor’s petition to the chief judge. The chief judge must also ensure that an order is entered within 24 hours of the hearing.

Appeals

Section 390.01114(4)(f), F.S., provides the right of a minor to an expedited appeal of a denial of a petition for a judicial waiver. Due to the ex parte nature of these proceedings, orders granting a waiver are not subject to appeal.

HB 1247 adds a new provision to s. 390.01114(4)(b), F.S., restating that a minor has a right to appeal a denial of a petition for a judicial waiver and adding a requirement that the appellate court must rule within 7 days after receipt of the appeal. The bill adds that a ruling on appeal may be remanded to the circuit court with instructions for the lower court to rule within 3 business days of the remand. The bill specifically requires that reversing a ruling of the lower court must be based on an abuse of discretion standard of appellate review and not based on the weight of the evidence presented to the trial court. In this sense, the bill requires an appellate court to defer to the factual and evidentiary evaluation of the trial judge in denying a petition. Under an abuse of discretion standard, a reversal would not be appropriate where reasonable people could differ as to the propriety of the decision of the trial court to deny a petition.²⁶ According to the bill, the express deference to a trial court’s evidentiary evaluation is due to the nonadversarial nature of the proceeding.

²⁶ See generally, *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980).

Grounds for Judicial Waiver

The current statute contains a *Bellotti* type bypass provision and allows the court to grant a waiver of its notice requirements under any of the following circumstances:

- Where the court finds by clear and convincing evidence, that the minor is “sufficiently mature” to decide whether to terminate her pregnancy.²⁷
- Where the court finds by a preponderance of the evidence, that there “is evidence of child abuse or sexual abuse of the petitioner by one or both of her parents or her guardian.”²⁸
- Where the court finds by a preponderance of the evidence, that “the notification of a parent or guardian is not in the best interest of the petitioner.”²⁹

Sufficient Maturity

With respect to granting a waiver on the basis of a minor’s “sufficient maturity,” HB 1247 provides several factors the court must consider in determining whether to grant a petition:

- The minor's age.
- The minor's overall intelligence.
- The minor's emotional development and stability.
- The minor's credibility and demeanor as a witness.
- The minor's ability to accept responsibility.
- The minor's ability to assess both the immediate and long-range consequences of the minor's choices.
- The minor's ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.
- Whether there may be any undue influence by another on the minor's decision to have an abortion.

The bill requires a final order on a petition to include factual findings and legal conclusions regarding the maturity of the minor in view of these specific factors.

Child or Sexual Abuse

With respect to granting a waiver on the basis of the minor being a victim of child or sexual abuse of a parent or legal guardian, HB 1247 makes no substantive change to current law.

Best Interest

With respect to granting a waiver on the basis that notification of the parent or legal guardian is not in the best interest of the minor, HB 1247 raises the standard of proof from the *preponderance of the evidence* standard to the higher *clear and convincing evidence* standard of proof.³⁰ Also, HB 1247 specifically excludes financial best interest, financial considerations or potential financial impact on the minor or the minor’s family for continuing the pregnancy, from what may be considered in the minor’s best interest.

²⁷ Section 390.01114(4)(c), F.S.

²⁸ Section 390.01114(4)(d), F.S.

²⁹ *Id.*

³⁰ Black’s Law Dictionary describes the preponderance of the evidence standard as “. . . evidence which as a whole shows that the fact to be proved is more probable than not.” It describes clear and convincing evidence as “. . . where the truth of the facts asserted are highly probable.” Black’s Law Dictionary 6th Edition.

Office of State Court Administrator Reporting

Current law requires the Supreme Court through the Office of the State Courts Administrator to report annually to the Governor, the President of the Senate and the Speaker of the House on the number of petitions filed requesting a judicial waiver and the manner of their disposal. HB 1247 adds a requirement that the annual report include the reason any such waivers are granted.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 390.01114, F.S., relating to the Parental Notice of Abortion Act.

Section 2 provides a severability clause.

Section 3 provides an effective date upon becoming a 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 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/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to parental notice of abortion; amending
 3 s. 390.01114, F.S.; revising the definition of the term
 4 "constructive notice"; revising notice requirements
 5 relating to the termination of a pregnancy of a minor;
 6 providing exceptions to the notice requirements; revising
 7 procedure for judicial waiver of notice; providing for the
 8 minor to petition for a hearing within a specified time;
 9 providing that in a hearing relating to waiving the
 10 requirement for parental notice, the court consider
 11 certain additional factors, including whether the minor's
 12 decision to terminate her pregnancy was due to undue
 13 influence; providing a procedure for appeal if judicial
 14 waiver of notice is not granted; requiring that the court
 15 order contain factual findings and legal conclusions;
 16 requiring Supreme Court reports to the Governor and
 17 Legislature to include additional information; providing
 18 for severability; providing an effective date.

