# Justice Council

**Tuesday, April 4, 2006**
**9:00 AM – 10:00 AM**
**404 House Office Building**

# Meeting Packet

**Allan G. Bense**
**Speaker**

**Bruce Kyle**
**Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense**

### Justice Council

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| **Start Date and Time:** | Tuesday, April 04, 2006 09:00 am |
| **End Date and Time:** | Tuesday, April 04, 2006 10:00 am |
| **Location:** | 404 HOB |
| **Duration:** | 1.00 hrs |

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

HB 175 CS Drug Court Programs by Adams
HB 187 CS Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth
HB 221 CS Paternity by Richardson
HB 303 CS Dart-Firing Stun Guns by Kravitz
HB 519 CS Internet Screening in Public Libraries by Kravitz
HB 543 CS Condominiums by Goodlette
HB 673 CS Residential Tenancies by Stargel
HB 919 CS Law Enforcement Investigations by Grant
HB 1029 CS Carrying of Firearms in National Forests by Baxley
HB 1047 CS Parental Relocation with a Child by Stargel
HB 1141 Conveyances of Land by Stargel
HB 1341 Fiduciary Lawyer-Client Privilege by Joyner
HB 1527 CS Parental Notification of Termination of a Minor's Pregnancy by Stargel
HB 7091 Real Property Electronic Recording by Civil Justice Committee
HB 7151 Adoption by Civil Justice Committee
HJR 7165 Obsolete, Erroneous, and Inconsistent Provisions; Preservation of Certain Constitutional Provisions as Statutes by Judiciary Committee
HB 7177 Time Limitations for Criminal Prosecutions by Criminal Justice Committee
HB 7205 Death Penalty by Criminal Justice Committee

**NOTICE FINALIZED on 03/31/2006 16:20 by COCHRAN.MARGARET**

HB 175

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 175 CS Drug Court Programs
**SPONSOR(S):** Adams and others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 114, SB 444

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Criminal Justice Committee | 8 Y, 0 N, w/CS | Cunningham | Kramer |
| 2) Juvenile Justice Committee | 4 Y, 0 N, w/CS | White | White |
| 3) Judiciary Appropriations Committee | 5 Y, 0 N, w/CS | Brazzell | DeBeaugrine |
| 4) Justice Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The term "drug court" refers to a process by which substance abusers entering the court system are placed into treatment and proactively monitored by the judge and a team of justice-system and treatment professionals. This bill modifies laws regarding drug court programs in dependency, criminal, and delinquency proceedings.

Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). This bill authorizes a court to order individuals involved in a dependency case to be evaluated for drug or alcohol problems and allows the court, after a finding of dependency, to require an individual to participate in and comply with treatment-based drug court programs. Individuals may voluntarily enter drug court prior to a finding of dependency.

In adult criminal and juvenile delinquency courts, drug court programs have traditionally been structured as pretrial diversion programs. This bill authorizes a court to require postadjudicatory and sentenced offenders to participate in and comply with treatment-based drug court programs. Individuals charged with crimes may voluntarily enter drug court prior to trial.

This bill also provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with program rules. This protocol may include, but is not limited to: (a) placement in specified licensed substance abuse treatment programs; (b) placement in a jail-based treatment program; (c) secure detention; or (d) incarceration. These provisions of the bill address recent case law holding that incarceration or a licensed substance abuse treatment program may not be imposed for noncompliance with pretrial drug court programs as such sanctions are not authorized by current law.

The fiscal impact to state and local governments of this bill is unknown. The language of the bill is permissive (i.e. participation in drug court programs is at the counties' discretion). As such, the bill does not appear to implicate the mandate provisions of Article VII, Section 18 of the Florida Constitution. *See* Fiscal Analysis & Economic Impact Statement and Applicability of Municipal/County Mandates Provision.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill authorizes the court to order a substance abuse assessment and evaluation, after a shelter petition or dependency petition has been filed, for individuals involved in the case. This bill expands the scope of drug court programs beyond pretrial intervention programs to include dependency drug court, postadjudicatory programs, and the monitoring of sentenced offenders. It also authorizes counties to adopt sanctions for individuals who violate drug court terms and conditions.

Promote Personal Responsibility: This bill provides for court-ordered substance abuse evaluation and treatment and court-monitored compliance with such orders. It also authorizes counties to adopt sanctions for individuals who violate drug court terms and conditions.

Empower Families: This bill increases court responsibilities in dependency court matters.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Proceedings Relating to Children

There are two main court systems specifically tailored for minors. Dependency court is for children who are dependent upon the state to protect them from abuse or neglect by their adult caretaker(s). Delinquency court is for minors who commit crimes that do not warrant transfer to the adult criminal justice system.

In January 1999, the National Center on Addiction and Substance Abuse at Columbia University (CASA) published a report detailing its two-year analysis of the connection between substance abuse and child maltreatment.[1] CASA estimates that substance abuse causes or contributes to 7 out of 10 cases of child maltreatment and accounts for nearly $10 billion in federal, state, and local spending, exclusive of costs relating to healthcare, operating judicial systems, law enforcement, special education, lost productivity, and privately incurred costs.

The CASA report documented a doubling in the number of child abuse or neglect cases, from 1.4 million cases nationwide in 1986 to nearly 3 million cases in 1997. In connection with the report, CASA conducted a national survey of family court and welfare professionals to ascertain their perceptions of the extent to which substance abuse issues exist in child welfare cases. The survey revealed the following:

- 71.6 percent of respondents cited substance abuse as one of the top three causes for the rise in the number of child abuse and neglect cases.
- Almost 80 percent of respondents stated that substance abuse causes or contributes to at least half of all child abuse and neglect cases while nearly 40 percent stated that substance abuse was a factor in over 75 percent of cases.
- 75.7 percent of respondents believed that children of substance abusing parents were more likely to enter foster care than other children, and more likely to experience longer stays in foster care.
- 42 percent of all caseworkers reported that they were either not required or uncertain if they were required to report substance abuse when investigating child abuse or neglect cases.

In April 1999, the Department of Health and Human Services issued a report to Congress which highlighted the necessity of prioritizing the identification and treatment of parental substance abuse and

[1] "No Safe Haven: Children of Substance-Abusing Parents," January 1999.

its relationship to children in foster care. It stated that children in substance abuse households were more likely than others to be served in foster care, spent longer periods of time in foster care than other children, and were less likely to have left foster care within a year.

Drug Court System

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.[2] The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction."[3] The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.[4]

As of July 2004, 88 drug courts operated in 43 counties.[5] There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.[6]

In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism and that drug courts are a cost-effective alternative to incarceration of drug offenders.[7]

Drug courts operate on a reward and punishment system. The reward for successful completion of the program is not only a better life but also lowering of a criminal charge to a lesser offense or even dismissal of the criminal charge. Punishments for failing to comply with the program typically include work assignment, increased treatment modalities, increased court appearances, increased urinalysis testing, community service, house arrest, and incarceration. Failure to comply with the program can also result in the continuation of the criminal process and possible additional jail time upon conviction. Recently, two District Courts of Appeal have ruled that because there is no statutory authorization for the imposition of incarceration or a licensed substance abuse treatment program (specifically an Addiction Receiving Facility) upon violation of a drug court program, such sanctions may not be imposed.[8]

**Effect of the Bill**

Dependency Proceedings

This bill expands existing legislative intent to encourage courts to use the drug court program model and to authorize courts to assess children and persons who have custody or are requesting custody of children for substance abuse problems in every stage of the dependency process. This bill establishes the following goals for substance abuse treatment services in the dependency process:

- ensure the safety of children;
- prevent and remediate the consequence of substance abuse;
- expedite permanent placement; and
- support families in recovery.

This bill authorizes a dependency court, upon a showing of good cause, to order a child, or person who has custody or is requesting custody of the child, to submit to substance abuse assessment or evaluation. The assessment or evaluation must be made by a qualified professional, as defined by s. 397.311, F.S.[9] After an adjudication of dependency, or finding of dependency where adjudication is

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[2] Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p.1
[3] *Id.*
[4] *Id.*
[5] *Report on Florida's Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, p.5
[6] *Id.*
[7] *Id.*
[8] *Diaz v. State*, 884 So.2d 299 (Fla. 2nd DCA 2004); *T.N. v. Portesy*, 30 FLW D2369 (Fla. 2nd DCA October 7, 2005).
[9] Section 397.311(24), F.S., defines "qualified professional" to mean "a physician licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; or a person who is certified through a department-

withheld, the court may require the individual to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program. Prior to a finding of dependency, participation in treatment, including a treatment-based drug court program, is voluntary. The court, in conjunction with other public agencies, may oversee progress and compliance with treatment and may impose appropriate available sanctions for noncompliance. The court may also make a finding of noncompliance for consideration in determining whether an alternate placement of the child is in the child's best interests.

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with dependency drug court program rules, which may include, but is not limited to: (a) placement in a substance abuse program offered by a licensed service provider as defined in s. 397.311, F.S.;[10] (b) placement in a jail-based treatment program; (c) secure detention under ch. 985, F.S.;[11] or (d) incarceration within the time limits established for contempt of court (six months).

Criminal and Juvenile Delinquency Proceedings

Drug court programs typically provide services and monitoring in the pretrial stage of a criminal case. A defendant who successfully completes the drug court program receives the benefit of dismissal of the criminal charge, thereby sparing the defendant from jail and from a permanent criminal record of a conviction. Pretrial drug court programs suspend the setting of a trial date and use the threat of resetting the trial date, and possible conviction, as a means to encourage compliance with the program.

This bill provides that, in addition to pretrial intervention programs, treatment-based drug court programs may include sentenced offenders and offenders in postadjudicatory programs.

This bill specifies that entry into any pretrial treatment-based drug court program is voluntary and that the coordinated strategy adopted by the county for its drug court program, which may include a protocol of sanctions, must be provided in writing to a participant before he or she agrees to enter into a pretrial treatment-based drug court program. A recent court ruling indicates that a participating individual may be allowed to "opt out" of the program if there is an administrative order stating that *participation* in the program is voluntary.[12]

This bill provides that counties with treatment-based drug court programs may adopt a protocol of sanctions for noncompliance with criminal and juvenile delinquency drug court program rules, which may include, but is not limited to: (a) placement in a substance abuse program offered by a licensed

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recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment."

[10] Section 397.311(18) defines a "licensed service provider" as, ". . . a public agency under this chapter, a private for-profit or not-for-profit agency under this chapter, a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse impairment services . . ." through one or more of the following licensable service components: (a) an addictions receiving facility; (b) detoxification; (c) intensive inpatient treatment; (d) residential treatment; (e) nonresidential day and night treatment; (f) outpatient treatment; (g) medication and methadone maintenance treatment; (h) prevention; and (i) intervention.

[11] In the event a juvenile violates a dependency drug court treatment program, the court may find that the juvenile committed contempt of court under s. 985.216, F.S., and may securely detain the juvenile if no alternative sanctions are available for up to five days for a first offense and up to 15 days for a second offense.

[12] Section 948.08, F.S. requires that pretrial substance abuse education and treatment intervention programs be approved by the chief judge of the circuit. The court in *Mullin v. Jenne*, 890 So.2d 543 (Fla. 4th DCA 2005), referenced this statute and held that where a chief judge's administrative order defining the parameters of the program stated that *participation* in the program was voluntary (rather than *entry*), a court could not require a defendant to remain in a drug court treatment program. The court noted that had the administrative order stated that "entry" into the program was voluntary, a different result would have occurred. Although this bill provides that entry, rather than participation, is voluntary, pretrial substance abuse intervention programs are still, by statute, subject to approval by the chief judge of the circuit. Thus, should a chief judge issue an administrative order stating that participation in a program is voluntary, participating individuals may opt out of the program.

service provider as defined in s. 397.311, F.S.;[13] (b) placement in a jail-based treatment program; (c) secure detention under ch. 985, F.S.;[14] or (d) incarceration within the time limits established for contempt of court (six months).[15]

This bill provides that an individual who successfully completes a treatment-based drug court program, if otherwise eligible, may have his or her arrest record and nolo contendere plea expunged.

This bill requires, contingent upon an annual appropriation, each judicial circuit to establish at least one coordinator position for the treatment-based drug court program.[16]

Current law provides that any person eligible for participation in a drug court treatment program may be eligible to have his or her case transferred to a county other than that in which the charge arose if the drug court program agrees and specific conditions are met. The bill specifies that if approval for transfer is received from all parties, the trial court must accept a plea of nolo contendere. The bill further specifies that the jurisdiction to which a case has been transferred is responsible for disposition of the case.

Finally, the bill adds tampering with evidence, solicitation to purchase a controlled substance, and obtaining a prescription by fraud to the list of offenses that make a child eligible for admission into a delinquency pretrial substance abuse education and treatment intervention program.

C. SECTION DIRECTORY:

**Section 1.** Names the act the "Robert J. Koch Drug Court Intervention Act."

**Section 2.** Amends s. 39.001(4), F.S., adding legislative intent language regarding substance abuse treatment services in proceedings relating to children.

**Section 3.** Amends s. 39.407, F.S., providing that at any time after a shelter or dependency petition is filed, a court may order a child or a person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation.

**Section 4.** Amends s. 39.507, F.S., providing that after an adjudication of dependency or finding of dependency where adjudication is withheld, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; that the court may require participation and compliance with treatment; providing that the court may oversee progress and compliance with treatment; and that the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

**Section 5.** Amends s. 39.521(1)(b)1., F.S., providing that when a child is adjudicated dependent, the court may order a child or person who has or is requesting custody of a child to submit to substance abuse assessment or evaluation; the court may require participation and compliance with treatment; that the court may oversee progress and compliance with treatment; and the court may impose sanctions for noncompliance or make a finding of noncompliance for consideration in determining a child's placement.

**Section 6.** Amends s. 397.334, F.S., providing that entry into a pretrial treatment-based drug court program is voluntary; expanding the types of treatment-based drug court programs; providing for a protocol of sanctions that may be adopted by a county; and providing a treatment-based drug court

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[13] *See* Footnote 10.

[14] In the event a juvenile violates a delinquency drug court treatment program, the court may securely detain the juvenile if: (a) it finds that the juvenile committed contempt of court under s. 985.216, F.S. (for up to five days for a first offense and up to 15 days for a second offense, if no alternative sanctions are available); or (b) the juvenile has absconded from a drug court treatment program imposed as a condition of probation or conditional release (under s. 985.215(2)(a), F.S., a juvenile who absconds from a probation program or while on conditional release may be held in secure detention for up to 24 hours at which point the court must conduct a detention hearing to determine whether the juvenile's score on the risk assessment instrument warrants continued detention for up to 21 days under s. 985.215(2) and (5)(c), F.S.).

[15] The bill's provision of permissible sanctions would have the effect of overturning the effect of the decisions in *Diaz* and *T.N. Diaz v. State*, 884 So.2d 299 (Fla. 2nd DCA 2004) ; *T.N. v. Portesy*, 30 FLW D2369 (Fla. 2nd DCA October 7, 2005). Note that the *Diaz* court suggested that the Legislature make this change.

[16] These positions were established in prior budgets and are currently staffed and funded.

program coordinator within each judicial circuit; and permitting a circuit's chief judge to appoint an advisory committee for the drug program.

