



**LOCAL & FEDERAL AFFAIRS
COMMITTEE**

MEETING PACKET

**Thursday, March 7, 2013
4:00 p.m.
Webster Hall (212 Knott)**

**Will W. Weatherford
Speaker**

**Eduardo "Eddy" Gonzalez
Chair**



The Florida House of Representatives

Local & Federal Affairs Committee

Will W. Weatherford
Speaker

Eduardo "Eddy" Gonzalez
Chair

AGENDA

Webster Hall (212 Knott)

Thursday, March 7, 2013, 4:00 pm

- I. CALL TO ORDER AND WELCOME REMARKS**
- II. CONSIDERATION OF THE FOLLOWING BILL(S):**
 - CS/HB 119 Searches and Seizures by Criminal Justice Subcommittee, Workman
 - HB 267 Real Property Liens and Conveyances by Wood
 - HM 763 Congressional Term Limits by Caldwell
 - HB 855 South Indian River Water Control District, Palm Beach County by Rooney
- III. ADJOURNMENT**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 119 Searches and Seizures
SPONSOR(S): Criminal Justice Subcommittee; Workman
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Local & Federal Affairs Committee		Nelson <i>lpn</i>	Rojas <i>RF</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

The CS for HB 119 creates the "Freedom from Unwarranted Surveillance Act" (Act), which prohibits a law enforcement agency from using a drone to collect evidence or other information. Evidence gathered in violation of the Act is inadmissible in a criminal prosecution in any state court.

The bill provides three exceptions that allow a law enforcement agency to use a drone:

- to counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- if a law enforcement agency obtains a search warrant to use the drone; or
- if a law enforcement agency has reasonable suspicion that under particular circumstances, swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

The bill allows for a civil action by an aggrieved party to be brought against a law enforcement agency that violates the Act, and therefore may have a negative fiscal impact on state and local agencies that violate the Act and are subject to civil penalties.

The bill becomes effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Drones

Drones, also known as Unmanned Aircraft Systems (UAS), are unmanned aircraft that can be flown by remote control or on a predetermined flight path.¹ The size of a drone varies—it can be as small as an insect or as large as a jet.² Drones can be equipped with various devices such as infrared cameras,³ license plate readers,⁴ and “ladar” (laser radar).⁵ It is reported that the U.S. Army contracted with two corporations in 2011 to develop facial recognition and behavioral recognition technologies for drone use.⁶

There are three major markets for drones: military, civil government and commercial.⁷ The majority of drones are operated by the military and have an insignificant impact on U.S. airspace.⁸ However, drone use in this country is increasing because of technological advances.⁹ In 2010, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace within the next 20 years.¹⁰

Non-Military Drone Use

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.¹¹ In doing so, it must balance the integration of drones with the safety of the nation’s airspace.¹² To safeguard the U.S. airspace, the FAA limits drone use to public interest missions such as fighting fires, search and rescue, scientific research, and environmental monitoring by the National Aeronautics and Space Administration (NASA) and National Oceanic and Atmospheric Administration (NOAA).¹³ The FAA also has limited the type of airspace where drones may operate. Currently, drones are not allowed to operate in Class B airspace, which is over the major urban areas and where the greatest numbers of manned aircraft are flown.¹⁴

¹ *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited on January 28, 2013).

² *See*, CRS Report R42136. *U.S. Unmanned Aerial Systems*, Jeremiah Gertler.

³ *US Army unveils 1.8 gigapixel camera helicopter drone*, BBC NEWS, December 29, 2011, <http://www.bbc.com/news/technology-16358851> (last visited on January 28, 2013).

⁴ *See*, *Draganflyer X6, Thermal Infrared Camera*, <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php> (last visited on January 28, 2013).

⁵ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml (last visited on January 28, 2013).

⁶ *Army Developing Drones That Can Recognize Your Face From a Distance And even recognize you intentions*, Clay Dillow, Popular Science, September 28, 2011, <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind> (last visited on January 28, 2013).

⁷ Federal Aviation Administration, *FAA Aerospace Forecast: Fiscal Years 2010-2030* at 48 (2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited on January 28, 2013).

¹² FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited on January 28, 2013).

¹³ *Id.*

¹⁴ *Supra* note 7.

In 2004, the U.S. Customs and Border Patrol (Border Patrol) began utilizing drones to monitor the borders.¹⁵ In 2010, the Border Patrol expanded its use of drones to monitor Florida's shorelines.¹⁶

FAA approval is necessary to operate a drone for non-military purposes. There are two ways to obtain this approval:¹⁷ through acquisition of a private sector experimental airworthiness certificate that allows for research, development, training and flight demonstrations,¹⁸ or a Certificate of Waiver of Authorization (COA), which allows public entities, including governmental agencies, to fly drones in civil airspace.¹⁹ An agency seeking a COA must apply online and detail the proposed operation for the drone.²⁰ If the FAA issues a COA, it contains a stated time period (usually two years) a certain block of airspace for the drone, and other special provisions unique to the specific operation.²¹ As of November 2012, there were 345 active COAs.²²

FAA Modernization Reform Act of 2012

In February 2012, Congress passed the FAA Modernization Reform Act (Reform Act), which requires the FAA to safely integrate drones into U.S. airspace by September 2015.²³ The Reform Act authorizes the FAA to allow government public safety agencies to operate drones under certain restrictions and makes the process for approving authorization requests more efficient.²⁴ Drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace, and more than five miles from any airport or other location with aviation activities.²⁵ The Reform Act also instructs the FAA to develop operation standards and certification criteria for drones and conduct studies concerning the safe use of drones.²⁶

Implementation of the Reform Act has caused privacy²⁷ issues to be raised. The FAA recently delayed the selection of six drone safety testing sites, mandated by the Reform Act, because of privacy concerns with integrating drones into U.S. airspace.²⁸ In a letter to Congressional Unmanned Systems Caucus, FAA Acting Chief Michael Huerta addressed the delay and said "...[i]ncreasing the use of UAS [drones] in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated."²⁹ The Reform Act does not address privacy concerns and it is not clear if the FAA will attempt to address this issue through drone operational standards or studies required by Reform Act.³⁰

¹⁵ *Supra* note 5.