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

21
 22 Section 1. Section 390.01114, Florida Statutes, is amended
 23 to read:

24 390.01114 Parental Notice of Abortion Act.—

25 (1) SHORT TITLE.—This section may be cited as the
 26 "Parental Notice of Abortion Act."

27 (2) DEFINITIONS.—As used in this section, the term:

28 (a) "Actual notice" means notice that is given directly,

29 in person or by telephone, to a parent or legal guardian of a
 30 minor, by a physician, at least 48 hours before the inducement
 31 or performance of a termination of pregnancy, and documented in
 32 the minor's files.

33 (b) "Child abuse" has the same meaning as s. 39.0015(3).

34 (c) "Constructive notice" means notice that is given in
 35 writing, signed by the physician, and mailed at least 72 hours
 36 before the inducement or performance of the termination of
 37 pregnancy, to the last known address of the parent or legal
 38 guardian of the minor, by first-class mail and by certified
 39 mail, return receipt requested, and delivery restricted to the
 40 parent or legal guardian. After the 72 hours have passed,
 41 delivery is deemed to have occurred.

42 (d) "Medical emergency" means a condition that, on the
 43 basis of a physician's good faith clinical judgment, so
 44 complicates the medical condition of a pregnant woman as to
 45 necessitate the immediate termination of her pregnancy to avert
 46 her death, or for which a delay in the termination of her
 47 pregnancy will create serious risk of substantial and
 48 irreversible impairment of a major bodily function.

49 (e) "Sexual abuse" has the meaning ascribed in s. 39.01.

50 (f) "Minor" means a person under the age of 18 years.

51 (3) NOTIFICATION REQUIRED.—

52 (a) Actual notice shall be provided by the physician
 53 performing or inducing the termination of pregnancy before the
 54 performance or inducement of the termination of the pregnancy of
 55 a minor. The notice may be given by a referring physician. The
 56 physician who performs or induces the termination of pregnancy

57 must receive the written statement of the referring physician
 58 certifying that the referring physician has given notice. If
 59 actual notice is not possible after a reasonable effort has been
 60 made, the physician performing or inducing the termination of
 61 pregnancy or the referring physician must give constructive
 62 notice. Notice given under this subsection by the physician
 63 performing or inducing the termination of pregnancy must include
 64 the name and address of the facility providing the termination
 65 of pregnancy and the name of the physician providing notice.
 66 Notice given under this subsection by a referring physician must
 67 include the name and address of the facility where he or she is
 68 referring the minor and the name of the physician providing
 69 notice. If actual notice is provided by telephone, the physician
 70 must actually speak with the parent or guardian, and must record
 71 in the minor's medical file the name of the parent or guardian
 72 provided notice, the phone number dialed, and the date and time
 73 of the call. If constructive notice is given, the physician must
 74 document that notice by placing copies of any document related
 75 to the constructive notice, including, but not limited to, a
 76 copy of the letter and the return receipt, in the minor's
 77 medical file. Actual notice given by telephone shall be
 78 confirmed in writing, signed by the physician, and mailed to the
 79 last known address of the parent or legal guardian of the minor,
 80 by first-class mail and by certified mail, return receipt
 81 requested, with delivery restricted to the parent or legal
 82 guardian.

- 83 (b) Notice is not required if:
 84 1. In the physician's good faith clinical judgment, a

85 | medical emergency exists and there is insufficient time for the
 86 | attending physician to comply with the notification
 87 | requirements. If a medical emergency exists, the physician shall
 88 | make reasonable attempts, whenever possible, without endangering
 89 | the minor, to contact the parent or legal guardian, and may
 90 | proceed, but must document reasons for the medical necessity in
 91 | the patient's medical records. The physician shall provide
 92 | notice directly, in person or by telephone, to the parent or
 93 | legal guardian, including details of the medical emergency and
 94 | any additional risks to the minor. If the parent or legal
 95 | guardian has not been notified within 24 hours after the
 96 | termination of the pregnancy, the physician shall provide notice
 97 | in writing, including details of the medical emergency and any
 98 | additional risks to the minor, signed by the physician, to the
 99 | last known address of the parent or legal guardian of the minor,
 100 | by first-class mail and by certified mail, return receipt
 101 | requested, with delivery restricted to the parent or legal
 102 | guardian;

103 | 2. Notice is waived in writing by the person who is
 104 | entitled to notice and such waiver is notarized, dated not more
 105 | than 30 days before the termination of pregnancy, and contains a
 106 | specific waiver of the right of the parent or legal guardian to
 107 | notice of the minor's termination of pregnancy;

108 | 3. Notice is waived by the minor who is or has been
 109 | married or has had the disability of nonage removed under s.
 110 | 743.015 or a similar statute of another state;