**Section 7.** Amends s. 910.035(5), F.S., relating to transfers from county for pleas and sentencing.

**Section 8.** Amends s. 948.08, F.S., providing that while in a felony pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 9.** Amends s. 948.16, F.S., providing that while in a misdemeanor pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 10.** Amends s. 985.306, F.S., expanding the list of crimes for which an offender is eligible for participation in a delinquency pretrial substance abuse education and treatment intervention program and providing that while in a delinquency pretrial substance abuse education and treatment intervention program, participants are subject to a coordinated strategy developed by a drug court team and that the coordinated strategy may include a protocol of sanctions for noncompliance with the program.

**Section 11.** Provides that the act takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. This bill does not affect a state revenue source.

2. Expenditures:

   See "Fiscal Comments," below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None. This bill does not affect a local government revenue source.

2. Expenditures:

   Indeterminate. The language in this bill is permissive and participation in a drug court program will be left to the counties' discretion. Likewise, the bill authorizes counties in their discretion to adopt a protocol of sanctions for individuals who fail to comply with drug court programs. The protocol of sanctions for programs may include jail-based treatment programs, incarceration, and secure detention for noncompliance. These sanctions would result in a cost to the counties. Given the permissive nature of the drug court programs and sanctions authorized, there is no data to estimate the number of individuals that may be sanctioned under this bill. It should be noted that pretrial intervention programs are already authorized in law and are designed to reduce jail populations and associated costs. Thus, pretrial intervention programs are generally perceived as providing a financial benefit to counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the use of private drug assessment and treatment programs. Individuals are often required to pay for services ordered through drug courts.

D. FISCAL COMMENTS:

Departments of Children and Families and Juvenile Justice

The fiscal impact on state government is indeterminate but expected to be insignificant.

Section 29.008(2), F.S., provides for counties to be responsible for the costs of the state court system to meet local requirements. Since a county may choose whether to implement a drug court system, it is considered a local requirement, and thus drug court funding is a county responsibility. However, decisions made by a judge in the course of drug court proceedings may impact certain state expenditures. Such expenditures primarily include those made by the Department of Children and Families (DCF) for substance abuse treatment and by the Department of Juvenile Justice (DJJ) for detention of juveniles who have committed certain offenses under ch. 985, F.S.

Whether these expenditures are increased significantly depends on (1) whether the bill increases the number of individuals entering drug courts and (2) the degree to which the bill changes the extent to which individuals involved in drug courts access substance abuse treatment services from the DCF or are subject to detention by the DJJ and these departments' abilities to absorb these costs. In regard to (1), the bill's impact on the number of individuals entering drug courts is unclear. While the bill does expand the number of individuals eligible for drug court, it does not appear that it will result in a significant increase. In regard to (2), the bill's impact is also unclear but is likely to be insignificant since the bill primarily codifies in more specific language many drug courts' existing practices. Also:

- The DCF states that it gives priority for funding to individuals involved in the drug court system. It currently funds substance abuse treatment for an estimated 8,602 adults and 2,200 children involved in the drug court system. Based on these factors and the permissiveness of the language, according to the DCF, "the net impact of this legislation may not be significant."
- According to the DJJ, though "it is impossible to accurately calculate the fiscal impact [from the placement of youth in secure detention] due to the lack of specific guidelines for the individual's sanctions", the DJJ estimates a fiscal impact ranging from $204,825 to $422,280 or above.[17] However, secure detention is only one of the sanctions (and is one of the more severe sanctions) that could be assessed in a drug court, so not all violators would receive secure detention. Additionally, some youths who would be detained under this bill for violating drug court would likely have received detention anyway, absent the bill, by exiting drug court and re-entering the DJJ system. Also, by making slightly more youth eligible for drug court and thus diverting them from the DJJ system, the bill may lead to some youths not entering DJJ secure detention who otherwise would, though this number is not likely to be significant. Furthermore, it appears that the court can already impose secure detention as a sanction in certain instances. Based on decision tree analysis incorporating these factors, it appears that the fiscal impact on DJJ, while potentially positive, would not be significant.

Office of State Courts Administrator

The bill requires the establishment by each judicial circuit, contingent upon appropriations, of a coordinator for the drug court program. However, the Office of State Courts Administrator reports that all judicial circuits already have a drug court coordinator, so there would not be a fiscal impact related to this provision.

Under the implementation of Revision 7 to Article V of Florida's Constitution, the state is obligated to pay from state revenues certain case management costs which include "service referral, coordination,

[17] Section 985.215(5)(c), F.S., permits a period of detention up to 21 days for specified offenses, including absconding from a nonresidential commitment program; s. 985.216, F.S., permits a period of detention of up to 5 days for a first offense and up to 15 days for subsequent offenses. Secure detention costs the DJJ $115 per day, and the average stay is 12 days. DJJ states that according to the Office of the State Courts Administrator (OSCA), 1,798 youth participated in drug court programs during calendar year 2004, not including Broward and Seminole Counties. The DJJ states that the rate of violation in other department diversion programs is approximately 17%. Using these figures and assuming the youth are post-dispositional, detained under s. 985.216, F.S., with 5% second-time violators, DJJ estimates a fiscal impact of $204,825. Assuming that the youth are post-dispositional and detained under s. 985.215(5)(c), DJJ estimates a fiscal impact of $422,280. However, since the number of youth participating in drug court does not include those from Broward or Seminole Counties, the fiscal impact could be higher.

monitoring, and tracking for treatment-based drug court programs under s. 397.334."[18] However, "costs associated with the application of therapeutic jurisprudence principles by the courts" are excluded from the mandated portion of these costs to be borne by the state.[19] Therefore, while costs associated with case management will be paid by the state, to the extent the assessments and treatment described by the provisions of the bill are "therapeutic," they do not appear to have a significant fiscal impact on the state.

Committee on Criminal Justice Fiscal Comments

The State Courts Administrator asserts that the costs of evaluation of individuals ordered by a dependency court would be "therapeutic", and therefore not paid by the state under s. 29.004(10), F.S. However, that section is only applicable to "case management services." Section 29.004(6), F.S., provides that the state will be responsible for "expert witnesses not requested by any party which are appointed by the court pursuant to an express grant of statutory authority." If a finding is made that an assessment is not therapeutic, but only explores whether therapeutic services are necessary, then s. 29.004(10), F.S., will not apply and the state may be obligated to pay for the evaluation for indigent persons.

Currently, these assessments are already being ordered and paid for through a variety of sources, including payment by individuals who can afford it. The number of annual assessments is unknown. Also unknown is whether this bill will increase the number of substance abuse assessments ordered. In FY 2002-2003, there were 16,215 dependency cases filed.[20] If 70 percent of cases involve substance abuse, and courts were to order a substance abuse evaluation in each case, this would result in a potential of 11,351 cases with substance abuse evaluations. Note, however, that some cases may involve multiple individuals, but that evaluations may not be ordered where the individual admits to his or her addiction. The estimated cost for an assessment is $50.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, Section 18 of the state constitution reads as follows: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance."

The bill's language is permissive (i.e. participation in drug court programs and adoption of a protocol of sanctions are at the counties' discretion). As such, the bill does not appear to implicate the mandate provisions of Article VII, Section 18 of the Florida Constitution

2. Other:

[18] Section 29.004(10)(d), F.S.
[19] Section 29.004(10), F.S.
[20] *Trial Court Statistical Reference Guide*, published by the Office of State Courts Administrator.

The amendments to s. 397.334, F.S. provide that the protocol of sanctions for treatment-based programs authorized in Chapter 39 (dependency proceedings) may include incarceration for noncompliance with the program rules within the time limits established for contempt of court. Thus, an individual participating in a treatment-based drug court program as part of a dependency proceeding may be incarcerated for failing to comply with the program's terms and conditions. As written, this bill authorizes a court to impose a criminal punishment (incarceration) in a civil proceeding (dependency proceedings are civil proceedings). Although incarceration can be used in civil proceedings as a sanction for criminal and civil contempt, this bill does not specify that incarceration would be the result of contempt proceedings (only that the incarceration may not exceed the time limits established for contempt of court). This could result in a constitutional challenge.

It is uncertain whether the statements that parents or other caregivers make during the substance abuse assessment can be used against them in a criminal proceeding. Although some of the persons who administer assessments may qualify as psychotherapists for purposes of the psychotherapist and patient privilege[21], the privilege does not apply to statements made in the course of a court-ordered evaluation of the mental or emotional condition of a patient.[22]

Section 7 of this bill provides that offenders who are "postadjudicatory" may be referred to drug court for assessment and treatment of addictions. The ex post facto and double jeopardy clauses may prohibit a court from compelling such a referral for an offender whose offense was committed prior to the effective date of this bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted one amendment to the bill. As filed, the bill provides that individuals participating in treatment-based drug court programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The bill also provides that individuals participating in pretrial intervention programs, misdemeanor pretrial substance abuse education and treatment intervention programs, and delinquency pretrial intervention programs are subject to a coordinated strategy that *must* include a protocol of sanctions. The first amendment adopted by the committee made the language of these provisions more permissive by providing that the coordinated strategy *may* include a protocol of sanctions. The first amendment also deletes a provision allowing state attorneys to deny a defendant's admission into a pretrial substance abuse education and treatment intervention program if the defendant previously declined admission to such a program.

The Juvenile Justice Committee adopted two amendments to the bill, which amended its provisions to: (a) consistently provide that counties may, rather than must, adopt specified sanctions for drug court program noncompliance; (b) clarify that the specified sanctions are not exclusive, i.e., counties may adopt other types of sanctions; (c) substitute "substance abuse treatment program offered by a licensed service provider as defined in s. 397.311" for the undefined term "secure licensed clinical program;" and (d) provide that juveniles who fail

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[21] Section 90.503, F.S. The constitutional privilege against self-incrimination relates to protecting the accused from giving an admission of guilt against his or her will. Psychiatric examinations generally require testimonial communications of the person examined and any statements obtained from the patient by the doctor are used as evidence of mental condition only, and not as evidence of the factual truth contained therein, *Parkin v. State*, 238 So.2d 817 (Fla. 1970). A person's prior substance abuse treatment as part of a plea agreement did not constitute a court-ordered examination under the statute providing that there is no psychotherapist-patient privilege for communications made during a court-ordered examination of the mental conduct of the patient, *Viveiros v. Cooper*, 832 So.2d 868 (Fla. 4th DCA 2002).

[22] Section 90.503(4)(b), F.S.

to comply with drug court programs may be securely detained when permitted under ch. 985, F.S., rather than only when permitted by s. 985.216, F.S., the juvenile contempt of court statute.

At its February 9, 2006, meeting, the Judiciary Appropriations committee adopted eight amendments to the bill. These amendments:

- Clarify legislative intent regarding the persons from whom courts may require substance abuse assessments in dependency cases;
- Revise language to clarify that the bill does not authorize placement of children with certain persons who require substance abuse treatment;
- Remove bill language granting judges the ability to modify terms of a case plan to require participation in drug court;
- Restore current statutory language allowing the court to deny certain persons the ability to enter drug court, with the modification that the state attorney cannot deny outright but may file a motion to do so; and
- Make conforming and technical changes.

CHAMBER ACTION

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1 The Judiciary Appropriations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to drug court programs; providing a short
7 title; amending s. 39.001, F.S.; providing additional
8 legislative purposes and intent with respect to the
9 treatment of substance abuse, including the use of the
10 drug court program model; authorizing the court to require
11 certain persons to undergo treatment following
12 adjudication; amending s. 39.407, F.S.; authorizing the
13 court to order specified persons to submit to a substance
14 abuse assessment or evaluation upon a showing of good
15 cause in connection with a shelter petition or petition
16 for dependency; amending ss. 39.507 and 39.521, F.S.;
17 authorizing the court to order specified persons to submit
18 to a substance abuse assessment as part of an adjudicatory
19 order or pursuant to a disposition hearing; requiring a
20 showing of good cause; authorizing the court to require
21 participation in a treatment-based drug court program;
22 authorizing the court to impose sanctions for
23 noncompliance; amending s. 397.334, F.S.; revising

24 legislative intent with respect to treatment-based drug
25 court programs to reflect participation by community
26 support agencies, the Department of Education, and other
27 individuals; including postadjudicatory programs as part
28 of treatment-based drug court programs; providing
29 requirements and sanctions, including treatment by
30 specified licensed service providers, jail-based
31 treatment, secure detention, or incarceration, for the
32 coordinated strategy developed by the drug court team to
33 encourage participant compliance; requiring each judicial
34 circuit to establish a position for a coordinator of the
35 treatment-based drug court program, subject to annual
36 appropriation by the Legislature; authorizing the chief
37 judge of each judicial circuit to appoint an advisory
38 committee for the treatment-based drug court program;
39 providing for membership of the committee; revising
40 language with respect to an annual report; amending s.
41 910.035, F.S.; revising language with respect to
42 conditions for the transfer of a case in the drug court
43 treatment program to a county other than that in which the
44 charge arose; amending ss. 948.08, 948.16, and 985.306,
45 F.S., relating to felony, misdemeanor, and delinquency
46 pretrial substance abuse education and treatment
47 intervention programs; providing for application of the
48 coordinated strategy developed by the drug court team;
49 removing provisions authorizing appointment of an advisory
50 committee, to conform to changes made by the act;
51 providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:
54
55 Section 1. This act may be cited as the "Robert J. Koch
56 Drug Court Intervention Act."
57 Section 2. Subsection (4) of section 39.001, Florida
58 Statutes, is amended to read:
59 39.001 Purposes and intent; personnel standards and
60 screening.--
61 (4) SUBSTANCE ABUSE SERVICES.--
62 (a) The Legislature recognizes that early referral and
63 comprehensive treatment can help combat substance abuse in
64 families and that treatment is cost effective.
65 (b) The Legislature establishes the following goals for
66 the state related to substance abuse treatment services in the
67 dependency process:
68 1. To ensure the safety of children.
69 2. To prevent and remediate the consequences of substance
70 abuse on families involved in protective supervision or foster
71 care and reduce substance abuse, including alcohol abuse, for
72 families who are at risk of being involved in protective
73 supervision or foster care.
74 3. To expedite permanency for children and reunify
75 healthy, intact families, when appropriate.
76 4. To support families in recovery.
77 (c) The Legislature finds that children in the care of the
78 state's dependency system need appropriate health care services,
79 that the impact of substance abuse on health indicates the need

80 for health care services to include substance abuse services to
81 children and parents where appropriate, and that it is in the
82 state's best interest that such children be provided the
83 services they need to enable them to become and remain
84 independent of state care. In order to provide these services,
85 the state's dependency system must have the ability to identify
86 and provide appropriate intervention and treatment for children
87 with personal or family-related substance abuse problems.
88 (d) It is the intent of the Legislature to encourage the
89 use of the drug court program model established by s. 397.334
90 and authorize courts to assess children and persons who have
91 custody or are requesting custody of children where good cause
92 is shown to identify and address substance abuse problems as the
93 court deems appropriate at every stage of the dependency
94 process. Participation in treatment, including a treatment-based
95 drug court program, may be required by the court following
96 adjudication. Participation in assessment and treatment prior to
97 adjudication shall be voluntary, except as provided in s.
98 39.407(16).
99 (e) It is therefore the purpose of the Legislature to
100 provide authority for the state to contract with community
101 substance abuse treatment providers for the development and
102 operation of specialized support and overlay services for the
103 dependency system, which will be fully implemented and used
104 ~~utilized~~ as resources permit.
105 (f) Participation in the treatment-based drug court
106 program does not divest any public or private agency of its
107 responsibility for a child or adult, but is intended to enable

108 these agencies to better meet their needs through shared
109 responsibility and resources.
110 Section 3. Subsection (15) of section 39.407, Florida
111 Statutes, is amended, and subsection (16) is added to that
112 section, to read:
113 39.407 Medical, psychiatric, and psychological examination
114 and treatment of child; physical, ~~or~~ mental, or substance abuse
115 examination of ~~parent or~~ person with or requesting child custody
116 ~~of child~~.--
117 (15) At any time after the filing of a shelter petition or
118 petition for dependency, when the mental or physical condition,
119 including the blood group, of a parent, caregiver, legal
120 custodian, or other person who has custody or is requesting
121 custody of a child is in controversy, the court may order the
122 person to submit to a physical or mental examination by a
123 qualified professional. The order may be made only upon good
124 cause shown and pursuant to notice and procedures as set forth
125 by the Florida Rules of Juvenile Procedure.
126 (16) At any time after a shelter petition or petition for
127 dependency is filed, the court may order a child or a person who
128 has custody or is requesting custody of the child to submit to a
129 substance abuse assessment or evaluation. The assessment or
130 evaluation must be administered by a qualified professional, as
131 defined in s. 397.311. The order may be made only upon good
132 cause shown. This subsection does not authorize placement of a
133 child with a person seeking custody, other than the parent or
134 legal custodian, who requires substance abuse treatment.