¹⁶ *Space Florida Probing Drone's Future Potential*, Howard Altman, Tampa Bay Online, August 5, 2012, <http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/> (last visited on January 18, 2013).

¹⁷ *Supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited on January 28, 2013).

²⁴ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, www.faa.gov/news/updates/?newsId=68004 (last visited on January 28, 2013).

²⁵ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

²⁶ *Id.*

²⁷ *See*, the **III. COMMENTS, A. CONSTITUTIONAL ISSUES: 2. Other**, section of the analysis for a discussion of this issue.

²⁸ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Going Slow on Drones as Privacy Concerns Studied*, Alan Levine, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow-> (last visited on January 22, 2013).

²⁹ *Id.*

³⁰ *Id.*

In response to the Reform Act, U.S. Senator Rand Paul filed legislation entitled "Preserving Freedom from Unwarranted Surveillance Act of 2012."³¹ Senator Paul's legislation, which is essentially identical to this bill, did not become law.³²

Drone Use by Law Enforcement Agencies in Florida

The Miami-Dade Police Department, Orange County Sheriff's Office, and Polk County Sheriff's Office are law enforcement agencies in Florida that have obtained a COA from the FAA and purchased drones.³³

- The Miami-Dade Police Department's COA became effective on July 1, 2011. Its drones have not been flown in an actual operation.³⁴
- The Polk County Sheriff's Office determined that the expense of training pilots to operate the drone was too high and have discontinued use of the drone.³⁵
- The Orange County Sheriff's Office is currently experimenting with its drones.³⁶ The Sheriff's Office needs permission from the Orange County Commission before the drones can be put to use, and hopes to launch the drones by the summer of 2013.³⁷

Several police chiefs who do not have COAs and who have not started drone testing have indicated that drone use would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters, or armed and barricaded suspects.³⁸

Effect of Proposed Changes

The CS for HB 119 creates the "Freedom from Unwarranted Surveillance Act," which prohibits a law enforcement agency from using drones to collect evidence or other information. Evidence obtained in violation of the Act is inadmissible in a criminal prosecution in any state court.

The bill provides the following three exceptions that allow a law enforcement agency to use a drone:

- to counter a high risk of a terrorist attack by a specific individual or organization if the U.S. Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- if a law enforcement agency obtains a search warrant to use the drone; or
- if a law enforcement agency has reasonable suspicion that under particular circumstances, swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

³¹ *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

³² Govtrack.us <http://www.govtrack.us/congress/bills/112/s3287> (last visited on January 24, 2013).

³³ FAA Drones COA, <https://www.eff.org/file/34697#page/1/mode/lup> (last visited on January 23, 2013).

³⁴ Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle "MAV" Program, provided to Senate Committee Staff, January 8, 2013 (on file with the Criminal Justice Subcommittee).

³⁵ *Central Florida Sheriff Wants to Fly Drones by the Summer*, Aero News Network, January 16, 2013, <http://www.aero-news.net/getmorefromann.cfm?do=main.textpost&id=2ee04d46-6fe7-4f65-bae5-c843dce80ab5> (last visited on January 24, 2013).

³⁶ *Orange sheriff: Drones won't be used for spying*, Dan Tracy, Orlando Sentinel, January 18, 2013, <http://www.orlandosentinel.com/news/local/breakingnews/os-orange-sheriff-drone-flies-20130118,0,6760531.story> (last visited on January 24, 2013).

³⁷ *Id.*

³⁸ Memo provided to Senate Committee Staff on December 12, 2012, by the Florida Police Chiefs Association (on file with the Criminal Justice Subcommittee).

The last exception appears to require a reasonable, articulable suspicion, based on objective facts, that a person has engaged in, is engaging in, or is about to engage in, criminal activity. *See, Terry v. Ohio*, 392 U.S. 1 (1968). The bill's standard takes the particular circumstances into account, and a precise analysis of each situation will need to be made on a case-by-case basis.

The bill authorizes an aggrieved party to initiate a civil action against a law enforcement agency that violates the Act to obtain all appropriate relief that will prevent or remedy the violation. This language appears to provide for injunctive relief as well as actions for damages against a law enforcement agency.

The bill defines "drone" as a means a powered, aerial vehicle that:

- does not carry a human operator;
- uses aerodynamic forces to provide vehicle lift;
- can fly autonomously or be piloted remotely;
- can be expendable or recoverable; and
- can carry a lethal or nonlethal payload.

"Law enforcement agency" is defined by the bill as a lawfully established state or local public agency that is responsible for the prevention and detention of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

The CS for HB 119 becomes effective on July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law relating to searches and seizure using a drone.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a state law enforcement agency that violates the Act to obtain all appropriate relief that will prevent or remedy the violation. The remedy could result in monetary damages, which would have a negative fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a local law enforcement agency who violates the Act to obtain all appropriate relief that will prevent or remedy the violation.

The remedy could result in monetary damages, which would have a negative fiscal impact on a local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not apply to the use of drones for any purposes other than state and local law enforcement. It does not restrict the use of drones for private research and information gathering, and should have no impact on these activities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Currently, law enforcement can use drones, but must first obtain a COA and use the drone as specified in the COA. The drone must be used within the confines of the Fourth Amendment of the United States Constitution.

The Fourth Amendment guarantees the people of this country security in their houses, persons, papers and possessions from unreasonable searches and seizures by government actors.³⁹ Section 12, Art. 1 of the State Constitution contains the same guarantees; however, the State Constitution provides more protections by specifically extending the Fourth Amendment to protect private communications.

The U.S. Supreme Court has yet to hear a case that addresses the Fourth Amendment as it relates to a search conducted by a drone. However, some guidance is found in the Court's rulings in cases involving aerial searches by law enforcement officers in manned aircraft.