111 | 4. Notice is waived by the patient because the patient has
 112 | a minor child dependent on her; or

113 5. Notice is waived under subsection (4).
 114 (c) Violation of this subsection by a physician
 115 constitutes grounds for disciplinary action under s. 458.331 or
 116 s. 459.015.
 117 (4) PROCEDURE FOR JUDICIAL WAIVER OF NOTICE.—
 118 (a) A minor may petition any circuit court ~~in a judicial~~
 119 ~~circuit within the jurisdiction of the District Court of Appeal~~
 120 in which the minor ~~she~~ resides for a waiver of the notice
 121 requirements of subsection (3) and may participate in
 122 proceedings on her own behalf. The petition may be filed under a
 123 pseudonym or through the use of initials, as provided by court
 124 rule. The petition must include a statement that the petitioner
 125 is pregnant and notice has not been waived. The court shall
 126 advise the minor that she has a right to court-appointed counsel
 127 and shall provide her with counsel upon her request at no cost
 128 to the minor.
 129 (b)1. Court proceedings under this subsection must be
 130 given precedence over other pending matters to the extent
 131 necessary to ensure that the court reaches a decision promptly.
 132 The court shall rule, and issue written findings of fact and
 133 conclusions of law, within 3 business days ~~48 hours~~ after the
 134 petition is filed, except that the 3-business-day ~~48-hour~~
 135 limitation may be extended at the request of the minor. If the
 136 court fails to rule within the 3-business-day ~~48-hour~~ period and
 137 an extension has not been requested, the minor may immediately
 138 petition for a hearing upon the expiration of the 3-business-day
 139 period to the chief judge of the circuit, who must ensure a
 140 hearing is held within 48 hours after receipt of the minor's

141 petition and an order is entered within 24 hours after the
 142 hearing the petition is granted, and the notice requirement is
 143 waived.

144 2. If the circuit court does not grant judicial waiver of
 145 notice, the minor has the right to appeal. An appellate court
 146 must rule within 7 days after receipt of appeal, but a ruling
 147 may be remanded with further instruction for a ruling within 3
 148 business days after the remand. The reason for overturning a
 149 ruling on appeal must be based on abuse of discretion by the
 150 court and may not be based on the weight of the evidence
 151 presented to the circuit court since the proceeding is a
 152 nonadversarial proceeding.

153 (c) If the court finds, by clear and convincing evidence,
 154 that the minor is sufficiently mature to decide whether to
 155 terminate her pregnancy, the court shall issue an order
 156 authorizing the minor to consent to the performance or
 157 inducement of a termination of pregnancy without the
 158 notification of a parent or guardian. If the court does not make
 159 the finding specified in this paragraph or paragraph (d), it
 160 must dismiss the petition. Factors the court shall consider
 161 include:

- 162 1. The minor's:
 - 163 a. Age.
 - 164 b. Overall intelligence.
 - 165 c. Emotional development and stability.
 - 166 d. Credibility and demeanor as a witness.
 - 167 e. Ability to accept responsibility.
 - 168 f. Ability to assess both the immediate and long-range

169 consequences of the minor's choices.

170 g. Ability to understand and explain the medical risks of
 171 terminating her pregnancy and to apply that understanding to her
 172 decision.

173 2. Whether there may be any undue influence by another on
 174 the minor's decision to have an abortion.

175 (d) If the court finds, by a preponderance of the
 176 evidence, that the petitioner is the victim ~~there is evidence~~ of
 177 child abuse or sexual abuse inflicted ~~of the petitioner~~ by one
 178 or both of her parents or her guardian, or by clear and
 179 convincing evidence that the notification of a parent or
 180 guardian is not in the best interest of the petitioner, the
 181 court shall issue an order authorizing the minor to consent to
 182 the performance or inducement of a termination of pregnancy
 183 without the notification of a parent or guardian. The best-
 184 interest standard does not include financial best interest or
 185 financial considerations or the potential financial impact on
 186 the minor or the minor's family if the minor does not terminate
 187 the pregnancy. If the court finds evidence of child abuse or
 188 sexual abuse of the minor petitioner by any person, the court
 189 shall report the evidence of child abuse or sexual abuse of the
 190 petitioner, as provided in s. 39.201. If the court does not make
 191 the finding specified in this paragraph or paragraph (c), it
 192 must dismiss the petition.