135 Section 4. Subsection (9) is added to section 39.507,
136 Florida Statutes, to read:
137 39.507 Adjudicatory hearings; orders of adjudication.--
138 (9) After an adjudication of dependency, or a finding of
139 dependency where adjudication is withheld, the court may order a
140 child or a person who has custody or is requesting custody of
141 the child to submit to a substance abuse assessment or
142 evaluation. The assessment or evaluation must be administered by
143 a qualified professional, as defined in s. 397.311. The court
144 may also require such person to participate in and comply with
145 treatment and services identified as necessary, including, when
146 appropriate and available, participation in and compliance with
147 a treatment-based drug court program established under s.
148 397.334. In addition to supervision by the department, the
149 court, including the treatment-based drug court program, may
150 oversee the progress and compliance with treatment by the child
151 or a person who has custody or is requesting custody of the
152 child. The court may impose appropriate available sanctions for
153 noncompliance upon the child or a person who has custody or is
154 requesting custody of the child or make a finding of
155 noncompliance for consideration in determining whether an
156 alternative placement of the child is in the child's best
157 interests. Any order entered under this subsection may be made
158 only upon good cause shown. This subsection does not authorize
159 placement of a child with a person seeking custody, other than
160 the parent or legal custodian, who requires substance abuse
161 treatment.

162 Section 5. Paragraph (b) of subsection (1) of section
163 39.521, Florida Statutes, is amended to read:
164 39.521 Disposition hearings; powers of disposition.--
165 (1) A disposition hearing shall be conducted by the court,
166 if the court finds that the facts alleged in the petition for
167 dependency were proven in the adjudicatory hearing, or if the
168 parents or legal custodians have consented to the finding of
169 dependency or admitted the allegations in the petition, have
170 failed to appear for the arraignment hearing after proper
171 notice, or have not been located despite a diligent search
172 having been conducted.
173 (b) When any child is adjudicated by a court to be
174 dependent, the court having jurisdiction of the child has the
175 power by order to:
176 1. Require the parent and, when appropriate, the legal
177 custodian and the child~~,~~ to participate in treatment and
178 services identified as necessary. The court may require the
179 child or the person who has custody or who is requesting custody
180 of the child to submit to a substance abuse assessment or
181 evaluation. The assessment or evaluation must be administered by
182 a qualified professional, as defined in s. 397.311. The court
183 may also require such person to participate in and comply with
184 treatment and services identified as necessary, including, when
185 appropriate and available, participation in and compliance with
186 a treatment-based drug court program established under s.
187 397.334. In addition to supervision by the department, the
188 court, including the treatment-based drug court program, may
189 oversee the progress and compliance with treatment by the child

190 or a person who has custody or is requesting custody of the
191 child. The court may impose appropriate available sanctions for
192 noncompliance upon the child or a person who has custody or is
193 requesting custody of the child or make a finding of
194 noncompliance for consideration in determining whether an
195 alternative placement of the child is in the child's best
196 interests. Any order entered under this subparagraph may be made
197 only upon good cause shown. This subparagraph does not authorize
198 placement of a child with a person seeking custody of the child,
199 other than the child's parent or legal custodian, who requires
200 substance abuse treatment.
201 2. Require, if the court deems necessary, the parties to
202 participate in dependency mediation.
203 3. Require placement of the child either under the
204 protective supervision of an authorized agent of the department
205 in the home of one or both of the child's parents or in the home
206 of a relative of the child or another adult approved by the
207 court, or in the custody of the department. Protective
208 supervision continues until the court terminates it or until the
209 child reaches the age of 18, whichever date is first. Protective
210 supervision shall be terminated by the court whenever the court
211 determines that permanency has been achieved for the child,
212 whether with a parent, another relative, or a legal custodian,
213 and that protective supervision is no longer needed. The
214 termination of supervision may be with or without retaining
215 jurisdiction, at the court's discretion, and shall in either
216 case be considered a permanency option for the child. The order
217 terminating supervision by the department shall set forth the

218 powers of the custodian of the child and shall include the
219 powers ordinarily granted to a guardian of the person of a minor
220 unless otherwise specified. Upon the court's termination of
221 supervision by the department, no further judicial reviews are
222 required, so long as permanency has been established for the
223 child.
224 Section 6. Section 397.334, Florida Statutes, is amended
225 to read:
226 397.334 Treatment-based drug court programs.--
227 (1) Each county may fund a treatment-based drug court
228 program under which persons in the justice system assessed with
229 a substance abuse problem will be processed in such a manner as
230 to appropriately address the severity of the identified
231 substance abuse problem through treatment services ~~plans~~
232 tailored to the individual needs of the participant. It is the
233 intent of the Legislature to encourage the Department of
234 Corrections, the Department of Children and Family Services, the
235 Department of Juvenile Justice, the Department of Health, the
236 Department of Law Enforcement, the Department of Education, and
237 such ~~other~~ agencies, local governments, law enforcement
238 agencies, ~~and~~ other interested public or private sources, and
239 individuals to support the creation and establishment of these
240 problem-solving court programs. Participation in the treatment-
241 based drug court programs does not divest any public or private
242 agency of its responsibility for a child or adult, but enables
243 ~~allows~~ these agencies to better meet their needs through shared
244 responsibility and resources.

245 (2) Entry into any pretrial treatment-based drug court
246 program shall be voluntary. The court may only order an
247 individual to enter into a pretrial treatment-based drug court
248 program upon written agreement by the individual, which shall
249 include a statement that the individual understands the
250 requirements of the program and the potential sanctions for
251 noncompliance.
252 (3) ~~(2)~~ The treatment-based drug court programs shall
253 include therapeutic jurisprudence principles and adhere to the
254 following 10 key components, recognized by the Drug Courts
255 Program Office of the Office of Justice Programs of the United
256 States Department of Justice and adopted by the Florida Supreme
257 Court Treatment-Based Drug Court Steering Committee:
258 (a) Drug court programs integrate alcohol and other drug
259 treatment services with justice system case processing.
260 (b) Using a nonadversarial approach, prosecution and
261 defense counsel promote public safety while protecting
262 participants' due process rights.
263 (c) Eligible participants are identified early and
264 promptly placed in the drug court program.
265 (d) Drug court programs provide access to a continuum of
266 alcohol, drug, and other related treatment and rehabilitation
267 services.
268 (e) Abstinence is monitored by frequent testing for
269 alcohol and other drugs.
270 (f) A coordinated strategy governs drug court program
271 responses to participants' compliance.

272 (g) Ongoing judicial interaction with each drug court
273 program participant is essential.
274 (h) Monitoring and evaluation measure the achievement of
275 program goals and gauge program effectiveness.
276 (i) Continuing interdisciplinary education promotes
277 effective drug court program planning, implementation, and
278 operations.
279 (j) Forging partnerships among drug court programs, public
280 agencies, and community-based organizations generates local
281 support and enhances drug court program effectiveness.
282 (4) ~~(3)~~ Treatment-based drug court programs may include
283 pretrial intervention programs as provided in ss. 948.08,
284 948.16, and 985.306, treatment-based drug court programs
285 authorized in chapter 39, postadjudicatory programs, and the
286 monitoring of sentenced offenders through a treatment-based drug
287 court program. While enrolled in any treatment-based drug court
288 program, the participant is subject to a coordinated strategy
289 developed by the drug court team under paragraph (3)(f). Each
290 coordinated strategy may include a protocol of sanctions that
291 may be imposed upon the participant for noncompliance with
292 program rules. The protocol of sanctions for treatment-based
293 programs may include, but is not limited to, placement in a
294 substance abuse treatment program offered by a licensed service
295 provider as defined in s. 397.311 or in a jail-based treatment
296 program or serving a period of secure detention under chapter
297 985 if a child or a period of incarceration within the time
298 limits established for contempt of court if an adult. The
299 coordinated strategy must be provided in writing to the

300 participant before the participant agrees to enter into a
301 pretrial treatment-based drug court program. Any person whose
302 charges are dismissed after successful completion of the
303 treatment-based drug court program, if otherwise eligible, may
304 have his or her arrest record and plea of nolo contendere to the
305 dismissed charges expunged under s. 943.0585.
306 (5) Contingent upon an annual appropriation by the
307 Legislature, each judicial circuit shall establish, at a
308 minimum, one coordinator position for the treatment-based drug
309 court program within the state courts system to coordinate the
310 responsibilities of the participating agencies and service
311 providers. Each coordinator shall provide direct support to the
312 treatment-based drug court program by providing coordination
313 between the multidisciplinary team and the judiciary, providing
314 case management, monitoring compliance of the participants in
315 the treatment-based drug court program with court requirements,
316 and providing program evaluation and accountability.
317 (6) ~~(4)~~ (a) The Florida Association of Drug Court ~~Program~~
318 Professionals is created. The membership of the association may
319 consist of treatment-based drug court program practitioners who
320 comprise the multidisciplinary treatment-based drug court
321 program team, including, but not limited to, judges, state
322 attorneys, defense counsel, treatment-based drug court program
323 coordinators, probation officers, law enforcement officers,
324 community representatives, members of the academic community,
325 and treatment professionals. Membership in the association shall
326 be voluntary.

327 (b) The association shall annually elect a chair whose
328 duty is to solicit recommendations from members on issues
329 relating to the expansion, operation, and institutionalization
330 of treatment-based drug court programs. The chair is responsible
331 for providing on or before October 1 of each year the
332 association's recommendations and an annual report to the
333 appropriate Supreme Court ~~Treatment-Based Drug Court Steering~~
334 committee or to the appropriate personnel of the Office of the
335 State Courts Administrator~~, and shall submit a report each year,~~
336 ~~on or before October 1, to the steering committee~~.
337 (7) ~~(5)~~ If a county chooses to fund a treatment-based drug
338 court program, the county must secure funding from sources other
339 than the state for those costs not otherwise assumed by the
340 state pursuant to s. 29.004. However, this does not preclude
341 counties from using treatment and other service dollars provided
342 through state executive branch agencies. Counties may provide,
343 by interlocal agreement, for the collective funding of these
344 programs.
345 (8) The chief judge of each judicial circuit may appoint
346 an advisory committee for the treatment-based drug court
347 program. The committee shall be composed of the chief judge, or
348 his or her designee, who shall serve as chair; the judge of the
349 treatment-based drug court program, if not otherwise designated
350 by the chief judge as his or her designee; the state attorney,
351 or his or her designee; the public defender, or his or her
352 designee; the treatment-based drug court program coordinators;
353 community representatives; treatment representatives; and any
354 other persons the chair finds are appropriate.

355 Section 7. Paragraphs (b) and (e) of subsection (5) of
356 section 910.035, Florida Statutes, are amended to read:
357 910.035 Transfer from county for plea and sentence.--
358 (5) Any person eligible for participation in a drug court
359 treatment program pursuant to s. 948.08(6) may be eligible to
360 have the case transferred to a county other than that in which
361 the charge arose if the drug court program agrees and if the
362 following conditions are met:
363 (b) If approval for transfer is received from all parties,
364 the trial court shall accept a plea of nolo contendere and enter
365 a transfer order directing the clerk to transfer the case to the
366 county which has accepted the defendant into its drug court
367 program.
368 (e) Upon successful completion of the drug court program,
369 the jurisdiction to which the case has been transferred shall
370 dispose of the case pursuant to s. 948.08(6). If the defendant
371 does not complete the drug court program successfully, the
372 jurisdiction to which the case has been transferred shall
373 dispose of the case within the guidelines of the Criminal
374 Punishment Code ~~case shall be prosecuted as determined by the~~
375 ~~state attorneys of the sending and receiving counties~~.
376 Section 8. Subsections (6), (7), and (8) of section
377 948.08, Florida Statutes, are amended to read:
378 948.08 Pretrial intervention program.--
379 (6)(a) Notwithstanding any provision of this section, a
380 person who is charged with a felony of the second or third
381 degree for purchase or possession of a controlled substance
382 under chapter 893, prostitution, tampering with evidence,

383 solicitation for purchase of a controlled substance, or
384 obtaining a prescription by fraud; who has not been charged with
385 a crime involving violence, including, but not limited to,
386 murder, sexual battery, robbery, carjacking, home-invasion
387 robbery, or any other crime involving violence; and who has not
388 previously been convicted of a felony nor been admitted to a
389 felony pretrial program referred to in this section is eligible
390 for voluntary admission into a pretrial substance abuse
391 education and treatment intervention program, including a
392 treatment-based drug court program established pursuant to s.
393 397.334, approved by the chief judge of the circuit, for a
394 period of not less than 1 year in duration, upon motion of
395 either party or the court's own motion, except~~:~~
396 1. If a defendant was previously offered admission to a
397 pretrial substance abuse education and treatment intervention
398 program at any time prior to trial and the defendant rejected
399 that offer on the record, then the court, upon motion of ~~or~~ the
400 state attorney, may deny the defendant's admission to such a
401 program.
402 2. if the state attorney believes that the facts and
403 circumstances of the case suggest the defendant's involvement in
404 the dealing and selling of controlled substances, the court
405 shall hold a preadmission hearing. If the state attorney
406 establishes, by a preponderance of the evidence at such hearing,
407 that the defendant was involved in the dealing or selling of
408 controlled substances, the court shall deny the defendant's
409 admission into a pretrial intervention program.