In *California v. Ciraolo* and *Florida v. Riley*, police received anonymous tips that marijuana was growing in the defendants' backyards.⁴⁰ Police were unable to see into the backyards, so used planes to fly at altitudes of 400 and 1,000 feet over the property and detected marijuana plants.⁴¹ The Court held that the naked eye aerial observation of the backyards did not constitute a search and did not violate the Fourth Amendment.⁴² Similarly, in *Dow Chemical v. United States*, the Court addressed the issue of whether "industrial curtilage" would prevent the government from conducting aerial surveillance over one of Dow's plants.⁴³ The Court again found that such aerial inspection of the plant was not a search under the Fourth Amendment.⁴⁴

³⁹ The text of the Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

⁴⁰ *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Dow Chemical Company v. United States*, 476 U.S. 227 (1986).

⁴⁴ *Id.*

If the use of a drone were challenged as being in violation of the Fourth Amendment, the Court's analysis would likely be similar to that of manned aircraft. If a drone was used in a manner that has been held constitutional as applied to manned aircraft, such use would likely not be considered a search and, therefore, not require a warrant.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The American Civil Liberties Union supports this bill. Ron Bilbao, Senior Legislative Associate, ACLU of Florida recently issued a statement with regard to this bill and its Senate companion that read:

"Currently our privacy laws are not strong enough to ensure that this new technology will be used responsibly and consistently with our democratic values. Courts are still wrestling with the Constitutionality of the usage of this technology. We need a system of rules to ensure that we can enjoy the benefits of this technology without bringing us closer to a "surveillance society," in which everyone's move is monitored, tracked, recorded, and scrutinized by authorities. These bills take serious steps toward safeguarding our privacy rights, and would make Florida the first state in the nation to pass preemptive legislation regulating the use of drones."⁴⁵

The Florida Public Defenders Association also supports the bill.

The bill is opposed by the: Florida Sheriff's Association, Florida Police Chief's Association and Space Florida.

The Florida Association of Counties has no position on the bill.⁴⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a Committee Substitute. The amendments added additional exceptions to the prohibition on using drones, and amended the definition of "law enforcement agency" to include local government code enforcement.

This analysis is drafted to the Committee Substitute.

⁴⁵ http://www.acluf.org/news_events/index.cfm?action=viewRelease&emailAlertID=4018&src=rss

⁴⁶ February 2, 2013, e-mail from Deena M. Reppen, Legislative Director for the Florida Association of Counties.

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A bill to be entitled
An act relating to searches and seizures; creating the
"Freedom from Unwarranted Surveillance Act"; defining
the terms "drone" and "law enforcement agency";
prohibiting a law enforcement agency from using a
drone to gather evidence or other information;
providing exceptions; authorizing an aggrieved party
to initiate a civil action in order to prevent or
remedy a violation of the act; prohibiting a law
enforcement agency from using in any court of law in
this state evidence obtained or collected in violation
of the act; providing an effective date.

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

Section 1. Searches and seizure using a drone.-

(1) SHORT TITLE.-This act may be cited as the "Freedom
from Unwarranted Surveillance Act."

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

(a) "Drone" means a powered, aerial vehicle that:

- 1. Does not carry a human operator;
- 2. Uses aerodynamic forces to provide vehicle lift;
- 3. Can fly autonomously or be piloted remotely;
- 4. Can be expendable or recoverable; and
- 5. Can carry a lethal or nonlethal payload.

(b) "Law enforcement agency" means a lawfully established
state or local public agency that is responsible for the
prevention and detection of crime, local government code

29 enforcement, and the enforcement of penal, traffic, regulatory,
 30 game, or controlled substance laws.

31 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may
 32 not use a drone to gather evidence or other information.

33 (4) EXCEPTIONS.—This act does not prohibit the use of a
 34 drone:

35 (a) To counter a high risk of a terrorist attack by a
 36 specific individual or organization if the United States
 37 Secretary of Homeland Security determines that credible
 38 intelligence indicates that there is such a risk.

39 (b) If the law enforcement agency first obtains a search
 40 warrant signed by a judge authorizing the use of a drone.

41 (c) If the law enforcement agency possesses reasonable
 42 suspicion that under particular circumstances, swift action is
 43 needed to prevent imminent danger to life or serious damage to
 44 property or to forestall the imminent escape of a suspect or the
 45 destruction of evidence.

46 (5) REMEDIES FOR VIOLATION.—An aggrieved party may
 47 initiate a civil action against a law enforcement agency to
 48 obtain all appropriate relief in order to prevent or remedy a
 49 violation of this act.

50 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 51 collected in violation of this act is not admissible as evidence
 52 in a criminal prosecution in any court of law in this state.

53 Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 Real Property Liens and Conveyances
SPONSOR(S): Wood
TIED BILLS: None **IDEN./SIM. BILLS:** SB 404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Keegan	Bond
2) Local & Federal Affairs Committee		Nelson <i>NS</i>	Rojas <i>JR</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Current Florida law requires that the form of a warranty deed conveying real property include a blank space for the grantee's social security number. Providing this social security number on a warranty deed is not mandatory, and failure to do so does not affect the validity of the deed.

A lien is a form of security interest to ensure payment of a debt or other obligation. In general, a lien or other encumbrance against real property is legally binding against the owner of the property from the time the lien is created. However, certain unrecorded liens may also affect the title to real property.

HB 267 removes the requirement to include the space for a social security number on a warranty deed. The bill further requires that a lien against real property must be recorded in the official records of a county in order to be valid. This bill only applies to liens entered by a governmental or quasi-governmental entity for services, fines, or penalties, and does not affect liens for taxes, non-ad valorem or special assessments, or utilities.

The bill does not appear to have a fiscal impact on state government, and may have an indeterminate, minimal fiscal impact on local governments.

HB 267 has an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Statutory Warranty Deed Form

A warranty deed memorializes the transfer of real property,¹ and current Florida law provides a form for these deeds. However, this statutory form is not required for a deed to be valid.² If a warranty deed substantially conforms to the statutory form, the deed will convey real property.