193 (e) A court that conducts proceedings under this section
 194 shall:

195 1. Provide for a written transcript of all testimony and
 196 proceedings; and

197 2. Issue a final written order containing ~~and specific~~
 198 factual findings and legal conclusions supporting its decision,
 199 including factual findings and legal conclusions relating to the
 200 maturity of the minor as provided under paragraph (c); and shall

201 3. Order that a confidential record be maintained, as
 202 required under s. 390.01116. ~~At the hearing, the court shall~~
 203 ~~hear evidence relating to the emotional development, maturity,~~
 204 ~~intellect, and understanding of the minor, and all other~~
 205 ~~relevant evidence.~~

206 (f) All hearings under this section, including appeals,
 207 shall remain confidential and closed to the public, as provided
 208 by court rule.

209 (g)~~(f)~~ An expedited appeal shall be made available, as the
 210 Supreme Court provides by rule, to any minor to whom the circuit
 211 court denies a waiver of notice. An order authorizing a
 212 termination of pregnancy without notice is not subject to
 213 appeal.

214 (h)~~(g)~~ ~~No~~ Filing fees or court costs may not ~~shall~~ be
 215 required of any pregnant minor who petitions a court for a
 216 waiver of parental notification under this subsection at either
 217 the trial or the appellate level.

218 (i)~~(h)~~ ~~A~~ No county is not ~~shall be~~ obligated to pay the
 219 salaries, costs, or expenses of any counsel appointed by the
 220 court under this subsection.

221 (5) PROCEEDINGS.—The Supreme Court is requested to adopt
 222 rules and forms for petitions to ensure that proceedings under
 223 subsection (4) are handled expeditiously and in a manner
 224 consistent with this act. The Supreme Court is also requested to

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225 adopt rules to ensure that the hearings protect the minor's
 226 confidentiality and the confidentiality of the proceedings.

227 (6) REPORT.—The Supreme Court, through the Office of the
 228 State Courts Administrator, shall report by February 1 of each
 229 year to the Governor, the President of the Senate, and the
 230 Speaker of the House of Representatives on the number of
 231 petitions filed under subsection (4) for the preceding year, and
 232 the timing and manner of disposal of such petitions by each
 233 circuit court. For each petition resulting in a waiver of
 234 notice, the reason for the waiver shall be included in the
 235 report.

236 Section 2. If any provision of this act or its application
 237 to any individual or circumstance is held invalid, the
 238 invalidity does not affect other provisions or applications of
 239 the act which can be given effect without the invalid provision
 240 or application, and to this end the provisions of this act are
 241 severable.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1373 Condominiums
SPONSOR(S): Sands
TIED BILLS: None IDEN./SIM. BILLS: SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburr <i>W</i>	Bond <i>NB</i>
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to statute, which is comprised entirely of units that may be owned by one or more persons, and in which there is, belonging to each unit, an undivided share in the common elements. The owners of the units may form a condominium association by declaration that is charged with the management and oversight of the common elements of the condominium building. The association may also make and collect assessments in connection with its duties. If an owner fails to pay these assessments within ninety days the association may suspend the owner's use of common elements, common facilities, and other association property.

The bill provides that the common facilities of the association that may be suspended from use of the owner include, but are not limited to: recreation facilities, pools, gyms, meeting rooms, cable television service, Internet service, and valet service. The bill also provides that the utilities that are not subject to suspension are only water and electric utilities.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁵ Condominiums are administered by a board of directors referred to as a "board of administration."⁶

The condominium association, which is administered by a board of administration, has many powers and duties pursuant to s. 718.11, F.S., including managing the common areas, contracting on behalf of the condominium pursuant to its powers and duties and making and collecting assessments.

Obligations of the Owner and Remedies for Non-Payment to the Association

Section 718.303(1), F.S., provides that:

Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit.

One of the obligations of the owner is the payment of assessments. Section 718.303(3), F.S., provides that:

If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the association, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements,⁷ common facilities,⁸ or any other association property⁹ until the monetary obligation is paid.

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-97 (Fla. 4th DCA 2003).

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 718.103(4), F.S.

⁷ As defined in s. 718.103(8), F.S., "'Common elements' means the portions of the condominium property not included in the units."

⁸ "Common facilities," is not defined in s. 718.103, F.S.

⁹ As defined in s. 718.103(3), F.S., "'Association property' means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members."

Some condominium associations are interpreting the phrase "common elements" that may be suspended to include phone service.

Effect of the Bill

The bill amends s. 718.303(3), F.S., to provide that common elements subject to suspension of use if the unit owner is delinquent for more than 90 days in paying a monetary obligation to the association include, but are not limited to: recreation facilities, pools, gyms, meeting rooms, cable television service, Internet service, and valet service. The bill also provides that the utilities not subject to suspension by the association are only water and electric utilities.

B. SECTION DIRECTORY:

Section 1 amends s. 718.303, F.S., regarding common elements of a condominium.

Section 2 provides an effective date of July 1, 2011.