410 (b) While enrolled in a pretrial intervention program
411 authorized by this subsection, the participant is subject to a
412 coordinated strategy developed by a drug court team under s.
413 397.334(3). The coordinated strategy may include a protocol of
414 sanctions that may be imposed upon the participant for
415 noncompliance with program rules. The protocol of sanctions may
416 include, but is not limited to, placement in a substance abuse
417 treatment program offered by a licensed service provider as
418 defined in s. 397.311 or in a jail-based treatment program or
419 serving a period of incarceration within the time limits
420 established for contempt of court. The coordinated strategy must
421 be provided in writing to the participant before the participant
422 agrees to enter into a pretrial treatment-based drug court
423 program or other pretrial intervention program.
424 (c) ~~(b)~~ At the end of the pretrial intervention period, the
425 court shall consider the recommendation of the administrator
426 pursuant to subsection (5) and the recommendation of the state
427 attorney as to disposition of the pending charges. The court
428 shall determine, by written finding, whether the defendant has
429 successfully completed the pretrial intervention program.
430 ~~(c)1.~~ If the court finds that the defendant has not
431 successfully completed the pretrial intervention program, the
432 court may order the person to continue in education and
433 treatment, which may include substance abuse treatment programs
434 offered by licensed service providers as defined in s. 397.311
435 or jail-based treatment programs, or order that the charges
436 revert to normal channels for prosecution.

437 ~~2.~~ The court shall dismiss the charges upon a finding that
438 the defendant has successfully completed the pretrial
439 intervention program.
440 (d) Any entity, whether public or private, providing a
441 pretrial substance abuse education and treatment intervention
442 program under this subsection must contract with the county or
443 appropriate governmental entity, and the terms of the contract
444 must include, but need not be limited to, the requirements
445 established for private entities under s. 948.15(3).
446 ~~(7) The chief judge in each circuit may appoint an~~
447 ~~advisory committee for the pretrial intervention program~~
448 ~~composed of the chief judge or his or her designee, who shall~~
449 ~~serve as chair; the state attorney, the public defender, and the~~
450 ~~program administrator, or their designees; and such other~~
451 ~~persons as the chair deems appropriate. The advisory committee~~
452 ~~may not designate any defendant eligible for a pretrial~~
453 ~~intervention program for any offense that is not listed under~~
454 ~~paragraph (6)(a) without the state attorney's recommendation and~~
455 ~~approval. The committee may also include persons representing~~
456 ~~any other agencies to which persons released to the pretrial~~
457 ~~intervention program may be referred.~~
458 (7) ~~(8)~~ The department may contract for the services and
459 facilities necessary to operate pretrial intervention programs.
460 Section 9. Section 948.16, Florida Statutes, is amended to
461 read:
462 948.16 Misdemeanor pretrial substance abuse education and
463 treatment intervention program.--

464 (1)(a) A person who is charged with a misdemeanor for
465 possession of a controlled substance or drug paraphernalia under
466 chapter 893, and who has not previously been convicted of a
467 felony nor been admitted to a pretrial program, is eligible for
468 voluntary admission into a misdemeanor pretrial substance abuse
469 education and treatment intervention program, including a
470 treatment-based drug court program established pursuant to s.
471 397.334, approved by the chief judge of the circuit, for a
472 period based on the program requirements and the treatment plan
473 for the offender, upon motion of either party or the court's own
474 motion, except, if the state attorney believes the facts and
475 circumstances of the case suggest the defendant is involved in
476 dealing and selling controlled substances, the court shall hold
477 a preadmission hearing. If the state attorney establishes, by a
478 preponderance of the evidence at such hearing, that the
479 defendant was involved in dealing or selling controlled
480 substances, the court shall deny the defendant's admission into
481 the pretrial intervention program.
482 (b) While enrolled in a pretrial intervention program
483 authorized by this section, the participant is subject to a
484 coordinated strategy developed by a drug court team under s.
485 397.334(3). The coordinated strategy may include a protocol of
486 sanctions that may be imposed upon the participant for
487 noncompliance with program rules. The protocol of sanctions may
488 include, but is not limited to, placement in a substance abuse
489 treatment program offered by a licensed service provider as
490 defined in s. 397.311 or in a jail-based treatment program or
491 serving a period of incarceration within the time limits

492 established for contempt of court. The coordinated strategy must
493 be provided in writing to the participant before the participant
494 agrees to enter into a pretrial treatment-based drug court
495 program or other pretrial intervention program.
496 (2) At the end of the pretrial intervention period, the
497 court shall consider the recommendation of the treatment program
498 and the recommendation of the state attorney as to disposition
499 of the pending charges. The court shall determine, by written
500 finding, whether the defendant successfully completed the
501 pretrial intervention program.
502 ~~(a)~~ If the court finds that the defendant has not
503 successfully completed the pretrial intervention program, the
504 court may order the person to continue in education and
505 treatment or return the charges to the criminal docket for
506 prosecution.
507 ~~(b)~~ The court shall dismiss the charges upon finding that
508 the defendant has successfully completed the pretrial
509 intervention program.
510 (3) Any public or private entity providing a pretrial
511 substance abuse education and treatment program under this
512 section shall contract with the county or appropriate
513 governmental entity. The terms of the contract shall include,
514 but not be limited to, the requirements established for private
515 entities under s. 948.15(3).
516 Section 10. Section 985.306, Florida Statutes, is amended
517 to read:
518 985.306 Delinquency pretrial intervention program.--

519 (1) ~~(a)~~ Notwithstanding any provision of law to the
520 contrary, a child who is charged ~~under chapter 893~~ with a felony
521 of the second or third degree for purchase or possession of a
522 controlled substance under chapter 893; tampering with evidence;
523 solicitation for purchase of a controlled substance; or
524 obtaining a prescription by fraud, and who has not previously
525 been adjudicated for a felony ~~nor been admitted to a delinquency~~
526 ~~pretrial intervention program under this section~~, is eligible
527 for voluntary admission into a delinquency pretrial substance
528 abuse education and treatment intervention program, including a
529 treatment-based drug court program established pursuant to s.
530 397.334, approved by the chief judge or alternative sanctions
531 coordinator of the circuit to the extent that funded programs
532 are available, for a period based on the program requirements
533 and the treatment services that are suitable for the offender ~~of~~
534 ~~not less than 1 year in duration~~, upon motion of either party or
535 the court's own motion. However, if the state attorney believes
536 that the facts and circumstances of the case suggest the child's
537 involvement in the dealing and selling of controlled substances,
538 the court shall hold a preadmission hearing. If the state
539 attorney establishes by a preponderance of the evidence at such
540 hearing that the child was involved in the dealing and selling
541 of controlled substances, the court shall deny the child's
542 admission into a delinquency pretrial intervention program.
543 (2) While enrolled in a delinquency pretrial intervention
544 program authorized by this section, a child is subject to a
545 coordinated strategy developed by a drug court team under s.
546 397.334(3). The coordinated strategy may include a protocol of

547 sanctions that may be imposed upon the child for noncompliance
548 with program rules. The protocol of sanctions may include, but
549 is not limited to, placement in a substance abuse treatment
550 program offered by a licensed service provider as defined in s.
551 397.311 or serving a period of secure detention under this
552 chapter. The coordinated strategy must be provided in writing to
553 the child before the child agrees to enter the pretrial
554 treatment-based drug court program or other pretrial
555 intervention program.
556 (3) ~~(b)~~ At the end of the delinquency pretrial intervention
557 period, the court shall consider the recommendation of the state
558 attorney and the program administrator as to disposition of the
559 pending charges. The court shall determine, by written finding,
560 whether the child has successfully completed the delinquency
561 pretrial intervention program.
562 ~~(c)1.~~ If the court finds that the child has not
563 successfully completed the delinquency pretrial intervention
564 program, the court may order the child to continue in an
565 education, treatment, or urine monitoring program if resources
566 and funding are available or order that the charges revert to
567 normal channels for prosecution.
568 ~~2.~~ The court may dismiss the charges upon a finding that
569 the child has successfully completed the delinquency pretrial
570 intervention program.
571 (4) ~~(d)~~ Any entity, whether public or private, providing
572 pretrial substance abuse education, treatment intervention, and
573 a urine monitoring program under this section must contract with
574 the county or appropriate governmental entity, and the terms of

575 the contract must include, but need not be limited to, the
576 requirements established for private entities under s.
577 948.15(3). It is the intent of the Legislature that public or
578 private entities providing substance abuse education and
579 treatment intervention programs involve the active participation
580 of parents, schools, churches, businesses, law enforcement
581 agencies, and the department or its contract providers.
582 ~~(2) The chief judge in each circuit may appoint an~~
583 ~~advisory committee for the delinquency pretrial intervention~~
584 ~~program composed of the chief judge or designee, who shall serve~~
585 ~~as chair; the state attorney, the public defender, and the~~
586 ~~program administrator, or their designees; and such other~~
587 ~~persons as the chair deems appropriate. The committee may also~~
588 ~~include persons representing any other agencies to which~~
589 ~~children released to the delinquency pretrial intervention~~
590 ~~program may be referred.~~
591 Section 11. This act shall take effect upon becoming a
592 law.

HB 187

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 187 CS Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances
**SPONSOR(S):** Porth and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 232

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Criminal Justice Committee | 6 Y, 0 N, w/CS | Kramer | Kramer |
| 2) Transportation Committee | 14 Y, 0 N | Rousseau | Miller |
| 3) Transportation & Economic Development Appropriations Committee | 15 Y, 0 N, w/CS | McAuliffe | Gordon |
| 4) Justice Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


HB 187 increases the sanction for refusing to submit to a lawful test of breath, urine or blood when an officer has reasonable cause to believe that a person was driving under the influence. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a prior refusal to submit to such a test. As a result of the bill, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year, as under current law, and to possible imprisonment for up to one year in county jail. The bill makes a corresponding change to the relevant boating under the influence (BUI) statutes.

In addition, the bill requires the Department of Highway Safety and Motor Vehicles (DHSMV), prior to reinstating a permanent or restricted license, to require the placement of an ignition interlock device in the vehicle of a person whose driver's license has been suspended for refusing to submit to a blood, breath, or urine test. For the first suspension the interlock device would be required for six months, and for a second or subsequent suspension the interlock device would be required for one year. Current law does not provide for the installation of an ignition interlock device for refusing to submit to a blood, breath or urine test.

In order for a breath or blood test to be considered valid it must be performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department. Upon the request of the person tested, the law requires that full information concerning the test taken at the direction of the law enforcement officer must be made available to the person or his or her attorney. The bill specifies what information must be provided and provides that full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information will not include information in the possession of the manufacturer of the test instrument.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Safeguard Individual Liberty: The bill makes it a first degree misdemeanor for a person to refuse to submit to a lawful breath, urine or blood test in a DUI or BUI case.

Promote Personal Responsibility: The bill will provide for increased sanctions for refusal to submit to a lawful breath, urine or blood test in DUI and BUI cases.

B. EFFECT OF PROPOSED CHANGES:

**DUI/BUI**

The offense of driving under the influence[1] (DUI) is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The offense is punishable as follows[2]:

- For a first conviction, by a fine of not less than $250 or more than $500 and by imprisonment for not more than six months.
- For a second conviction, by a fine of not less than $500 or more than $1,000 and by imprisonment for not more than nine months. If the second conviction was for an offense committed within five years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.[3]
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than $1,000 or more than $2,500 and by imprisonment for not more than 12 months.

A third conviction that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail[4] and up to five years in prison and a fine of up to $1000.[5] A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than $1,000 or more than $5,000.[6]

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

**Implied consent**

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[1] s. 316.193(1), F.S.
[2] s. 316.193(2), F.S.
[3] s. 316.193(6)(b), F.S.
[4] s. 316.193(6)(c), F.S.
[5] s. 316.193(2)(b), F.S.
[6] Additionally, a person who has been convicted of DUI faces suspension of his or her driving privilege and may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. Specifically, section 316.1932(1)(a)1, F.S., provides that:

> Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages.

Similarly, section 316.1932(1)(a)2, F.S. provides that a person who accepts the privilege of driving in the state is deemed to have consented to a urine test for the purpose of detecting the presence of a chemical substance or controlled substance. A breath or urine test must be incidental to a lawful arrest at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence.

A person is deemed to have given his or her consent to a blood test even if the person has not yet been arrested, if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at a medical facility and if the administration of a breath or urine test if impractical or impossible.[7]

When an officer requests the breath, urine or blood test, the offender must be told that:

- Refusal to submit to the test will result in the suspension of the offender's driving privilege for one year.
- Refusal to submit to the test will result in the suspension of the offender's driving privilege for 18 months if the offenders driving privilege has previously been suspended for a refusal to submit.
- Refusal to submit to test is a misdemeanor if the offender's driving privilege has previously been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood.

According to the DHSMV, there were 23,517 driver license suspensions in 2003 and 23,058 in 2004 for refusal to consent to a lawful test of breath, urine or blood.

**Sanctions for refusing to comply**

Prior to the 2002 legislative session, if a driver refused to submit to a breath, blood or urine test after an arrest for driving under the influence (DUI), their driving privilege would be suspended. The refusal to submit was not a criminal offense. During the 2002 session, the law was changed to make a refusal to submit to a breath, urine or blood test a first degree misdemeanor if the offender's driving privilege has previously been suspended for a refusal to submit.[8]

HB 187 amends s. 316.1939, F.S. to make it a first degree misdemeanor to refuse to consent to a lawful test of breath, urine or blood under the circumstances described above. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a refusal to submit to such a test. As a result, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill also amends s. 316.1932, F.S. to require that an officer inform a person that his or her refusal to submit to the test will be punishable as a misdemeanor. The bill makes a corresponding change to the relevant BUI statutes, ss. 327.352 and 327.359, F.S.

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[7] s. 316.1932(1)(c), F.S The refusal to submit to a breath, urine or blood test is admissible into evidence in any criminal proceeding. The result of any test pursuant to this section which indicates the presence of a controlled substances is not admissible in a trial for the possession of a controlled substance. s. 316.1932(2), F.S.

[8] See 2002-263, Laws of Fla.

## Ignition Interlock Devices

Section 322.2715, F.S., provides the DHSMV must require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. An exception is provided for consideration to be given to individuals with a documented medical condition prohibiting the ignition interlock device from functioning normally when such persons are convicted of an offense of DUI requiring the placement of the device. The placement of an interlock device is required on all vehicles individually or jointly owned or leased, and routinely operated by the offender. Current law does not provide for the installation of an interlock device for refusing to submit to a blood, breath, or urine test.

The section also specifies the duration of each installation period based upon the number of DUI convictions as required under s. 316.193, F.S. The installation of an interlock device is not required for the first DUI offense except where the violator had a blood alcohol level of 0.20 or higher, or if a passenger under 18 years of age is present in the vehicle. For such a first offense the section requires placement of an interlock device for up to 6 months and for up to two years for a second offense. Upon a second conviction for DUI, where the violator had a blood alcohol level below 0.20, and did not have a passenger under 18 years of age in the vehicle, the interlock device must be installed for not less than one year. Upon a third DUI conviction, the ignition interlock device must be installed for at least 2 years.

In addition, the section authorizes DHSMV to immediately require the interlock device be installed if the court fails to so order such installation on a convicted offender's vehicle. However, an exception is provided for consideration to be given to individuals with a documented medical condition prohibiting the ignition interlock device from functioning normally when such persons are convicted of an offense of DUI requiring the placement of the device.

HB 187 would require DHSMV, prior to reinstating a permanent or restricted license, to require the placement of an ignition interlock device in the vehicle of a person whose driver's license has been suspended for refusing to submit to a blood, breath, or urine test. The bill specifies the duration of each installation period based upon the number of prior refusals to mirror the installation period for a DUI conviction. However, the interlock device would be required for six months for a first offense regardless of whether the violator had a blood alcohol level of 0.20 or higher, or if a passenger under 18 years of age is present in the vehicle.