The statutory warranty deed form includes a blank space for the social security number of the individual (or individuals) acquiring real property (known as a "grantee").³ This requirement originally was added to the warranty deed form in 1988.⁴ There is no penalty for failure to include a grantee's social security number on a warranty deed,⁵ and it is commonly omitted.

This blank space requirement was created legislatively in the course of alimony and child support reform.⁶ The apparent purpose of the space was to allow more effective recordkeeping of real property for the purpose of collecting overdue child support.⁷ However, the requirement does not achieve this goal because the social security number is not indexed. There is no other obvious use for a social security number on a deed.

Lien Recording Requirements

A lien is a form of security interest to ensure payment of a debt or other obligation.⁸ Liens include mortgages,⁹ construction liens, and other liens authorized judicially, statutorily or consensually. In general, a lien or other encumbrance against real property is legally binding against the owner of the property from the time the lien is created.¹⁰ However, a lien normally is not effective against the rights of another lienholder unless that lienholder has notice of the lien.¹¹

A lienholder may comply with this notice requirement by recording the lien in the official records, which are retained by the clerk of court in the county where the property is located.¹² The law recognizes the date a lien is recorded as the presumptive date the lien becomes effective against other parties, determining priority of the lien, i.e., "first in time, first in line."¹³

¹ Section 689.03, F.S.

² Section 689.03, F.S.; 19 FLA. PRAC. SERIES, §3:8 (2012-2013 ed.).

³ Section 689.02(2), F.S.

⁴ S.B. 487, 1987-1988 Reg. Sess. (Fla. 1988).

⁵ Section 689.02(2), F.S.

⁶ Chapter 88-175, L. O. F.

⁷ Florida Dept. of Revenue, Office of Child Support Enforcement, *1988 HRS Legislative Proposal* (1988) (on file with the State Archives of Florida.)

⁸ 19 FLA. PRAC. SERIES, *Florida Real Estate* § 37:1 (2012-2013 ed.).

⁹ Under Florida law, a mortgage is a specific lien on the property and not a conveyance of the legal title or the right to possession. *See*, s. 697.02, F.S.

¹⁰ *Id.*

¹¹ *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010).

¹² *City of Palm Bay v. Wells Fargo Bank*, 57 So.3d 226 (Fla. 5th DCA 2011); *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010); s. 695.11, F.S.; s. 28.222, F.S.

¹³ *Id.*

Florida has a recording statute which provides:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser. See, s. 695.01, F.S.

However, there is a class of liens commonly referred to as “hidden liens,” which are not recorded in the official records.¹⁴ Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties levied in accordance with local building code enforcement.¹⁵ A number of local governments are of the opinion that s. 695.01, F.S., does not apply to their liens.¹⁶ When these liens are not recorded, a general title or public records search will not reveal that a lien is attached to the title of property.

According to the Real Property, Probate, and Trust Law (RPPTL) Section of the Florida Bar, liens assessed and maintained by a municipality, or one of its divisions, often are undetected due to:

- the difficulty in finding unrecorded liens;
- confusion regarding which branch of government has the right to impose the liens; and
- lack of knowledge concerning whom to contact to determine the existence of possible liens.

In an unscientific polling of local governments by the RPPTL Section, only 60.8 percent of the respondents recorded all of their liens. The result is that liens often are unpaid for extended periods, and through successive mortgages and transfers of ownership, with the burden of these liens falling on innocent purchasers. Non-record liens are not covered by Florida title insurance policies, except in rare instances.¹⁷

Courts have upheld hidden liens in various circumstances.¹⁸

Effect of Proposed Changes

HB 267 amends s. 689.02(2), F.S., to remove the specification that warranty deeds contain a blank space for the grantee’s social security number. This change will have no effect on any verifiable need for the social security number on these documents, and prevent the unnecessary use of such numbers. See, the **III. COMMENTS, C. DRAFTING ISSUES OR OTHER COMMENTS** section of this analysis,

¹⁴ Wanda Borges, *Hidden Liens: Who is Entitled to What?*, 103 COM. L.J. 284, 285 (1998).

¹⁵ Chapter 162, F.S., covers the powers of counties and municipalities to enforce municipal and county codes. Counties and municipalities are authorized to appoint code enforcement boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method for enforcing local codes and ordinances, where a pending or repeated violation continues to exist. The local government may record in the public records a certified copy of an order imposing a code enforcement fine, thereby constituting a lien against the land where the violation exists and upon any other real or personal property owned by the violator. No lien may continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is brought to foreclose on the lien or to sue to recover a money judgment for the lien plus interest. The local government also is allowed to collect all costs incurred in recording and satisfying a valid lien.

¹⁶ March 4, 2013, conversation with Russ Hale, attorney for the Florida Banker’s Association.

¹⁷ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Fair Notice of Governmental Liens* (on file with the Local and Federal Affairs Committee, Florida House of Representatives).

¹⁸ *Dade County v. Certain Lands*, 247 So.2d 787, 789 (Fla. 3rd DCA 1971).

below, for a discussion of the use of social security numbers on official documents and how this practice may facilitate identity fraud.

The bill also amends s. 695.01(3), F.S., to require that governmental and quasi-governmental entities¹⁹ record liens that attach to real property in order for the liens to be effective against creditors and subsequent purchasers, thereby protecting purchasers of real property from hidden liens.

This bill only pertains to governmental or quasi-governmental liens for improvements, services, fines, or penalties, and does not apply to liens for taxes, non-ad valorem or special assessments, or utilities, as these liens are readily identified via public records. A properly recorded lien must include the property owner's name, a property description or address, and the tax or parcel identification number. This requirement serves to prevent instances in which property descriptions have been incomplete or incomprehensible, and consequently incorrectly posted.

The elimination of lien rights will not affect liability for the underlying debt. That is, where a hidden lien is prohibited and the entity elects not to record a lien, the underlying debt is still owed and remains collectible. In practice, however, a debt without a lien is considered difficult to collect.

B. SECTION DIRECTORY:

Section 1: amends s. 689.02(2), F.S., regarding the statutory warranty deed form.

Section 2: amends s. 695.01(3), F.S., regarding lien recording.