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/ COMMITTEE SUBSTITUTE CHANGES

n/a

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1 A bill to be entitled
 2 An act relating to condominiums; amending s. 718.303,
 3 F.S.; specifying common elements for which right of use
 4 may be suspended by a condominium association if a unit
 5 owner is delinquent in paying a monetary obligation;
 6 providing an effective date.

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

9
 10 Section 1. Subsection (3) of section 718.303, Florida
 11 Statutes, is amended to read:

12 718.303 Obligations of owners and occupants; remedies.—

13 (3) If a unit owner is delinquent for more than 90 days in
 14 paying a monetary obligation due to the association, the
 15 association may suspend the right of a unit owner or a unit's
 16 occupant, licensee, or invitee to use common elements, common
 17 facilities, or any other association property until the monetary
 18 obligation is paid. The common elements include, but are not
 19 limited to, recreation facilities, pools, gyms, meeting rooms,
 20 cable television service, Internet service, and valet service.

21 This subsection does not apply to limited common elements
 22 intended to be used only by that unit, common elements that must
 23 be used to access the unit, electric and water utility services
 24 provided to the unit, parking spaces, or elevators. The
 25 association may also levy reasonable fines for the failure of
 26 the owner of the unit, or its occupant, licensee, or invitee, to
 27 comply with any provision of the declaration, the association
 28 bylaws, or reasonable rules of the association. A fine does not

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29 | become a lien against a unit. A fine may not exceed \$100 per
30 | violation. However, a fine may be levied on the basis of each
31 | day of a continuing violation, with a single notice and
32 | opportunity for hearing. However, the fine may not in the
33 | aggregate exceed \$1,000. A fine may not be levied and a
34 | suspension may not be imposed unless the association first
35 | provides at least 14 days' written notice and an opportunity for
36 | a hearing to the unit owner and, if applicable, its occupant,
37 | licensee, or invitee. The hearing must be held before a
38 | committee of other unit owners who are neither board members nor
39 | persons residing in a board member's household. If the committee
40 | does not agree with the fine or suspension, the fine or
41 | suspension may not be levied or imposed.

42 | Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-10 Supreme Court Provisions

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Johnson	Bond <i>NB</i>

SUMMARY ANALYSIS

This bill repeals outdated statutes relating to the Florida Supreme Court. Statutes that are repealed are:

- Section 25.151, F.S., which provides that “[n]o justice of the Supreme Court of Florida drawing retirement compensation as provided by any law shall engage in the practice of law.”
- Section 25.191, F.S., which provides that the “Supreme Court shall appoint a Clerk of the Supreme Court who shall hold office during the pleasure of the court.”
- Section 25.211, F.S., which provides that the “clerk shall have an office in the Supreme Court Building.”
- Section 25.231, F.S., which provides that the “Clerk shall perform such duties as may be directed by the court.”
- Section 25.371, F.S., which provides that “[w]hen a rule is adopted by the Supreme Court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.”

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Retired Justices

This bill repeals s. 25.151, F.S., which prohibits a retired justice from engaging in the practice of law.¹ This provision has been in the Florida Statutes since 1957.²

Florida Supreme Court justices are subject to mandatory retirement from the court on or after their 70th birthday.³ Furthermore, the justices are subject to merit retention votes upon the next general election following his or her appointment and every six years thereafter.⁴

Since 2000, there have been six justices to leave the Supreme Court:⁵ in 2003, Justice Shaw could not run again; in 2002, Justice Harding retired and returned to private practice; in 2009, Justices Wells and Anstead faced mandatory retirement; and in 2008, Justices Cantero and Bell resigned and returned to private practice.⁶

Eliminating this statutory prohibition of retired justices engaging in the practice of law will allow justices to retire from the Supreme Court and draw retirement while practicing law.

Clerk of the Supreme Court

This bill repeals sections 25.191, 25.211, and 25.231, F.S. These statutes require the appointment of a Clerk of the Supreme Court; require the clerk have an office in the Supreme Court Building; and require that the clerk perform duties as directed by the court.

These provisions have been in the Florida Statutes since 1957.⁷ Each statutory provision provides a mandate relating to the clerk and the inner mechanics and workings of the Supreme Court.

This bill will not remove the ability for the Supreme Court to have a clerk; it merely removes the statutory mandate to do so.⁸ Similarly, the clerk's office and duties are not changed through this bill, which only removes the statutory requirement for the office to be located in the Supreme Court Building⁹ and the clerk's duties¹⁰ to be provided by the court.

Rules of the Court

This bill repeals section 25.371, F.S., which provides that a rule of the Supreme Court concerning practice and procedure supersedes a contrary statutory provision. This provision has been in the Florida Statutes since 1957.¹¹ Article V, s. 2(a), Fla. Const., provides, "[t]he Supreme Court shall adopt rules for the practice and procedure in all courts." The Supreme Court of Florida has held that where the court has promulgated rules relating to practice and procedure, contrary statutes are

¹ For a list of all Florida Supreme Court justices, and the circumstances of their departure from the court, see "Dates of Service" link at <http://www.floridasupremecourt.org/justices/index.shtml> (hereinafter, "Dates of Service").