## Full information

In order for a breath or blood test to be considered valid it must be performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department.[9] Upon the request of the person tested, full information concerning the test taken at the direction of the law enforcement officer must be made available to the person or his or her attorney.[10]

In State v. Muldowny, 871 So.2d 911 (Fla. 2005), the Fifth District Court of Appeal stated that because this section requires that full information be disclosed:

> It must necessarily follow that when a person risks the loss of driving privileges or perhaps freedom based upon the use and operation of a particular machine, full information includes operating manuals, maintenance manuals and schematics in order to determine whether the machine actually used to determine the extent of a defendant's intoxication is the same unmodified model that was approved pursuant to statutory procedures. It seems to us that one should not have privileges and freedom jeopardized by the results of a mystical machine that is immune from discovery, that inhales breath samples and that produces a report specifying a

[9] ss. 316.1934(3) and 327.354(3), F.S.
[10] s. 316.1932(1)(f)4, F.S.

degree of intoxication.

The state had argued that it did not have possession of the requested information and that it was trade secret. The DCA affirmed the trial court's ruling excluding the breath test results. This is the only reported decision on this issue. Trial courts around the state have been divided on the issue.
The bill provides that full information will be provided concerning the *results of the test taken* and provides that full information is limited to the following:

1. The type of test administered and the procedures followed;
2. The time of the collection of the blood or breath test sampled;
3. The numerical results of the test indicating the alcohol content of the blood and breath;
4. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and
5. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

The bill also provides that full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.1932, F.S., relating to refusal to submit to a breath, urine or blood test.

Section 2. Amends s. 316.1939, F.S., removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in DUI case.

Section 3. Amends s. 322.2615, F.S., requiring DHSMV, prior to reinstating a permanent or restricted license, to require the placement of an ignition interlock device in the vehicle of a person whose driver's license has been suspended for refusing to submit to a blood, breath, or urine test. For the first suspension the interlock device would be required for six months, and for a second or subsequent suspension the interlock device would be required for one year.

Section 4. Amends s. 322.271, F.S., providing that if DHSMV restores the privilege of driving on a limited or restricted basis for business or employment use after upholding an administrative suspension for refusal to submit to a breath, blood or urine test, or if a hearing is not held, the licensee must have an ignition interlock device installed.

Section 5. Amends s. 322.2715, F.S., specifying the duration of each interlock device installation period based upon the number of refusals to submit to a breath, blood or urine test.

Section 6. Amends s. 327.352, F.S., relating to refusal to submit to breath, urine or blood test in BUI cases.

Section 4. Amends s. 327.359, F.S., removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in BUI case.

Section 5. Provides October 1, 2005 effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D. Fiscal Comments.

2. Expenditures:

See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill will make a first refusal to submit to a lawful breath, urine or blood test a first degree misdemeanor. Currently, a person commits a misdemeanor in refusing to submit to a breath, urine or blood test only if the person's driving privilege had previously been suspended for a refusal to submit to a test. A first degree misdemeanor is punishable by up to a year in county jail. This may have an impact on county court caseloads and county jail populations. In recent years more than 20,000 drivers per year have refused to consent to the tests. The new law could reduce the number of first-time refusals, but how the proposed change would affect the number is unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals refusing for the first time to submit to a lawful breath, urine or blood test of alcohol or of chemical or controlled substances would be subject to misdemeanor penalties.

According to DHSMV, persons requiring the placement of an approved ignition interlock device must currently pay a $70 installation fee, a deposit of $100 paid upon installation (and returned at the end of the required duration if the device is not damaged), and a $2 a day fee.

D. FISCAL COMMENTS:

The Department of Highway Safety and Motor Vehicles reports that the bill will not have a fiscal impact on the department.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 322.2615, F.S., providing for the installation of an ignition interlock device for <u>one year</u> for a second <u>or subsequent</u> suspension for refusing to submit to a breath, blood or urine test; however, the bill also amends s. 322.2715, F.S., providing for the installation of a interlock device for <u>not less than two years</u> for a <u>third</u> refusal.

Further, s. 322.2615, F.S., provides that 18 months is the maximum amount of time a persons driver's license may be suspended for refusal to submit to a lawful breath, blood or urine test, therefore this bill could require a person to have a interlock device in their vehicle after driving privileges have been reinstated.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

As originally filed, the bill expanded the circumstances in which a law enforcement officer could require that a blood sample be taken in DUI and BUI cases. The Criminal Justice Committee amended the bill to remove this provision. The amendment also added the language relating to information that must be provided to a person who is the subject of a breath or blood test.

On February 23, 2006, this bill was considered by the Transportation Economic Development Appropriations Committee. An amendment was adopted which requires the Department of Highway Safety and Motor Vehicles, prior to reinstating a permanent or restricted license, to require the placement of an ignition interlock device in the vehicle of a person whose driver's license has been suspended for refusing to submit to a blood, breath, or urine test. For the first suspension the interlock device would be required for six months, and for a second or subsequent suspension the interlock device would be required for one year.

CHAMBER ACTION

1 The Transportation & Economic Development Appropriations
2 Committee recommends the following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to lawful testing for alcohol, chemical
8 substances, or controlled substances; amending s.
9 316.1932, F.S.; revising provisions to notify a person
10 that refusal to submit to a lawful test of the person's
11 breath, urine, or blood is a misdemeanor, to conform to
12 changes made by the act; limiting information to be made
13 available to a person tested to determine the amount of
14 alcohol in the person's blood or breath or the presence of
15 chemical substances or controlled substances; amending s.
16 316.1939, F.S.; removing prior suspension as a condition
17 for the commission of a misdemeanor by refusal to submit
18 to a lawful test of breath, urine, or blood; amending s.
19 322.2615, F.S.; requiring the placement of an ignition
20 interlock device prior to issuance of a permanent or
21 restricted driver's license when the license was suspended
22 for refusal to submit to a blood, breath, or urine test
23 under specified provisions; requiring the device to remain

24 for specified time periods under certain circumstances;
25 amending s. 322.271, F.S.; providing for the installation
26 of an ignition interlock device if there has been an
27 administrative suspension for refusal; requiring the
28 device to remain installed for specified time periods
29 under certain circumstances; amending s. 322.2715, F.S.;
30 revising requirements for ignition interlock devices to
31 include installation for refusal to submit to testing
32 under specified provisions; providing for an exception
33 under certain circumstances; amending s. 327.352, F.S.;
34 revising provisions to notify a person that refusal to
35 submit to a lawful test of the person's breath, urine, or
36 blood is a misdemeanor, to conform to changes made by the
37 act; limiting information to be made available to a person
38 tested to determine the amount of alcohol in the person's
39 blood or breath or the presence of chemical substances or
40 controlled substances; amending s. 327.359, F.S.; removing
41 prior suspension as a condition for the commission of a
42 misdemeanor by refusal to submit to a lawful test of
43 breath, urine, or blood; providing an effective date.
44
45 Be It Enacted by the Legislature of the State of Florida:
46
47 Section 1. Paragraphs (a), (c), and (f) of subsection (1)
48 of section 316.1932, Florida Statutes, are amended to read:
49 316.1932 Tests for alcohol, chemical substances, or
50 controlled substances; implied consent; refusal.--

51 (1)(a)1.a. Any person who accepts the privilege extended
52 by the laws of this state of operating a motor vehicle within
53 this state is, by so operating such vehicle, deemed to have
54 given his or her consent to submit to an approved chemical test
55 or physical test including, but not limited to, an infrared
56 light test of his or her breath for the purpose of determining
57 the alcoholic content of his or her blood or breath if the
58 person is lawfully arrested for any offense allegedly committed
59 while the person was driving or was in actual physical control
60 of a motor vehicle while under the influence of alcoholic
61 beverages. The chemical or physical breath test must be
62 incidental to a lawful arrest and administered at the request of
63 a law enforcement officer who has reasonable cause to believe
64 such person was driving or was in actual physical control of the
65 motor vehicle within this state while under the influence of
66 alcoholic beverages. The administration of a breath test does
67 not preclude the administration of another type of test. The
68 person shall be told that his or her failure to submit to any
69 lawful test of his or her breath will result in the suspension
70 of the person's privilege to operate a motor vehicle for a
71 period of 1 year for a first refusal, or for a period of 18
72 months if the driving privilege of such person has been
73 previously suspended as a result of a refusal to submit to such
74 a test or tests, and shall also be told that if he or she
75 refuses to submit to a lawful test of his or her breath ~~and his~~
76 ~~or her driving privilege has been previously suspended for a~~
77 ~~prior refusal to submit to a lawful test of his or her breath,~~
78 ~~urine, or blood~~, he or she commits a misdemeanor in addition to

79 any other penalties. The refusal to submit to a chemical or
80 physical breath test upon the request of a law enforcement
81 officer as provided in this section is admissible into evidence
82 in any criminal proceeding.
83 b. Any person who accepts the privilege extended by the
84 laws of this state of operating a motor vehicle within this
85 state is, by so operating such vehicle, deemed to have given his
86 or her consent to submit to a urine test for the purpose of
87 detecting the presence of chemical substances as set forth in s.
88 877.111 or controlled substances if the person is lawfully
89 arrested for any offense allegedly committed while the person
90 was driving or was in actual physical control of a motor vehicle
91 while under the influence of chemical substances or controlled
92 substances. The urine test must be incidental to a lawful arrest
93 and administered at a detention facility or any other facility,
94 mobile or otherwise, which is equipped to administer such tests
95 at the request of a law enforcement officer who has reasonable
96 cause to believe such person was driving or was in actual
97 physical control of a motor vehicle within this state while
98 under the influence of chemical substances or controlled
99 substances. The urine test shall be administered at a detention
100 facility or any other facility, mobile or otherwise, which is
101 equipped to administer such test in a reasonable manner that
102 will ensure the accuracy of the specimen and maintain the
103 privacy of the individual involved. The administration of a
104 urine test does not preclude the administration of another type
105 of test. The person shall be told that his or her failure to
106 submit to any lawful test of his or her urine will result in the

107 suspension of the person's privilege to operate a motor vehicle
108 for a period of 1 year for the first refusal, or for a period of
109 18 months if the driving privilege of such person has been
110 previously suspended as a result of a refusal to submit to such
111 a test or tests, and shall also be told that if he or she
112 refuses to submit to a lawful test of his or her urine ~~and his~~
113 ~~or her driving privilege has been previously suspended for a~~
114 ~~prior refusal to submit to a lawful test of his or her breath,~~
115 ~~urine, or blood~~, he or she commits a misdemeanor in addition to
116 any other penalties. The refusal to submit to a urine test upon
117 the request of a law enforcement officer as provided in this
118 section is admissible into evidence in any criminal proceeding.
119 2. The Alcohol Testing Program within the Department of
120 Law Enforcement is responsible for the regulation of the
121 operation, inspection, and registration of breath test
122 instruments utilized under the driving and boating under the
123 influence provisions and related provisions located in this
124 chapter and chapters 322 and 327. The program is responsible for
125 the regulation of the individuals who operate, inspect, and
126 instruct on the breath test instruments utilized in the driving
127 and boating under the influence provisions and related
128 provisions located in this chapter and chapters 322 and 327. The
129 program is further responsible for the regulation of blood
130 analysts who conduct blood testing to be utilized under the
131 driving and boating under the influence provisions and related
132 provisions located in this chapter and chapters 322 and 327. The
133 program shall:

134 a. Establish uniform criteria for the issuance of permits
135 to breath test operators, agency inspectors, instructors, blood
136 analysts, and instruments.
137 b. Have the authority to permit breath test operators,
138 agency inspectors, instructors, blood analysts, and instruments.
139 c. Have the authority to discipline and suspend, revoke,
140 or renew the permits of breath test operators, agency
141 inspectors, instructors, blood analysts, and instruments.
142 d. Establish uniform requirements for instruction and
143 curricula for the operation and inspection of approved
144 instruments.
145 e. Have the authority to specify one approved curriculum
146 for the operation and inspection of approved instruments.
147 f. Establish a procedure for the approval of breath test
148 operator and agency inspector classes.
149 g. Have the authority to approve or disapprove breath test
150 instruments and accompanying paraphernalia for use pursuant to
151 the driving and boating under the influence provisions and
152 related provisions located in this chapter and chapters 322 and
153 327.
154 h. With the approval of the executive director of the
155 Department of Law Enforcement, make and enter into contracts and
156 agreements with other agencies, organizations, associations,
157 corporations, individuals, or federal agencies as are necessary,
158 expedient, or incidental to the performance of duties.
159 i. Issue final orders which include findings of fact and
160 conclusions of law and which constitute final agency action for
161 the purpose of chapter 120.

162 j. Enforce compliance with the provisions of this section
163 through civil or administrative proceedings.
164 k. Make recommendations concerning any matter within the
165 purview of this section, this chapter, chapter 322, or chapter
166 327.
167 l. Promulgate rules for the administration and
168 implementation of this section, including definitions of terms.
169 m. Consult and cooperate with other entities for the
170 purpose of implementing the mandates of this section.
171 n. Have the authority to approve the type of blood test
172 utilized under the driving and boating under the influence
173 provisions and related provisions located in this chapter and
174 chapters 322 and 327.
175 o. Have the authority to specify techniques and methods
176 for breath alcohol testing and blood testing utilized under the
177 driving and boating under the influence provisions and related
178 provisions located in this chapter and chapters 322 and 327.
179 p. Have the authority to approve repair facilities for the
180 approved breath test instruments, including the authority to set
181 criteria for approval.
182
183 Nothing in this section shall be construed to supersede
184 provisions in this chapter and chapters 322 and 327. The
185 specifications in this section are derived from the power and
186 authority previously and currently possessed by the Department
187 of Law Enforcement and are enumerated to conform with the
188 mandates of chapter 99-379, Laws of Florida.