Section 3: provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Some local governments may experience an increase in revenues as a result of increased collection on recorded liens, which are more easily detected by property owners and title insurance companies. However, the fiscal impact is indeterminate.

2. Expenditures:

This bill may have an unknown impact on local government expenditures. See, FISCAL COMMENTS, below.

¹⁹ While these terms are not defined by ch. 695, F.S., "governmental entity" typically refers to a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. See, s. 11.45, F.S. A "quasi-governmental" entity may be found by the courts in instances where a private body performs public functions. See, *Turkey Creek, Inc. v. Londono*, 567 So.2d 943, Fla.App. 1 Dist., 1990.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

HB 267 is likely to have a positive but unknown fiscal impact on the private sector. It appears that this bill will lower transaction costs and limit unknown liabilities of transfer agents and purchasers of real property.

It is unknown how many local governments do not record liens. Local governments may be able to elect one of three apparent means by which to respond to this bill, with the following fiscal impacts:

- A local government may elect to record previously unrecorded liens. Most liens only require a single page, which has a recording cost payable to the clerk of court or county recorder of \$10.00.²⁰ The cost to such a local government would be these recording costs, which could ultimately be recoverable.
- A local government may elect to amend any relevant ordinance to add the recording cost to the amount of the outstanding lien.
- A local government may elect to forgo recording liens and attempt to collect such monies without utilizing liens. In this case, the local government would save on "up front" recording costs, but may experience a decline in its collections rate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

²⁰ FLORIDA COURT CLERKS & COMPTROLLERS, DISTRIBUTION SCHEDULE 73 (2012), available at

http://www.flclerks.com/public_info.html (last viewed Feb. 11, 2013).

STORAGE NAME: h0267b.LFAC.DOCX

DATE: 3/5/2013

In 2002, the Office of Statewide Prosecution issued an interim report from the 16th Statewide Grand Jury on identity theft in Florida. The report implies that social security number requirements facilitate identity theft. Reforms were passed in 2002 in reaction to this report, including an amendment to s. 119.0714, F.S., which prohibits including social security numbers on official records unless expressly required by law.

The Florida Department of Revenue (DOR) neither receives nor uses the social security numbers on deeds for the purpose of collecting child support or alimony. DOR has indicated that it does not foresee any problem with eliminating the blank space for a social security number on warranty deeds.²¹

This bill is supported by the Real Property, Probate and Trust Law Section of the Florida Bar,²² the Florida Land Title Association, and the Florida Bankers Association. The Florida Association of Counties has no concerns with this bill.²³ The Florida League of Cities does not support the bill.

Any businesses that have been established to research unrecorded liens will undoubtedly oppose the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²¹ Legislative and Cabinet Services, Florida Department of Revenue, *Written Communication* (2012) (on file with the Civil Justice Subcommittee, Florida House of Representatives).

²² March 4, 2013, conversation with Gene Adams. Pennington, Moore, Wilkinson, Bell & Dunbar.

²³ February 15, 2013, e-mail from Deena M. Reppen, Legislative Director for the Florida Association of Counties.

1 A bill to be entitled
 2 An act relating to real property liens and
 3 conveyances; amending s. 689.02, F.S.; deleting a
 4 requirement that blank spaces be included on a
 5 warranty deed to allow for entry of social security
 6 numbers of grantees on the deed; conforming
 7 provisions; amending s. 695.01, F.S.; providing that
 8 certain types of governmental or quasi-governmental
 9 liens on real property are valid and effectual against
 10 certain creditors and purchasers only if recorded in a
 11 specified manner; providing an effective date.

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

14
 15 Section 1. Subsection (2) of section 689.02, Florida
 16 Statutes, is amended to read:

17 689.02 Form of warranty deed prescribed.—

18 (2) The form for warranty deeds of conveyance to land
 19 shall include a blank space for the property appraiser's parcel
 20 identification number describing the property conveyed, which
 21 number, if available, shall be entered on the deed before it is
 22 presented for recording, ~~and blank spaces for the social~~
 23 ~~security numbers of the grantees named in the deed, if~~
 24 ~~available, which numbers may be entered on the deed before it is~~
 25 ~~presented for recording.~~ The failure to include such blank space
 26 ~~spaces,~~ or the parcel identification number, ~~or any social~~
 27 ~~security number,~~ or the inclusion of an incorrect parcel
 28 identification number ~~or social security number,~~ does shall not

29 affect the validity of the conveyance or the recordability of
 30 the deed. Such parcel identification number is ~~shall~~ not
 31 ~~constitute~~ a part of the legal description of the property
 32 otherwise set forth in the deed and may ~~shall~~ not be used as a
 33 substitute for the legal description of the property being
 34 conveyed, ~~nor shall a social security number serve as a~~
 35 ~~designation of the grantee named in the deed.~~

36 Section 2. Subsection (3) is added to section 695.01,
 37 Florida Statutes, to read:

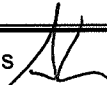
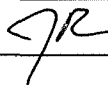
38 695.01 Conveyances and liens to be recorded.—

39 (3) A lien by a governmental entity or quasi-governmental
 40 entity that attaches to real property for an improvement,
 41 service, fine, or penalty, other than a lien for taxes, non-ad
 42 valorem or special assessments, or utilities, is valid and
 43 effectual against creditors and subsequent purchasers for a
 44 valuable consideration only if the lien is recorded in the
 45 official records of the county in which the property is located.
 46 The recorded notice of lien must contain the name of the owner
 47 of record, a description or address of the property, and the tax
 48 or parcel identification number applicable to the property as of
 49 the date of recording.

50 Section 3. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 763 Congressional Term Limits
SPONSOR(S): Caldwell
TIED BILLS: IDEN./SIM. BILLS: SM 970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee		Lukis 	Rojas 
2) State Affairs Committee			

SUMMARY ANALYSIS

HM 763 urges the United States Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that a member of Congress may serve in the same office. Currently, there is no limit on the number of terms a U.S. Senator or Representative can serve. As a result, pending reelection congressional members are able to stay in office for long periods of time, which supporters of term-limits contend negatively impacts their roles as representatives. This memorial does not specify a particular term limit—it advocates for *some limit*, which it states would allow for better service of this nation's interests (emphasis added).