² Laws 1957, c. 57-274, § 1.

³ <http://www.floridasupremecourt.org/justices/merit.shtml>.

⁴ *Id.*

⁵ Dates of Service.

⁶ *Id.*

⁷ Laws 1957, c. 57-274, § 1.

⁸ Section 25.191, F.S.

⁹ Section 25.211, F.S.

¹⁰ Section 25.231, F.S.

¹¹ Laws 1957, c. 57-274, § 1.

unconstitutional to the extent of the conflict.¹² Repeal of this statutory provision will not remove the ability of the Supreme Court's power to promulgate rules of practice and procedure.

B. SECTION DIRECTORY:

Section 1 repeals s. 25.151, F.S., relating to a retired justice practicing law.

Section 2 repeals s. 25.191, F.S., requiring the Supreme Court appoint a clerk.

Section 3 repeals s. 25.211, F.S., relating to the clerk's office.

Section 4 repeals s. 25.231, F.S., relating to the clerk's duties.

Section 5 repeals s. 25.371, F.S., relates to the court's rulemaking power.

Section 6 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have any impact on state revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

¹² See e.g. *Massey v. David*, 976 So. 2d 931, 937 (Fla. 2008).

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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A bill to be entitled
 An act relating to the Supreme Court; repealing s. 25.151,
 F.S., repealing restriction on the practice of law by a
 retired justice; repealing s. 25.191, F.S., repealing
 requirement to appoint a Clerk of the Supreme Court;
 repealing s. 25.211, F.S., repealing requirement that the
 clerk have an office in Supreme Clerk Building; repealing
 s. 25.231, F.S.; repealing requirement that the clerk
 perform duties as directed by the court; repealing s.
 25.371, F.S.; repealing provision by which rules of court
 supersede statutes; providing an effective date.

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

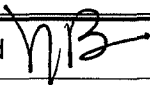
- Section 1. Section 25.151, Florida Statutes, is repealed.
- Section 2. Section 25.191, Florida Statutes, is repealed.
- Section 3. Section 25.211, Florida Statutes, is repealed.
- Section 4. Section 25.231, Florida Statutes, is repealed.
- Section 5. Section 25.371, Florida Statutes, is repealed.
- Section 6. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-11 Judicial Census Commissions

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: None IDEN./SIM. BILLS: SB 1398

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier	LMB Bond 

SUMMARY ANALYSIS

This proposed committee bill repeals the statutory provision related to the judicial census commissions. The commissions may be created by the Legislature to determine the population of a judicial circuit. Until 1973, the Florida Constitution provided for one circuit judge for every 50,000 people in a judicial circuit. The statute related to judicial census commissions is no longer needed because the Constitution has been amended to provide for different method of determining the number of circuit judges.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 26.011, F.S., provides that the Legislature may, from time to time, create a commission to determine the population of a judicial circuit. This "judicial census commission" may report to the Governor and the Governor may, by proclamation, announce the population of a circuit.

A judicial census commission was once useful because prior versions of the Florida Constitution provided for 1 circuit judge for every 50,000 people. For example, article V, section 6 of the 1968 Constitution provided:

(2) Circuit Judges. The legislature shall provide for one circuit judge in each circuit for each fifty thousand inhabitants or major fraction thereof according to the last census authorized by law. In circuits having more than one judge the legislature may designate the place of residence of any such additional judge or judges.

This provision was removed from the Constitution effective in 1973¹ and replaced with the current system where the Supreme Court certifies the need for additional judges to the Legislature prior to each legislative session.²

This proposed committee bill repeals s. 26.011, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 26.011, F.S., relating to census commissions.

Section 2 provides an effective date of July 1, 2011.

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.

¹ SJR 52-D (1971), adopted in 1972 and effective January 1, 1973.

² Article V, s. 9, Fla. Const.

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/ COMMITTEE SUBSTITUTE CHANGES

n/a

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A bill to be entitled
An act relating to judicial census commissions; repealing
s. 26.011, F.S.; repealing provisions related to judicial
census commissions; providing an effective date.

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

Section 1. Section 26.011, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-12 Executive Officer of Circuit Court

SPONSOR(S): Civil Justice Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>NB</i>

SUMMARY ANALYSIS

Current law designates the sheriff as the executive officer of the circuit courts. This proposed committee bill repeals that provision of law. The sheriff is required to attend sessions of court pursuant to a different statutory provision so this repeal will not change the requirements that sheriffs provide security in courtrooms. Other duties which might be provided by an executive officer are provided by the Office of State Courts Administrator.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 26.49, F.S., provides that the sheriff is the executive officer of the circuit court of the county. Section 30.15, F.S., provides for duties of the sheriffs, including attending all terms of the circuit court and county court held in their counties.