189 (c) Any person who accepts the privilege extended by the
190 laws of this state of operating a motor vehicle within this
191 state is, by operating such vehicle, deemed to have given his or
192 her consent to submit to an approved blood test for the purpose
193 of determining the alcoholic content of the blood or a blood
194 test for the purpose of determining the presence of chemical
195 substances or controlled substances as provided in this section
196 if there is reasonable cause to believe the person was driving
197 or in actual physical control of a motor vehicle while under the
198 influence of alcoholic beverages or chemical or controlled
199 substances and the person appears for treatment at a hospital,
200 clinic, or other medical facility and the administration of a
201 breath or urine test is impractical or impossible. As used in
202 this paragraph, the term "other medical facility" includes an
203 ambulance or other medical emergency vehicle. The blood test
204 shall be performed in a reasonable manner. Any person who is
205 incapable of refusal by reason of unconsciousness or other
206 mental or physical condition is deemed not to have withdrawn his
207 or her consent to such test. A blood test may be administered
208 whether or not the person is told that his or her failure to
209 submit to such a blood test will result in the suspension of the
210 person's privilege to operate a motor vehicle upon the public
211 highways of this state and that a refusal to submit to a lawful
212 test of his or her blood~~, if his or her driving privilege has~~
213 ~~been previously suspended for refusal to submit to a lawful test~~
214 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any
215 person who is capable of refusal shall be told that his or her
216 failure to submit to such a blood test will result in the

217 suspension of the person's privilege to operate a motor vehicle
218 for a period of 1 year for a first refusal, or for a period of
219 18 months if the driving privilege of the person has been
220 suspended previously as a result of a refusal to submit to such
221 a test or tests, and that a refusal to submit to a lawful test
222 of his or her blood~~, if his or her driving privilege has been~~
223 ~~previously suspended for a prior refusal to submit to a lawful~~
224 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.
225 The refusal to submit to a blood test upon the request of a law
226 enforcement officer is admissible in evidence in any criminal
227 proceeding.
228 (f)1. The tests determining the weight of alcohol in the
229 defendant's blood or breath shall be administered at the request
230 of a law enforcement officer substantially in accordance with
231 rules of the Department of Law Enforcement. Such rules must
232 specify precisely the test or tests that are approved by the
233 Department of Law Enforcement for reliability of result and ease
234 of administration, and must provide an approved method of
235 administration which must be followed in all such tests given
236 under this section. However, the failure of a law enforcement
237 officer to request the withdrawal of blood does not affect the
238 admissibility of a test of blood withdrawn for medical purposes.
239 2.a. Only a physician, certified paramedic, registered
240 nurse, licensed practical nurse, other personnel authorized by a
241 hospital to draw blood, or duly licensed clinical laboratory
242 director, supervisor, technologist, or technician, acting at the
243 request of a law enforcement officer, may withdraw blood for the
244 purpose of determining its alcoholic content or the presence of

245 chemical substances or controlled substances therein. However,
246 the failure of a law enforcement officer to request the
247 withdrawal of blood does not affect the admissibility of a test
248 of blood withdrawn for medical purposes.
249 b. Notwithstanding any provision of law pertaining to the
250 confidentiality of hospital records or other medical records, if
251 a health care provider, who is providing medical care in a
252 health care facility to a person injured in a motor vehicle
253 crash, becomes aware, as a result of any blood test performed in
254 the course of that medical treatment, that the person's blood-
255 alcohol level meets or exceeds the blood-alcohol level specified
256 in s. 316.193(1)(b), the health care provider may notify any law
257 enforcement officer or law enforcement agency. Any such notice
258 must be given within a reasonable time after the health care
259 provider receives the test result. Any such notice shall be used
260 only for the purpose of providing the law enforcement officer
261 with reasonable cause to request the withdrawal of a blood
262 sample pursuant to this section.
263 c. The notice shall consist only of the name of the person
264 being treated, the name of the person who drew the blood, the
265 blood-alcohol level indicated by the test, and the date and time
266 of the administration of the test.
267 d. Nothing contained in s. 395.3025(4), s. 456.057, or any
268 applicable practice act affects the authority to provide notice
269 under this section, and the health care provider is not
270 considered to have breached any duty owed to the person under s.
271 395.3025(4), s. 456.057, or any applicable practice act by
272 providing notice or failing to provide notice. It shall not be a

273 breach of any ethical, moral, or legal duty for a health care
274 provider to provide notice or fail to provide notice.
275 e. A civil, criminal, or administrative action may not be
276 brought against any person or health care provider participating
277 in good faith in the provision of notice or failure to provide
278 notice as provided in this section. Any person or health care
279 provider participating in the provision of notice or failure to
280 provide notice as provided in this section shall be immune from
281 any civil or criminal liability and from any professional
282 disciplinary action with respect to the provision of notice or
283 failure to provide notice under this section. Any such
284 participant has the same immunity with respect to participating
285 in any judicial proceedings resulting from the notice or failure
286 to provide notice.
287 3. The person tested may, at his or her own expense, have
288 a physician, registered nurse, other personnel authorized by a
289 hospital to draw blood, or duly licensed clinical laboratory
290 director, supervisor, technologist, or technician, or other
291 person of his or her own choosing administer an independent test
292 in addition to the test administered at the direction of the law
293 enforcement officer for the purpose of determining the amount of
294 alcohol in the person's blood or breath or the presence of
295 chemical substances or controlled substances at the time
296 alleged, as shown by chemical analysis of his or her blood or
297 urine, or by chemical or physical test of his or her breath. The
298 failure or inability to obtain an independent test by a person
299 does not preclude the admissibility in evidence of the test
300 taken at the direction of the law enforcement officer. The law

301 enforcement officer shall not interfere with the person's
302 opportunity to obtain the independent test and shall provide the
303 person with timely telephone access to secure the test, but the
304 burden is on the person to arrange and secure the test at the
305 person's own expense.
306 4. Upon the request of the person tested, full information
307 concerning the results of the test taken at the direction of the
308 law enforcement officer shall be made available to the person or
309 his or her attorney. Full information is limited to the
310 following:
311 a. The type of test administered and the procedures
312 followed.
313 b. The time of the collection of the blood or breath
314 sample analyzed.
315 c. The numerical results of the test indicating the
316 alcohol content of the blood and breath.
317 d. The type and status of any permit issued by the
318 Department of Law Enforcement which was held by the person who
319 performed the test.
320 e. If the test was administered by means of a breath
321 testing instrument, the date of performance of the most recent
322 required maintenance of such instrument.
323
324 Full information does not include manuals, schematics, or
325 software of the instrument used to test the person or any other
326 material that is not in the actual possession of the state.
327 Additionally, full information does not include information in
328 the possession of the manufacturer of the test instrument.

329 5. A hospital, clinical laboratory, medical clinic, or
330 similar medical institution or physician, certified paramedic,
331 registered nurse, licensed practical nurse, other personnel
332 authorized by a hospital to draw blood, or duly licensed
333 clinical laboratory director, supervisor, technologist, or
334 technician, or other person assisting a law enforcement officer
335 does not incur any civil or criminal liability as a result of
336 the withdrawal or analysis of a blood or urine specimen, or the
337 chemical or physical test of a person's breath pursuant to
338 accepted medical standards when requested by a law enforcement
339 officer, regardless of whether or not the subject resisted
340 administration of the test.
341 Section 2. Section 316.1939, Florida Statutes, is amended
342 to read:
343 316.1939 Refusal to submit to testing; penalties.--
344 (1) Any person who has refused to submit to a chemical or
345 physical test of his or her breath, blood, or urine, as
346 described in s. 316.1932, ~~and whose driving privilege was~~
347 ~~previously suspended for a prior refusal to submit to a lawful~~
348 ~~test of his or her breath, urine, or blood,~~ and:
349 (a) Who the arresting law enforcement officer had probable
350 cause to believe was driving or in actual physical control of a
351 motor vehicle in this state while under the influence of
352 alcoholic beverages, chemical substances, or controlled
353 substances;
354 (b) Who was placed under lawful arrest for a violation of
355 s. 316.193 unless such test was requested pursuant to s.
356 316.1932(1)(c);

357 (c) Who was informed that, if he or she refused to submit
358 to such test, his or her privilege to operate a motor vehicle
359 would be suspended for a period of 1 year or, in the case of a
360 second or subsequent refusal, for a period of 18 months;
361 (d) Who was informed that a refusal to submit to a lawful
362 test of his or her breath, urine, or blood~~, if his or her~~
363 ~~driving privilege has been previously suspended for a prior~~
364 ~~refusal to submit to a lawful test of his or her breath, urine,~~
365 ~~or blood,~~ is a misdemeanor; and
366 (e) Who, after having been so informed, refused to submit
367 to any such test when requested to do so by a law enforcement
368 officer or correctional officer,
369
370 commits a misdemeanor of the first degree, punishable ~~and is~~
371 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.
372 (2) The disposition of any administrative proceeding that
373 relates to the suspension of a person's driving privilege does
374 not affect a criminal action under this section.
375 (3) The disposition of a criminal action under this
376 section does not affect any administrative proceeding that
377 relates to the suspension of a person's driving privilege. ~~The~~
378 ~~department's records showing that a person's license has been~~
379 ~~previously suspended for a prior refusal to submit to a lawful~~
380 ~~test of his or her breath, urine, or blood shall be admissible~~
381 ~~and shall create a rebuttable presumption of such suspension.~~
382 Section 3. Subsection (17) is added to section 322.2615,
383 Florida Statutes, to read:
384 322.2615 Suspension of license; right to review.--

385 (17) Before issuing a permanent or restricted driver's
386 license to a person suspended under this section for refusal to
387 submit to a blood, breath, or urine test, the department shall
388 require placement of a department-approved ignition interlock
389 device. If this is the first suspension for refusal to submit to
390 a blood, breath, or urine test, the ignition interlock device
391 shall be required for a period of 6 months and, in the case of a
392 second or subsequent suspension for refusal to submit to a
393 blood, breath, or urine test, the ignition interlock device
394 shall be required for a period of 1 year.
395 Section 4. Subsection (3) of section 322.271, Florida
396 Statutes, is amended to read:
397 322.271 Authority to modify revocation, cancellation, or
398 suspension order.--
399 (3) Upon such hearing, the department shall either
400 suspend, affirm, or modify its order and may restore to the
401 licensee the privilege of driving on a limited or restricted
402 basis for business or employment use only. If the department
403 suspends, affirms, or modifies its order and restores the
404 licensee's privilege of driving on a limited or restricted basis
405 for business or employment use after upholding an administrative
406 suspension for refusal, the licensee is required to have an
407 ignition interlock device installed for the time periods listed
408 in s. 322.2715(3). If a hearing is not held, the administrative
409 suspension for refusal is upheld and goes into effect and the
410 licensee is required to have an ignition interlock device
411 installed for the time periods listed in s. 322.2715(3).

412 Section 5. Subsection (3) of section 322.2715, Florida
413 Statutes, is amended, and subsection (5) is added to that
414 section, to read:
415 322.2715 Ignition interlock device.--
416 (3) If the person is convicted of:
417 (a) A first offense of driving under the influence under
418 s. 316.193 and has an unlawful blood-alcohol level or breath-
419 alcohol level as specified in s. 316.193(4), or if a person is
420 convicted of a first offense of refusal under s. 316.1939, or if
421 a person is convicted of a violation of s. 316.193 and was at
422 the time of the offense accompanied in the vehicle by a person
423 younger than 18 years of age, the person shall have the ignition
424 interlock device installed for 6 months for the first offense
425 and for at least 2 years for a second offense.
426 (b) A second offense of driving under the influence or a
427 refusal under s. 316.1939, the ignition interlock device shall
428 be installed for a period of not less than 1 year.
429 (c) A third offense of driving under the influence or a
430 refusal under s. 316.1939, which occurs within 10 years after a
431 prior conviction for a violation of s. 316.193, the ignition
432 interlock device shall be installed for a period of not less
433 than 2 years.
434 (d) A third offense of driving under the influence or a
435 refusal under s. 316.1939, which occurs more than 10 years after
436 the date of a prior conviction, the ignition interlock device
437 shall be installed for a period of not less than 2 years.
438 (5) Before issuing a permanent or restricted driver's
439 license under this chapter, the department shall require the

440 placement of a department-approved ignition interlock device for
441 any person convicted of a refusal under s. 316.1939 or s.
442 322.2615, except that consideration may be given to those
443 individuals having a documented medical condition that would
444 prohibit the device from functioning normally. An ignition
445 interlock device shall be placed on all vehicles that are
446 individually or jointly leased or owned and routinely operated
447 by the convicted person.
448 Section 6. Paragraphs (a), (c), and (e) of subsection (1)
449 of section 327.352, Florida Statutes, are amended to read:
450 327.352 Tests for alcohol, chemical substances, or
451 controlled substances; implied consent; refusal.--
452 (1)(a)1. The Legislature declares that the operation of a
453 vessel is a privilege that must be exercised in a reasonable
454 manner. In order to protect the public health and safety, it is
455 essential that a lawful and effective means of reducing the
456 incidence of boating while impaired or intoxicated be
457 established. Therefore, any person who accepts the privilege
458 extended by the laws of this state of operating a vessel within
459 this state is, by so operating such vessel, deemed to have given
460 his or her consent to submit to an approved chemical test or
461 physical test including, but not limited to, an infrared light
462 test of his or her breath for the purpose of determining the
463 alcoholic content of his or her blood or breath if the person is
464 lawfully arrested for any offense allegedly committed while the
465 person was operating a vessel while under the influence of
466 alcoholic beverages. The chemical or physical breath test must
467 be incidental to a lawful arrest and administered at the request

468 of a law enforcement officer who has reasonable cause to believe
469 such person was operating the vessel within this state while
470 under the influence of alcoholic beverages. The administration
471 of a breath test does not preclude the administration of another
472 type of test. The person shall be told that his or her failure
473 to submit to any lawful test of his or her breath will result in
474 a civil penalty of $500~~,~~ and shall also be told that if he or
475 she refuses to submit to a lawful test of his or her breath ~~and~~
476 ~~he or she has been previously fined for refusal to submit to any~~
477 ~~lawful test of his or her breath, urine, or blood~~, he or she
478 commits a misdemeanor in addition to any other penalties. The
479 refusal to submit to a chemical or physical breath test upon the
480 request of a law enforcement officer as provided in this section
481 is admissible into evidence in any criminal proceeding.
482 2. Any person who accepts the privilege extended by the
483 laws of this state of operating a vessel within this state is,
484 by so operating such vessel, deemed to have given his or her
485 consent to submit to a urine test for the purpose of detecting
486 the presence of chemical substances as set forth in s. 877.111
487 or controlled substances if the person is lawfully arrested for
488 any offense allegedly committed while the person was operating a
489 vessel while under the influence of chemical substances or
490 controlled substances. The urine test must be incidental to a
491 lawful arrest and administered at a detention facility or any
492 other facility, mobile or otherwise, which is equipped to
493 administer such tests at the request of a law enforcement
494 officer who has reasonable cause to believe such person was
495 operating a vessel within this state while under the influence

496 of chemical substances or controlled substances. The urine test
497 shall be administered at a detention facility or any other
498 facility, mobile or otherwise, which is equipped to administer
499 such test in a reasonable manner that will ensure the accuracy
500 of the specimen and maintain the privacy of the individual
501 involved. The administration of a urine test does not preclude
502 the administration of another type of test. The person shall be
503 told that his or her failure to submit to any lawful test of his
504 or her urine will result in a civil penalty of $500~~,~~ and shall
505 also be told that if he or she refuses to submit to a lawful
506 test of his or her urine ~~and he or she has been previously fined~~
507 ~~for refusal to submit to any lawful test of his or her breath,~~
508 ~~urine, or blood~~, he or she commits a misdemeanor in addition to
509 any other penalties. The refusal to submit to a urine test upon
510 the request of a law enforcement officer as provided in this
511 section is admissible into evidence in any criminal proceeding.
512 (c) Any person who accepts the privilege extended by the
513 laws of this state of operating a vessel within this state is,
514 by operating such vessel, deemed to have given his or her
515 consent to submit to an approved blood test for the purpose of
516 determining the alcoholic content of the blood or a blood test
517 for the purpose of determining the presence of chemical
518 substances or controlled substances as provided in this section
519 if there is reasonable cause to believe the person was operating
520 a vessel while under the influence of alcoholic beverages or
521 chemical or controlled substances and the person appears for
522 treatment at a hospital, clinic, or other medical facility and
523 the administration of a breath or urine test is impractical or