Support for congressional term limits gained measurable traction around the early 1990s when 23 states, including Florida, passed laws imposing term limits on their respective federal legislators. The states' efforts were soon rendered void, however, in 1995 when the U.S. Supreme Court held that states could not impose term limits on federal legislators and that such limitation could only be accomplished by amending the U.S. Constitution. Accordingly, since that case supporters for term limits have focused their lobbying efforts on amending the Constitution.

To amend the U.S. Constitution each house of Congress must approve a proposal for an amendment by a two-thirds majority. Then, three-fourths (38) of the states have to ratify that proposal. Since 1995, congressional members have filed about 70 bills proposing an amendment to limit their terms, but none have been successful.

An identical memorial, HM 83, passed the Florida House of Representative on February 29, 2012 and the Florida Senate on March 1, 2012.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The United States Constitution governs congressional membership.¹ It specifies that members of the U.S. House of Representatives serve two-year terms and members of the U.S. Senate serve six-year terms.² The Constitution does not limit the number of terms or years a member of Congress may serve.³ The only check or limit on the length of congressional membership is the possibility of not being reelected.⁴

Supporters of congressional term limits find this check inadequate. They argue that given the ease at which incumbents are often reelected, members of Congress can become too insulated and isolated from the interests of their constituents.⁵ In particular, these supporters claim that so called "career politicians" tend to become too consumed with the perks of their jobs and too indebted to lobbyists and special interests that they lose sight of their duty as representatives.⁶

Conversely, opponents to congressional term limits argue that the ability to vote a member of Congress out of office is a sufficient check on their performance as lawmakers.⁷ Opponents argue further that term limits would produce a more novice congressional membership and would not reduce the power of lobbyists and special interests.⁸ Some even argue that term limits would increase the power of special interests.⁹

Background on the Term Limit Debate

This debate stems back to the late 18th Century,¹⁰ however, it took many years to develop into its present form. Until the 1900s, support for term limits was essentially deemed irrelevant because it was uncommon for members of Congress to serve for more than a few terms.¹¹ As time progressed through the 20th Century and reelection rates for congressional incumbents began to increase,¹² the push for term limits also grew but never with much success.¹³ Proponents of term limits did not gain any significant or measurable support until the early 1990s when 23 states, including Florida, passed laws imposing term limits on their respective federal legislators.¹⁴ These efforts were eventually

¹ U.S. Const. art. I, § 2, cl. 2; U.S. Const. art. I, § 3, cl. 3.

² *Id.*

³ *Id.*

⁴ *See, id.*

⁵ <http://www.termlimits.com/>; <http://termlimits.org/>; <http://www.cnn.com/2010/POLITICS/07/19/term.limits/index.html>

⁶ *Id.*

⁷ <http://www.cnn.com/2010/POLITICS/07/19/term.limits/index.html>; *See also*

http://www.cleveland.com/opinion/index.ssf/2012/07/the_case_against_legislative_t.html

⁸ *Id.*

⁹ *Id.*

¹⁰ The Framers debated the issue before drafting the final version of the U.S. Constitution as there were term limits for delegates to the Continental Congress under the Articles of Confederation.

¹¹ H0083z.FAS.DOCX March 15, 2012, citing Tiffanie Kovacevich, *Constitutionality of Term Limits: Can States Limit the Terms of Members of Congress?*, 23 Pac. L.J. 1677, 1680 (1992).

¹² *See*, the following source for data on re-election rates since 1964: <http://www.opensecrets.org/bigpicture/reelect.php>.

¹³ For example, discussion of congressional term limits came about during the debate before the 1951 ratification of the 22nd amendment, which imposed a two-term limit on the office of the President. Former Senator O'Daniel, a Democrat from Texas, sought a proposal for congressional term limits, but he only received one vote.

¹⁴ U.S. Congressional Research Service. *Term Limits for Members of Congress: State Activity* (No. 96-152 GOV; Nov. 22, 1996), by Sula P. Rishardson. Text at: <http://digital.library.unt.edu/ark:/67531/metacrs582/m1/>; Accessed: February 25, 2013. (States that

rendered void, however, with the 1995 Supreme Court case, *U.S. Term Limits, Inc. v. Thornton*.¹⁵ In that case, the Supreme Court held the following:

- 1) state-imposed candidacy limitations on federal legislative office violates the U.S. Constitution's "qualifications clauses;" and
- 2) term limits on federal legislators may only be imposed by amendment to the Constitution.¹⁶

Accordingly, since the *Thornton* decision, proponents for term limits have focused their lobbying efforts on amending the Constitution. To successfully amend the U.S. Constitution each side of Congress must approve a proposal for amendment by a two-thirds majority.¹⁷ Then, three-fourths (38) of the states have to ratify the proposal.¹⁸ Since 1995, congressional members have filed about 70 bills proposing an amendment to limit their terms, but none have been successful.¹⁹

Effect of Proposed Changes

HM 763 urges Congress to propose an amendment to the U.S. Constitution to limit the number of consecutive terms that a member of Congress may serve in the same office. The memorial does not advocate for a permanent ban from service of congressional members once their term limits expire. Under the memorial's approach, a member could be reelected to the same position as long as there is a break between periods of service. In addition, HM 763 does not specify a particular term limit—it advocates for *some limit*, which it states would allow for better service of this nation's interests (emphasis added).

An identical memorial, HM 83, passed the Florida House of Representative on February 29, 2012 and the Florida Senate on March 1, 2012.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

passed some form of congressional term limits include the following: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY.)

¹⁵ *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 881 (1995).

¹⁶ *Id.*

¹⁷ U.S. Const., art V.

¹⁸ *Id.*

¹⁹ This information was discovered through searches on www.thomas.gov, the online library of Congress.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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House Memorial

A memorial to the Congress of the United States,
 urging Congress to propose to the states an amendment
 to the Constitution of the United States that would
 limit the consecutive terms of office which a member
 of the United States Senate or the United States House
 of Representatives may serve.