This proposed committee bill repeals s. 26.49, F.S. The Florida Rules of Judicial Administration provide for state court administrator to perform administrative functions for the courts. Section 30.15, F.S., provides that the sheriff will attend all terms of court so the sheriffs can continue providing security for the circuit and county courts. Florida law does not provide for other duties of the sheriff as executive officer of the circuit courts.

B. SECTION DIRECTORY:

Section 1 repeals s. 26.49, F.S., relating to the sheriff as executive officer of the courts.

Section 2 provides an effective date of July 1, 2011.

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/ COMMITTEE SUBSTITUTE CHANGES

n/a

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A bill to be entitled
An act relating to the circuit courts; repealing s. 26.49,
F.S.; repealing provision by which the sheriff of a county
is the executive officer of the circuit court; providing
an effective date.
Be It Enacted by the Legislature of the State of Florida:
Section 1. Section 26.49, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-13 District Court
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>NB</i>

SUMMARY ANALYSIS

Current law provides that three judges on a district court of appeal shall consider each case and that the concurrence of a majority shall be necessary to a decision. The Florida Constitution provides that three judges on a district court shall consider each case and the concurrence of two shall be necessary to a decision. The statute restates the constitutional provision. This proposed committee bill repeals the redundant statute.

Current law provides that the duties of the clerk of the district court of appeal shall be as prescribed by the rules of court while the Constitution provides that the clerk shall perform such duties as the court directs. This proposed committee bill repeals an unnecessary statute.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 35.13, F.S., provides that three judges on a district court of appeal shall consider each case and that the concurrence of a majority shall be necessary to a decision. Article V, s. 4(a), Fla. Const., provides that three judges on a district court shall consider each case and the concurrence of two shall be necessary to a decision. Section 35.13, F.S., restates the constitutional provision. This proposed committee bill repeals the redundant statute.

Section 35.25, F.S., provides that the duties of the clerk of the district court of appeal shall be as prescribed by the rules of court. Article V, s. 4(c), Fla. Const., provides that the clerk shall perform such duties as the court directs. This proposed committee bill repeals an unnecessary statute.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.13, F.S., relating to a quorum of a district court of appeal.

Section 2 repeals s. 35.25, F.S., relating to the duties of the clerk of a district court of appeal.

Section 3 provides an effective date of July 1, 2011.

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/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to district courts of appeal; repealing s.
3 35.13, F.S.; repealing requirement that a district court
4 sit in 3 judge panels; repealing s. 35.25, F.S.; repealing
5 requirement that the clerk of a district court perform the
6 duties prescribed by rule of court; providing an effective
7 date.

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

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11 Section 1. Section 35.13, Florida Statutes, is repealed.

12 Section 2. Section 35.25, Florida Statutes, is repealed.

13 Section 3. This act shall take effect July 1, 2011.

PCB 11-14

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-14 Offers of Settlement

SPONSOR(S): Civil Justice Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>NB</i>

SUMMARY ANALYSIS

Current law provides two different statutes regarding offers of settlement. This proposed committee bill repeals the statute that only applies to causes of action accruing before October 1, 1990.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 45.061, F.S., provides for offers of settlements in civil actions. The statute provides for attorney fees, costs, expenses, expert witness fees, and other expenses to be assessed against a party that unreasonably rejects an offer of settlement. It was repealed for all causes of action that accrued after the effective date of the repeal, October 1, 1990.^{1,2} The Legislature enacted s. 768.79, F.S., and the Florida Supreme Court promulgated Florida Rule of Civil Procedure 1.442. The statute and rule provide a mechanism for parties to make offers of settlement and provide for sanctions for parties that unreasonably reject such offers.

Section 45.061, F.S., is obsolete by its own terms and in light of subsequent statutory changes and amendments to the rules of court. It is unlikely that there will be a need to apply the statute since the statutes of limitations for most causes of action have expired.

B. SECTION DIRECTORY:

Section 1 repeals s. 45.061, F.S., relating to offers of settlement.

Section 2 provides an effective date of July 1, 2011.

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

¹ Section 45.061(6), F.S.

² See *Timmons v. Coombs*, 608 So.2d 1 (Fla. 1992) ("The legislature has now repealed section 45.061 with respect to causes of action accruing after October 1, 1990. Ch. 90-119, § 22, Laws of Fla. This leaves section 768.79 as the only statute on the subject for new causes of action").