524 impossible. As used in this paragraph, the term "other medical
525 facility" includes an ambulance or other medical emergency
526 vehicle. The blood test shall be performed in a reasonable
527 manner. Any person who is incapable of refusal by reason of
528 unconsciousness or other mental or physical condition is deemed
529 not to have withdrawn his or her consent to such test. Any
530 person who is capable of refusal shall be told that his or her
531 failure to submit to such a blood test will result in a civil
532 penalty of $500 and that a refusal to submit to a lawful test of
533 his or her blood~~, if he or she has previously been fined for~~
534 ~~refusal to submit to any lawful test of his or her breath,~~
535 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a
536 blood test upon the request of a law enforcement officer shall
537 be admissible in evidence in any criminal proceeding.
538 (e)1. The tests determining the weight of alcohol in the
539 defendant's blood or breath shall be administered at the request
540 of a law enforcement officer substantially in accordance with
541 rules of the Department of Law Enforcement. However, the failure
542 of a law enforcement officer to request the withdrawal of blood
543 does not affect the admissibility of a test of blood withdrawn
544 for medical purposes.
545 2. Only a physician, certified paramedic, registered
546 nurse, licensed practical nurse, other personnel authorized by a
547 hospital to draw blood, or duly licensed clinical laboratory
548 director, supervisor, technologist, or technician, acting at the
549 request of a law enforcement officer, may withdraw blood for the
550 purpose of determining its alcoholic content or the presence of
551 chemical substances or controlled substances therein. However,

552 the failure of a law enforcement officer to request the
553 withdrawal of blood does not affect the admissibility of a test
554 of blood withdrawn for medical purposes.
555 3. The person tested may, at his or her own expense, have
556 a physician, registered nurse, other personnel authorized by a
557 hospital to draw blood, or duly licensed clinical laboratory
558 director, supervisor, technologist, or technician, or other
559 person of his or her own choosing administer an independent test
560 in addition to the test administered at the direction of the law
561 enforcement officer for the purpose of determining the amount of
562 alcohol in the person's blood or breath or the presence of
563 chemical substances or controlled substances at the time
564 alleged, as shown by chemical analysis of his or her blood or
565 urine, or by chemical or physical test of his or her breath. The
566 failure or inability to obtain an independent test by a person
567 does not preclude the admissibility in evidence of the test
568 taken at the direction of the law enforcement officer. The law
569 enforcement officer shall not interfere with the person's
570 opportunity to obtain the independent test and shall provide the
571 person with timely telephone access to secure the test, but the
572 burden is on the person to arrange and secure the test at the
573 person's own expense.
574 4. Upon the request of the person tested, full information
575 concerning the results of the test taken at the direction of the
576 law enforcement officer shall be made available to the person or
577 his or her attorney. Full information is limited to the
578 following:

579 a. The type of test administered and the procedures
580 followed.
581 b. The time of the collection of the blood or breath
582 sample analyzed.
583 c. The numerical results of the test indicating the
584 alcohol content of the blood and breath.
585 d. The type and status of any permit issued by the
586 Department of Law Enforcement which was held by the person who
587 performed the test.
588 e. If the test was administered by means of a breath
589 testing instrument, the date of performance of the most recent
590 required maintenance of such instrument.
591
592 Full information does not include manuals, schematics, or
593 software of the instrument used to test the person or any other
594 material that is not in the actual possession of the state.
595 Additionally, full information does not include information in
596 the possession of the manufacturer of the test instrument.
597 5. A hospital, clinical laboratory, medical clinic, or
598 similar medical institution or physician, certified paramedic,
599 registered nurse, licensed practical nurse, other personnel
600 authorized by a hospital to draw blood, or duly licensed
601 clinical laboratory director, supervisor, technologist, or
602 technician, or other person assisting a law enforcement officer
603 does not incur any civil or criminal liability as a result of
604 the withdrawal or analysis of a blood or urine specimen, or the
605 chemical or physical test of a person's breath pursuant to
606 accepted medical standards when requested by a law enforcement

607 officer, regardless of whether or not the subject resisted
608 administration of the test.
609 Section 7. Section 327.359, Florida Statutes, is amended
610 to read:
611 327.359 Refusal to submit to testing; penalties.--Any
612 person who has refused to submit to a chemical or physical test
613 of his or her breath, blood, or urine, as described in s.
614 327.352, ~~and who has been previously fined for refusal to submit~~
615 ~~to a lawful test of his or her breath, urine, or blood,~~ and:
616 (1) Who the arresting law enforcement officer had probable
617 cause to believe was operating or in actual physical control of
618 a vessel in this state while under the influence of alcoholic
619 beverages, chemical substances, or controlled substances;
620 (2) Who was placed under lawful arrest for a violation of
621 s. 327.35 unless such test was requested pursuant to s.
622 327.352(1)(c);
623 (3) Who was informed that if he or she refused to submit
624 to such test he or she is subject to a fine of $500;
625 (4) Who was informed that a refusal to submit to a lawful
626 test of his or her breath, urine, or blood~~, if he or she has~~
627 ~~been previously fined for refusal to submit to a lawful test of~~
628 ~~his or her breath, urine, or blood,~~ is a misdemeanor; and
629 (5) Who, after having been so informed, refused to submit
630 to any such test when requested to do so by a law enforcement
631 officer or correctional officer,
632
633 commits a misdemeanor of the first degree, punishable ~~and is~~
634 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

635 Section 8. This act shall take effect October 1, 2006.

# HB 221

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 221 CS Paternity
**SPONSOR(S):** Richardson; Kendrick
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 438

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 6 Y, 0 N | Shaddock | Bond |
| 2) Future of Florida's Families Committee | 7 Y, 0 N, w/CS | Preston | Collins |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Paternity is the state or condition of being a father to a child. A child born during a valid marriage is presumed to be the legitimate and legal child of the husband and wife, whereas paternity must be established for children born out of wedlock. Current law does not provide a means for challenging a judgment of paternity, but a general court rule applicable to all civil actions effectively prohibits a father from challenging a paternity determination later than one year after entry of the judgment.

This bill provides that a father may challenge a paternity judgment at any time until the child's 18th birthday, provided that DNA testing shows he is not the biological father and other specified conditions are met. If the father prevails, his future child support obligations will terminate.

This bill may have an unknown but negative recurring fiscal impact on state government revenues. This bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Promote personal responsibility** -- This bill may allow a father to, years after the entry of a paternity judgment, set the judgment aside and stop paying child support. This may result in mothers and their children losing court ordered support, and force them into seeking public assistance until the actual father can be found (if he can be).

**Empower families** -- This bill allows a man required to pay child support as the father of a child to petition to set aside the determination of paternity upon meeting certain conditions. This may have the effect of affecting relationships between family members and may decrease family stability.

B. EFFECT OF PROPOSED CHANGES:

**Establishment of Paternity**

A child born during a valid marriage is presumed to be the legitimate and legal child of the husband and wife.[1] Paternity is defined as "the state or condition of being a father."[2] In order to establish paternity for children born out of wedlock, s. 742.10, F.S., sets forth the criteria. A determination of paternity must be established by clear and convincing evidence.[3] In any proceeding to establish paternity, the court may on its own motion require the child, the mother, and the alleged father to submit to scientific tests generally relied upon for establishing paternity.[4] A woman who is pregnant or who has a child, any man who has reason to believe he is the father of a child, or any child may bring a proceeding to determine the paternity of the child when the paternity has not otherwise been established.[5]

A male can acknowledge paternity by a notarized voluntary acknowledgement or a voluntary acknowledgement signed under penalty of perjury in the presence of two witnesses. These acknowledgements create a rebuttable presumption of paternity, subject to the right of rescission within 60 days of the date of signing the acknowledgement.[6] After the expiration of the 60-day period, the signed voluntary acknowledgement of paternity constitutes an establishment of paternity and is only subject to challenge in court on the basis of fraud, duress, or material mistake of fact.[7] However, the challenger to the determination of paternity is still responsible for his legal responsibilities, including child support, during the pendency of the challenge, except upon a finding of good cause by the court.[8]

Currently, there is no statute authorizing a male who has been determined to be the father of a child to challenge that determination and be discharged from making child support payments. In order for a man determined to be the father of a child to be relieved of his child support obligation, he must bring an action pursuant to Florida Rules of Civil Procedure 12.540[9] and 1.540. Rule 1.540(b), entitled "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.," states in pertinent part that a party may file a motion for relief:

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[1] Section 382.013(2)(a), F.S.; *Dep't of Revenue v. Cummings*, 871 So. 2d 1055, 1059 (Fla. 2d DCA 2004) (citations omitted).
[2] Black's Law Dictionary, 1163 (rev. 8th ed. 2004)
[3] Section 742.031, F.S.; *T.J. v. Dep't of Children & Families*, 860 So. 2d 517, 518 (Fla. 4th DCA 2003).
[4] Section 742.12(1), F.S.
[5] Section 742.011, F.S.
[6] Section 742.10(1), F.S.
[7] Section 742.10(4), F.S.
[8] *Id.*
[9] Rule 12.540 provides that Rule 1.540 "shall govern general provisions concerning relief from judgment, decrees, or orders, except that there shall be no time limit for motions based on fraudulent financial affidavits in marital or paternity cases."

> from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . . *The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken.* A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court. *[emphasis in italics not in original]*

Once paternity has been adjudicated, unless there is a showing of fraud upon the court, "a paternity order is res judicata on the issue of paternity, and relitigation of the paternity issues is unauthorized in connection with any subsequently-filed motion for contempt for failure to pay court-ordered child support."[10] A final judgment of dissolution of marriage that establishes a child support obligation for a former husband is a final determination of paternity, and any subsequent paternity challenge must be brought pursuant to rule 1.540.[11]

In other words, the key section of the above rule under which a petitioner may seek relief from an order of paternity is Rule 1.540(b)(3) (the fraud provision). A petition would be required to demonstrate fraud, either extrinsic or intrinsic, within the one year time limitation imposed by the rule.

Extrinsic fraud "occurs where a defendant has somehow been prevented from participating in a cause."[12] [13] One may seek relief from extrinsic fraud by filing an independent action in equity attacking the final judgment.[14] Nevertheless, due to the constraints of the definition, extrinsic fraud generally is not available as an avenue for relief for a petitioner seeking relief from an adverse paternity finding.

Intrinsic fraud, on the other hand, is fraudulent conduct that arises within a proceeding and pertains to the issues in the case that have been tried or could have been tried.[15] The Florida Supreme Court has expressly found, consistent with the general rule, "that false testimony given in a proceeding is intrinsic fraud."[16] Florida Rule of Civil Procedure 1.540(b) authorizes an action for relief from a final judgment which was obtained through intrinsic fraud, among other grounds, but within a one-year time limitation.[17] Failure to act within that one year will preclude the court from hearing any additional evidence concerning paternity and will act as a procedural bar to a petitioner's relief.

In a non-marital paternity dispute, the Second District Court of Appeal has determined that a man who was informed by the mother that he was the father of her child, and who was named as the biological father in a final judgment of paternity, could not have the judgment of paternity vacated six years later

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[10] *Dep't of Revenue v. Clark*, 866 So. 2d 129 (Fla. 4th DCA 2004)(quoting *Dep't of Revenue v. Gouldbourne*, 648 So. 2d 856 (Fla. 4th DCA 1995)).
[11] *D.F. v. Dep't of Revenue*, 823 So. 2d 97, 100 (Fla. 2002).
[12] *DeClaire v. Yohanon*, 453 So. 2d 375, 377 (Fla. 1984).
[13] The Florida Supreme Court, in *DeClaire*, pointed to the United States Supreme Court's definition of extrinsic fraud as authoritative. *Declaire*, 453 So.2d at 377. That definition, from *United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878), provides: Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side--these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. (Citations omitted.)
[14] *DeClaire*, 453 So. 2d at 378.
[15] *DeClaire*, 453 So. 2d at 379.
[16] *Id.*
[17] *DeClaire*, 453 So. 2d at 377.

absent a showing that the mother had committed a fraud on the court at the time of the original paternity action.[18] Any subsequent blood testing of the alleged father, mother, and child would not change the alleged father's monetary obligations to the child in the absence of proof of fraud on the court.[19] The fact that, six years later, the mother submitted an affidavit expressing her belief that the man paying child support was not the biological father, did not constitute evidence of fraud on the court.[20]

Furthermore, the Fifth District Court of Appeal on December 2, 2005, held that a trial court erred in setting aside a judgment of paternity to which father stipulated in 1991, and in reducing child support arrearages to zero, on ground that DNA test results showed zero percent probability of paternity.[21] The judgment could not be vacated under Rule 1.540(b)(3), since the motion was not timely filed within one year.[22] Additionally, the motion was premised on intrinsic fraud, it concerned allegations of perjury or misrepresentation, and the court could not properly vacate judgment under Rule 1.540(b)(5), which provides that court may relieve party from final judgment if it is no longer equitable that the judgment should have prospective application. Equity "is not available to deprive a child of parental support based on facts that could have been determined prior to entry of the stipulated judgment of paternity."[23] Therefore, the "judgment [was] entitled to res judicata effect."[24]

Finally, in an opinion released on November 30, 2005, the Fourth District Court of Appeal, was confronted with a situation in which a male and female were married when a child was born.[25] The female represented to the male that he was the biological father of the child. Three years later the couple was divorced and the male was obligated to pay child support. After the child's fifth birthday the former husband filed an action maintaining that he was not the child's biological father and DNA testing excluded him as such.[26] The former husband's petition was dismissed by the trial court and that decision was affirmed by the appellate court. The court grappled with what it termed a "fundamental choice" in a case such as the one before them "between the interests of the legal father on the one hand and the child on the other."[27] The main issue, according to the court, "affecting the child in a disestablishment suit is the psychological devastation that the child will undoubtedly experience from losing the only father he or she has ever known."[28] On the other hand, the former husband "may feel victimized,"[29] however, an adult is best able to "absorb the pain of betrayal rather than inflict additional betrayal on the involved children."[30] The court concluded, "the issue of paternity misrepresentation in marital dissolution proceedings is a matter of intrinsic fraud. It is not extrinsic fraud, or a fraud upon the court, that can form the basis for relief from judgment more than a year later. Any relevant policy considerations that would compel a different result are best addressed by the legislature."[31]

**Effect of Bill**

This bill provides an avenue for a male, in any action where he has been required to pay child support as the father of a child, to file a petition to set aside a determination of paternity. The petition to set aside may be filed at any time, up to the child's eighteenth (18th) birthday.

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[18] *State, Dep't of Revenue v. Pough*, 723 So. 2d 303, 306 (Fla. 2d DCA 1998).
[19] *Id.*
[20] *Id.*
[21] *Dep't of Revenue v. Boswell*, 915 So. 2d 717 (Fla. 5th DCA 2005).
[22] *Boswell*, 915 So. 2d at 723.
[23] *Boswell*, 915 So. 2d at 723.
[24] *Id.*
[25] *Parker v. Parker*, 2005 WL 3179971 (Fla. 4th DCA Nov. 30, 2005).
[26] *Id.*
[27] *Parker*, 2005 WL 3179971, *5.
[28] *Id.*
[29] *Parker*, 2005 WL 3179971, *6.
[30] *Parker*, 2005 WL 3179971, *6 (citation omitted).
[31] *Parker*, 2005 WL 3179971, *6.

A petition to set aside a determination of paternity must be filed in the circuit court and served on the mother or other legal guardian or custodian. If the support order was established administratively, the petition must also be served on the Department of Revenue. The petition must include:

- An affidavit from the petitioner affirming that newly discovered evidence relating to the paternity of a child has come to his knowledge since the entry of judgment;
- The results of scientific testing, generally accepted within the scientific community for showing a probability of paternity, administered within 90 days prior to the filing of such a petition, indicating that the male ordered to pay child support cannot be the father of the child for whom he is required to pay support or an affidavit from the petitioner stating he did not have access to the child to have the testing done; and
- An affidavit executed by the petitioner stating that he is current on all child support payments for the child whose paternity is in question or that he is substantially in compliance, with any delinquency being the result of an inability to pay.