WHEREAS, Article V of the Constitution of the United States
 authorizes Congress to propose amendments to the Constitution
 which shall become valid when ratified by the states, and

WHEREAS, a continuous and growing concern has been
 expressed that the best interests of this nation will be served
 by limiting the terms of members of Congress, a concern
 expressed by the Founding Fathers and incorporated into the
 Articles of Confederation, and

WHEREAS, the voters of the State of Florida, by the
 gathering of petition signatures, placed on the general election
 ballot of 1992 a measure to limit the consecutive years of
 service for several offices, including the offices of United
 States Senator and United States Representative, and

WHEREAS, the voters of Florida incorporated this limitation
 into the State Constitution as Section 4, Article VI, by an
 approval vote that exceeded 76 percent in the general election
 of 1992, and

WHEREAS, in 1995, the United States Supreme Court ruled in
U.S. Term Limits, Inc., et al., v. Thornton, et al., 514 U.S.
 779 (1995), a five-to-four decision, that the individual states

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29 | did not possess the requisite authority to establish term
 30 | limits, or additional qualifications, for persons elected to the
 31 | United States Senate or United States House of Representatives,
 32 | and

33 | WHEREAS, upon reflecting on the intent of the voters of
 34 | this state and their overwhelming support of congressional term
 35 | limits, the Legislature, in its 114th Regular Session since
 36 | Statehood in 1845, did express through a memorial to Congress
 37 | the desire to receive an amendment to the Constitution of the
 38 | United States to limit the number of consecutive terms that a
 39 | person may serve in the United States Senate or the United
 40 | States House of Representatives, and

41 | WHEREAS, the Legislature, in its 115th Regular Session
 42 | since Statehood in 1845, does again express the same desire to
 43 | receive such an amendment, NOW, THEREFORE,

44 |

45 | Be It Resolved by the Legislature of the State of Florida:

46 |

47 | That the Florida Legislature respectfully petitions the
 48 | Congress of the United States to propose to the states an
 49 | amendment to the Constitution of the United States to limit the
 50 | number of consecutive terms which a person may serve in the
 51 | United States Senate or the United States House of
 52 | Representatives.

53 | BE IT FURTHER RESOLVED that copies of this memorial be
 54 | dispatched to the President of the United States, to the
 55 | President of the United States Senate, to the Speaker of the
 56 | United States House of Representatives, to each member of the

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57 | Florida delegation to the United States Congress, and to the
58 | presiding officer of each house of the legislature of each
59 | state.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 855 South Indian River Water Control District, Palm Beach County
SPONSOR(S): Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee		Dougherty	JDD Rojas <i>JK</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The South Indian River Water Control District manages drainage systems and road maintenance in specified areas of Palm Beach County. This bill authorizes the Board of Supervisors of the South Indian River Water Control District to construct improvements upon real and personal property for recreational purposes on specified land within the District.

A water control district is a water management or drainage district created by a special act (or, formerly, by circuit court decree). Each district is governed by a board of supervisors, tasked with carrying out their district's water control plan. A water control plan is a comprehensive document that describes the operations and water management improvements of the district as authorized by law. Chapter 298, F.S., enumerates the powers of water control districts' board of supervisors. These powers include the authority to build and construct any improvements necessary to execute the water control plan.

No fiscal impacts are anticipated according to the Economic Impact Statement.

This bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Water Control Districts

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts – through circuit court decree – and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

Today, ch. 298, F.S., contains provisions governing drainage and water control, including the creation and operation of water control districts and the powers of their boards of supervisors.

Powers of Board of Supervisors

Section 298.22, F.S., grants the board full authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan. This section enumerates certain related powers held by the board of supervisors, including in s. 298.22(a), F.S., the authority to build and construct works and improvements needed to preserve and maintain the works in or out of the district.

Limitation on Special or Local Legislation

Section 298.76, F.S., provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S., with certain enumerated exceptions not relevant here.

South Indian River Water Control District

Chapter 2001-213, L.O.F., provides the charter for the South Indian River Water Control District. As per s. 12 of s. 3 of ch. 2001-313, L.O.F., as amended by ch. 2003-332, L.O.F., the Board of Supervisors of the South Indian River Water Control District is authorized, among other things, to hold, control, acquire by donation or purchase, and maintain real and personal property for recreational purposes on specified land within the District.

Effect of Proposed Changes

This bill amends the charter of the South Indian River Water Control District, ch. 2001-313, L.O.F., authorizing the Board of Supervisors of the South Indian River Water Control District to construct improvements upon the real and personal property held, controlled, and maintained for recreational purposes on specified land within the District.

Section 298.76, F.S., prohibits granting any water control district additional authority, power, rights, or privileges by either special law or general law of local application. However, s. 298.22, F.S., grants the board of supervisors of the district full power and authority to construct, complete, operate, maintain,

repair, and replace any works or improvements necessary. According to s. 298.22(3), F.S., this authority includes any improvements needed to preserve and maintain the works in or out of the district. Therefore, the proposed amendment authorizing the board to construct improvements upon real and personal property is permissible by the statute.

B. SECTION DIRECTORY:

Section 1: Amends s. 12 of s. 3 of ch. 2001-313, L.O.F., as amended by ch. 2003-332, L.O.F., relating to the authority to fund engineering studies, road improvements, and recreational lands.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 18, 2013

WHERE? *The Palm Beach Post*, a daily and Sunday newspaper published in Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

The Palm Beach Post
REAL NEWS STARTS HERE
Palm Beach Daily News

STATE OF FLORIDA
COUNTY OF PALM BEACH

**NOTICE OF INTENT TO SEEK
LEGISLATION**

South Indian River Water Control District, Palm Beach County, Florida, hereby gives notice pursuant to Article III, Section 10 of the Florida Constitution and Section 11.02, Florida Statutes, of its intent to seek legislation before the 2013 Florida Legislature. The legislation will provide for authority to construct improvements on district property acquired for recreational purposes within a specified area of the district and provide an effective date.