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:

Sections 44.102(5)(b) and 766.209(2), F.S., contain references to s. 45.061, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

PCB CVJS 11-14

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A bill to be entitled
An act relating to offers of settlement; repealing s.
45.061, F.S.; repealing law regarding offers of settlement
made prior to 1990; providing an effective date.

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

Section 1. Section 45.061, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-15 Declaratory Judgment Costs

SPONSOR(S): Civil Justice Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>VBS</i>

SUMMARY ANALYSIS

Current law provides that the court may award costs in a declaratory judgment action. Another statute, applicable to all civil actions, provides that the prevailing party shall be awarded costs. The term "costs" does not include attorney's fees.

This proposed committee bill repeals the specific statute relating to costs in a declaratory judgment action. Parties would still be awarded costs pursuant to the general statute.

This proposed committee bill does not appear to have a fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 86, F.S., relates to declaratory judgment actions. Section 86.081, F.S., provides that the court may award costs in declaratory judgment actions as are equitable. Section 57.041(1), F.S., provides that "the party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment." While s. 86.081, F.S., provides that the court may award costs as are equitable,¹ s. 57.041, F.S., makes an award of costs mandatory.² A court explained:

Under section 57.041, the recovery of costs is generally available to any "party recovering judgment." This general provision may be displaced by context-specific statutory costs provisions. For example, in declaratory judgment proceedings, section 86.081, Florida Statutes (2005), provides that "[t]he court may award costs as are equitable." And in dissolution cases, section 61.16, Florida Statutes (2005), provides that "a reasonable amount" may be awarded for the costs of a party "after considering the financial resources of both parties." Although the standard for the award of costs may - based on specific statutory provisions - vary from the general standard set forth in section 57.041, it is universally true that costs are at issue when a lawsuit is brought.³

This bill repeals s. 86.081, F.S. Recovery of costs would therefore be governed under the general provisions of s. 57.041, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 86.081, F.S., relating to costs in declaratory judgment actions.

Section 2 provides an effective date of July 1, 2011.

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.

¹ See *Davis v. Davis*, 301 So.2d 154 (Fla. 3d DCA 1974).

² See *Hendry Tractor Company v. Fernandez*, 432 So.2d 1315, 1316 (Fla. 1983).

³ *First Protective Insurance Company v. Featherston*, 978 So.2d 881, 884 (Fla. 2d DCA 2008).

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/ COMMITTEE SUBSTITUTE CHANGES

n/a

PCB CVJS 11-15

ORIGINAL

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A bill to be entitled
An act relating to declaratory judgments; repealing s.
86.081, F.S.; repealing provision allowing for taxable
costs; providing an effective date.

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

- Section 1. Section 86.081, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-16 Veteran's Guardianship

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>YB</i>

SUMMARY ANALYSIS

This proposed committee bill repeals an obsolete provision of the guardianship statute. The statutory provision relates to statutory construction of Veteran's Guardianship Act and contains statutory references which have been repealed. The same rules of statutory construction are contained in the Veteran's Guardianship Act without the reference to repealed statutes.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Part VIII of ch. 744, F.S., is Florida's "Veteran's Guardianship Law."¹ Section 744.602(2), provides:

The application of this part is limited to veterans and other persons who are entitled to receive benefits from the United States Department of Veterans Affairs. This part is not intended to replace the general law relating to guardianship except insofar as this part is inconsistent with the general law relating to guardianship; in which event, this part and the general law relating to guardianship shall be read together, with any conflict between this part and the general law of guardianship to be resolved by giving effect to this part.

Section 744.103, F.S., provides:

The provisions of this law shall extend to incapacitated world war veterans, provided for in chapters 293 and 294 or any amendment or revision of them. The provisions of this law are cumulative to those chapters. Any conflict between chapters 293 and 294, or any amendment or revision of them, and this law shall be resolved by giving effect to those chapters.

This bill repeals s. 744.103, F.S., which is obsolete because chapters 293 and 294, F.S., were repealed or transferred to ch. 744, F.S.² Section 744.103, F.S., references repealed chapters of the Florida Statutes. The statutory construction provisions in s. 744.103, F.S., are also contained in s. 744.602(2), F.S.

The effect of this bill is to repeal an obsolete statutory section. This bill does not change the law relating to veteran's guardianship.

B. SECTION DIRECTORY:

Section 1 repeals s. 744.103, F.S., relating to guardians of incapacitated world war veterans.

Section 2 provides an effective date of July 1, 2011.

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.

¹ Section 744.602(1), F.S.

² Chapter 84-62, L.O.F.

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/ COMMITTEE SUBSTITUTE CHANGES

n/a

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A bill to be entitled
An act relating to veteran's guardianship; repealing s.
744.103, F.S.; repealing provisions relating to guardians
of incapacitated world war veterans; providing an
effective date.

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

Section 1. Section 744.103, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2011.