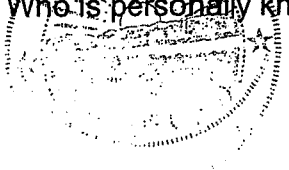
FUB: The Palm Beach Post
1-18-13 #44-101

Before the undersigned authority personally appeared Monica Brackman, who on oath says that she is Call Center Legal Advertising Representative of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a Notice in the matter NOTICE OF INTENT TO SEEK LEGISLATION Sou was published in said newspaper in the issues of 01/18/2013. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin and St. Lucie Counties.

Signed M. Brackman

Notary Public

Sworn to and subscribed before 01/23/2013.
Who is personally known to me
In and for the State of Ohio
My Commission Expires Sept. 02, 2014



HOUSE OF REPRESENTATIVES

2013 LOCAL BILL CERTIFICATION FORM

BILL #: HB 0855

SPONSOR(S): Rep. Pat Rooney

RELATING TO: South Indian River Water Control District
[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Palm Beach County

CONTACT PERSON: Rachael Ondrus Merlan

PHONE NO.: (561) 818-8833 E-Mail: rondrus@pbcgov.org

I. House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [x] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [x] NO []

Date hearing held: January 4, 2013

Location: Village of Wellington City Hall, 12300 Forest Hill Blvd, Wellington, FL 33414

(3) Was this bill formally approved by a majority of the delegation members?

YES [x] NO []

II. Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [] DATE January 18, 2013

Where? The Palm Beach Post County Palm Beach

Referendum in lieu of publication: YES [] NO [x]

Date of Referendum

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [x] NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [x] NOT APPLICABLE []

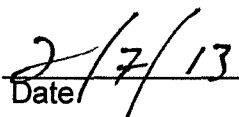
If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local & Federal Affairs Committee.



Delegation Chair (Original Signature)



Date

Representative Mark Pafford

Printed Name of Delegation Chair

HOUSE COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE
2013 ECONOMIC IMPACT STATEMENT

House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts. Please submit this completed, original form to the Community & Military Affairs Subcommittee as soon as possible after a bill is filed.

BILL #: HB 0855

SPONSOR(S): Rep. Pat Rooney
South Indian River Water Control District

RELATING TO: _____
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY 13-14</u>	<u>FY 14-15</u>
Expenditures:	\$0	\$0
All costs are included in current budget		

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 13-14</u>	<u>FY 14-15</u>
Federal:		
State:		
Local:	X	X

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 13-14</u>	<u>FY 14-15</u>
Revenues:	\$0	\$0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

Will allow completion of infrastructure for a district park

Disadvantages:

None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

1. Review of district plans and budget
2. Personal experience

PREPARED BY: Tyler Lewis 11/13/12
[Must be signed by Preparer] Date

TITLE: General Counsel

REPRESENTING: South Indian River Water Control District

PHONE: (561) 640-0820

E-MAIL ADDRESS: Tlewis@llw-law.com

1 A bill to be entitled
 2 An act relating to the South Indian River Water
 3 Control District, Palm Beach County; amending chapter
 4 2001-313, Laws of Florida, as amended; authorizing
 5 construction of improvements on district property for
 6 recreational purposes within a specified area of the
 7 district; providing an effective date.

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

10
 11 Section 1. Section 12 of section 3 of chapter 2001-313,
 12 Laws of Florida, as amended by chapter 2003-332, Laws of
 13 Florida, is amended to read:

14 Section 12. Authority to fund engineering studies, road
 15 improvements, recreational lands.—The Board of Supervisors of
 16 the South Indian River Water Control District in Palm Beach
 17 County is hereby authorized, empowered, and permitted to expend
 18 funds of the District to pay for engineering studies for the
 19 purpose of planning a road improvement program, and to pay for
 20 the construction, maintenance, improvement, and repair of
 21 dedicated roads and road rights-of-way, including the swales
 22 thereof, within the District where such construction,
 23 maintenance, improvement, and repair is not performed by other
 24 governmental bodies and to levy special assessments to acquire,
 25 construct, and maintain said improvements on the basis of
 26 parcels benefited rather than acres benefited for said purposes.
 27 The Board of Supervisors of the South Indian River Water Control
 28 District is further authorized, empowered, and permitted to

29 expend funds of the District to pay for engineering studies for
 30 the purpose of planning facilities to provide potable water
 31 distribution and wastewater collection systems to those lands
 32 lying East of Canal 18 of the South Florida Water Management
 33 District, and to the Northeast Quarter (NE 1/4) of the Northeast
 34 Quarter (NE 1/4) plus the North one-half (N 1/2) of the North
 35 one-half (N 1/2) of the Southeast Quarter (SE 1/4) of the
 36 Northeast Quarter (NE 1/4) of Section 1, Township 41 South,
 37 Range 41 East, in Palm Beach County, in cooperation with the
 38 Town of Jupiter and the Loxahatchee River Environmental Control
 39 District, and to pay for the construction, maintenance,
 40 improvement, and repair of those facilities where such
 41 construction, maintenance, improvement, and repair is not
 42 performed by other governmental bodies, and to levy special
 43 assessments, on the basis of parcels or front footage benefited,
 44 acres benefited or other lawful basis, for said purposes, and to
 45 transfer said facilities to the Town of Jupiter and the
 46 Loxahatchee River Environmental Control District for operation
 47 and maintenance. The Board of Supervisors of the South Indian
 48 River Water Control District is further authorized to hold,
 49 control, acquire by donation or purchase, construct improvements
 50 upon, and maintain real and personal property for recreational
 51 purposes for land within the District lying East of Canal 18 of
 52 the South Florida Water Management District only, and to make it
 53 available for the use of the landowners. The Board of
 54 Supervisors is authorized to expend funds of the District to pay
 55 for the maintenance of such property, the cost of which shall be

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2013

56 borne by the landowners owning land lying East of Canal 18 of
57 the South Florida Water Management District.

58 Section 2. This act shall take effect upon becoming a law.