The trial court must grant relief on a petition that complies with the above requirements if the court finds that all of the following have been met:

- Newly discovered evidence has come to the petitioner's knowledge since the initial paternity determination;
- The genetic test was properly conducted;
- The male is current on all child support payments for the child, or any delinquency in payments is the result of an inability to pay;
- The male ordered to pay child support has not adopted the child;
- The child was not conceived by artificial insemination while the child's mother and the male who is ordered to pay child support were married; and
- The male ordered to pay child support did not prevent the biological father of the child from asserting parental rights over the child.

The court shall not set aside the paternity determination or child support order if the male engaged in the following conduct after learning that he is not the biological father of the child:

- Married the child's mother and voluntarily assumed a parental obligation and duty to pay support;
- Acknowledged paternity of the child in a sworn statement;
- Consented to be named as the child's biological father on the child's birth certificate;
- Voluntarily promised in writing to support the child and was required to support the child based on that promise;
- Received and disregarded a written notice from any state agency or court instructing him to submit to genetic testing; or
- Signed a voluntary acknowledgement of paternity pursuant to section 742.10(4), Florida Statutes.

If the petitioner fails to make the showing required by this section, the court must deny the petition.

If the trial court grants relief, it must be limited to the issues of prospective child support payments and termination of parental rights, custody, and visitation rights. This section does not create a cause of action for the recovery of previously paid child support.

While the petition is pending, the duty to pay child support and other legal obligations for the child remain in effect and may not be suspended unless good cause is shown. The court may order child support payments to be held in the court registry until the final determination of paternity has been made.

If the genetic testing results are provided solely by the male ordered to pay child support, the court may, on its own motion, and must, on the motion of any party, order the child and the male to submit to genetic tests. This genetic testing must occur within 30 days of an order by the trial court.

Should the child's mother or the male ordered to pay child support willfully refuse to submit to genetic testing, or if either party, as custodian of the child, willfully fails to submit the child for testing, the court must issue an order granting relief on the petition against the party failing to submit to genetic testing. If a party shows good cause for failing to submit to genetic testing, the failure will not be considered willful.

The party requesting genetic testing must pay any fees charged for the tests. If the child's custodian receives services from an administrative agency providing enforcement of child support orders, the agency must pay the costs of genetic testing if it requests the test, and the agency may seek reimbursement for the fees from the person against whom the court assesses the costs of the action.

The bill provides a process for issuing a new birth certificate if relief is granted on a filed petition. Granting a petition does not affect the legitimacy of a child born during a lawful marriage.

If relief is not granted on a petition filed in accordance with this section, the court must assess costs and attorney's fees against the petitioner.

C. SECTION DIRECTORY:

**Section 1.** Creates an unnumbered section establishing grounds by which a man required to pay child support as the father of a child may petition to set aside a determination of paternity. The bill may fit within Chapter 742, Determination of Parentage, Chapter 39, Proceedings Relating to Children, or another provision of Florida Statutes.

**Section 2.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown, but it appears that this bill may have a negative recurring fiscal impact on state revenues. See Fiscal Comments.

2. Expenditures:

   Unknown, but it appears that this bill may have some impact on state government. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may relieve a financial burden on men ordered to pay child support for children who are not their biological children. Additionally, this bill authorizes setting aside of paternity determinations and stopping prospective child support payments and the cessation of these payments will undoubtedly impact the child(ren) and the mothers. Finally, a child who is legally considered to be the "child" of a male is entitled to inheritance rights that would also be eliminated should a paternity judgment be set aside.

D. FISCAL COMMENTS:

This bill may have a fiscal impact on the Department of Revenue, as the department would no longer be able to seek reimbursement for services provided to the mother from the male formerly determined to be the father. This bill may have a fiscal impact on the Department of Revenue, as the department would expend resources to locate the "new" father if there is a judicial determination on a petition to set aside a paternity that the original male who was required to pay child support payments is not the "father" of the child(ren). Also, loss of child support payments to a mother and her child(ren) may result in that family having to receive public assistance.

## 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:

   **Separation of Powers**

   This bill might raise a separation of powers issue, because it allows for a petition to set aside a determination of paternity to be brought "at any time," although the procedural rules established by the Supreme Court restrict challenges to final orders and judgments to one year from entry of the judgment or order, except in cases of fraud upon the court. This bill could raise a constitutional concern if it were considered a procedural rather than a substantive law, although it can be argued that this bill constitutes substantive law.[32]

   With respect to the separation of powers issue, several Supreme Court justices and appellate court judges have urged the Legislature to address paternity issues, although the courts' concern seems to focus on the paternity of children whose mothers are married to men who are not the biological fathers of their children.[33]

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[32] Altenbernd, Quasi-Marital Children, 26 Fla. St. U. L. Rev. at 260-61 (noting that in a due process challenge, the Supreme Court has upheld a statute's conclusive presumption of fatherhood as a substantive rule of law supported by social policy concerns) (citing *Michael H. v. Gerald D.*, 491 U.S. 110 (1989)).

[33] *Anderson v. Anderson*, 845 So. 2d 870, 872-874 (2003)(Pariente, J., dissenting); *D.F.*, 823 So. 2d at 101-03 (Pariente, J., concurring); *Fla. Dep't of Revenue v. M.L.S.*, 756 So. 2d 125, 127-33 (Altenbernd, J., dissenting); *Lefler*, 722 So. 2d at 942-44 (Klein, J., specially concurring).

In *Anderson*, the Florida Supreme Court noted that "this is another case requiring the Court to define the law regarding a child support obligation of a husband who is not the biological father of the child."[34] The supreme court upheld the trial court's determination that the father had not proven "'by a preponderance of the evidence that he had been defrauded into believing that the minor child was his.'"[35] Justice Pariente dissented, stating that:

> Cathy Anderson's unequivocal, affirmative response to Michael Anderson that the child was his constituted a misrepresentation under Florida Rule of Civil Procedure 1.540(b)(3) . . . . In light of this affirmative misrepresentation, it was error to refuse to set aside the final judgment of dissolution in this case based on his timely filed postjudgment motion.
>
> . . . a father should be able to rely on the unequivocal, affirmative representations of his wife that he is the father of her child, and should not be obligated to request DNA testing during the divorce action to disprove this presumed fact.[36]

In *D.F.,* where the supreme court held that a final judgment of dissolution of marriage establishing a child support obligation for a former husband is a final determination of paternity, subject to challenge only through rule 1.540, Justice Pariente concurred, stating:

> I write separately to urge the Legislature to address the difficult issues raised in cases such as this one. Cases involving the rights and responsibilities of biological and non-biological parents are no doubt fraught with difficult social issues that translate into complicated legal issues. The legal problems that arise are not limited to the area of child support, but also may arise in the area of probate, wrongful death, adoption, and actions to terminate parental rights.[37]

Finally, as mentioned above the Fourth District Court of Appeal, in *Parker*, stated, "the issue of paternity misrepresentation in marital dissolution proceedings is a matter of intrinsic fraud. It is not extrinsic fraud, or a fraud upon the court, that can form the basis for relief from judgment more than a year later. Any relevant policy considerations that would compel a different result are best addressed by the legislature."[38]

**Due Process**

The bill may infringe upon the child's due process rights by failing to provide the child with representation in a process which will significantly affect the child's legal rights and may leave him or her without a father and without financial support. A child has a constitutional due process right to retain his or her legitimacy if doing so is in the child's best interest.[39] The child has a strong interest in maintaining legitimacy and stability,[40] and the legal recognition of a biological father other than the legal father will affect the heretofore legal father's rights to the care, custody, and control of the child.[41] Because the law does not recognize "dual fathership,"[42] the entry of a judgment of paternity and,

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[34] *Anderson*, 845 So. 2d at 870.
[35] *Id.* at 871.
[36] *Id.* at 872-73.
[37] *D.F.*, 823 So. 2d at 101.
[38] *Parker*, 2005 WL 3179971, *6.
[39] *Dep't of Health & Rehab. Servs. v. Privette*, 716 So. 2d 305, 307 (Fla. 1993).
[40] *R.H.B. v. J.B.W.*, 826 So. 2d 346, 350 n.5 (Fla. 2d DCA 2002) (citation omitted).
[41] *Dep't of Revenue v. Cummings*, 871 So. 2d 1055, 1060 (Fla. 2d DCA 2004).
[42] *G.F.C. v. S.G.*, 686 So. 2d 1382, 1386 (Fla. 5th DCA 1997).

presumably, the entry of an order rescinding a determination of paternity, affects the legal rights of both the father and the child.[43]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is no provision in the bill for considering the best interests of the child, nor is there any requirement that the court consider appointing a guardian ad litem for the child.

Lines 99-101 use the term "disregarded" without providing a specific definition for the term or incorporating a timeframe which could be utilized to assist in defining the term.

Line 42 uses the term "cannot," in reference to results of paternity testing, yet it would appear that DNA testing is measured in terms of probability rather than such finite terms.

Lines 137-139 state that "Nothing shall prevent the child from reestablishing paternity under s. 742.10, Florida Statutes." Children do not establish paternity; alleged fathers establish paternity for a child.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Future of Florida's Families Committee adopted a strike-all amendment to the bill. The amendment:

- Reflects the fact that some child support obligations are established administratively and requires that the Department of Revenue be noticed when petitions are filed in those cases;
- Relaxes the standard requiring the petitioner to be current in his child support to allow for substantial compliance with any delinquency being the result of the inability to pay;
- Removes the requirement that the mother of a child undergo genetic testing;
- Provides a process for issuing a new birth certificate if relief is granted under a petition;
- Provides that granting relief under a petition does not affect the legitimacy of a child born during a lawful marriage; and
- Provides that nothing precludes an individual from seeking relief from a final judgment, decree, or order of proceeding pursuant to Rule 1.540, Florida Rules of Civil Procedure, or from challenging a paternity determination pursuant to s. 742.10(4), Florida Statutes.

As amended, the bill was reported favorably as a committee substitute.

[43] See Cummings, 871 So. 2d at 1060.

CHAMBER ACTION

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1 The Future of Florida's Families Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to paternity; permitting a petition to set
8 aside a determination of paternity or terminate a child
9 support obligation; specifying contents of the petition;
10 providing standards upon which relief shall be granted;
11 providing remedies; providing that child support
12 obligations shall not be suspended while a petition is
13 pending; providing for scientific testing; providing for
14 the amendment of the child's birth certificate; providing
15 for assessment of costs and attorney's fees; providing an
16 effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. (1) This section establishes circumstances
21 under which a male may disestablish paternity or terminate a
22 child support obligation when the male is not the biological
23 father of the child. To disestablish paternity or terminate a

24 child support obligation, the male must file a petition in the
25 court with continuing jurisdiction over the child support
26 obligation. The petition must also be served on the mother or
27 other legal guardian or custodian of the child. If the child
28 support obligation was determined administratively and has not
29 been ratified by a court, then the petition must be filed in the
30 circuit court where the mother or legal guardian or custodian of
31 the child resides. Such a petition must be served on the
32 Department of Revenue and on the mother or other legal guardian
33 or custodian. The petition must include:
34 (a) An affidavit executed by the petitioner that newly
35 discovered evidence relating to the paternity of the child has
36 come to the petitioner's knowledge since the initial paternity
37 determination or establishment of a child support obligation.
38 (b) The results of scientific tests that are generally
39 acceptable within the scientific community to show a probability
40 of paternity, administered within 90 days prior to the filing of
41 such petition, which results indicate that the male ordered to
42 pay such child support cannot be the father of the child for
43 whom support is required or an affidavit executed by the
44 petitioner stating that he did not have access to the child to
45 have scientific testing performed prior to the filing of the
46 petition. A male who suspects he is not the father but does not
47 have access to the child to have scientific testing performed
48 may file a petition requesting the court to order the child to
49 be tested.
50 (c) An affidavit executed by the petitioner stating that
51 the petitioner is current on all child support payments for the

52 child for whom relief is sought or that he has substantially
53 complied with his child support obligation for the applicable
54 child and that any delinquency in his child support obligation
55 for that child arose from his inability for just cause to pay
56 the delinquent child support when the delinquent child support
57 became due.
58 (2) The court shall grant relief on a petition filed in
59 accordance with subsection (1) upon a finding by the court of
60 all of the following:
61 (a) Newly discovered evidence relating to the paternity of
62 the child has come to the petitioner's knowledge since the
63 initial paternity determination or establishment of a child
64 support obligation.
65 (b) The scientific test required in paragraph (1)(b) was
66 properly conducted.
67 (c) The male ordered to pay child support is current on
68 all child support payments for the applicable child or that the
69 male ordered to pay child support has substantially complied
70 with his child support obligation for the applicable child and
71 that any delinquency in his child support obligation for that
72 child arose from his inability for just cause to pay the
73 delinquent child support when the delinquent child support
74 became due.
75 (d) The male ordered to pay child support has not adopted
76 the child.
77 (e) The child was not conceived by artificial insemination
78 while the male ordered to pay child support and the child's
79 mother were in wedlock.

80 (f) The male ordered to pay child support did not act to
81 prevent the biological father of the child from asserting his
82 paternal rights with respect to the child.
83 (g) The child had not yet reached his or her 18th birthday
84 when the petition was filed.
85 (3) Notwithstanding subsection (2), a court shall not set
86 aside the paternity determination or child support order if the
87 male engaged in the following conduct after learning that he is
88 not the biological father of the child:
89 (a) Married the mother of the child while known as the
90 putative father in accordance with s. 742.091, Florida Statutes,
91 and voluntarily assumed the parental obligation and duty to pay
92 child support;
93 (b) Acknowledged his paternity of the child in a sworn
94 statement;
95 (c) Consented to be named as the child's biological father
96 on the child's birth certificate;
97 (d) Voluntarily promised in writing to support the child
98 and was required to support the child based on that promise;
99 (e) Received and disregarded written notice from any state
100 agency or any court directing him to submit to scientific
101 testing; or
102 (f) Signed a voluntary acknowledgment of paternity as
103 provided in s. 742.10(4), Florida Statutes.
104 (4) In the event the petitioner fails to make the
105 requisite showing required by this section, the court shall deny
106 the petition.

107 (5) In the event relief is granted pursuant to this
108 section, relief shall be limited to the issues of prospective
109 child support payments and termination of parental rights,
110 custody, and visitation rights. The male's previous status as
111 father continues to be in existence until the order granting
112 relief is rendered. All previous lawful actions taken based on
113 reliance on that status are confirmed retroactively but not
114 prospectively. This section shall not be construed to create a
115 cause of action to recover child support that was previously
116 paid.
117 (6) The duty to pay child support and other legal
118 obligations for the child shall not be suspended while the
119 petition is pending except for good cause shown. However, the
120 court may order the child support to be held in the registry of
121 the court until final determination of paternity has been made.
122 (7)(a) In an action brought pursuant to this section, if
123 the scientific test results submitted in accordance with
124 paragraph (1)(b) are provided solely by the male ordered to pay
125 child support, the court on its own motion may, and on the
126 petition of any party shall, order the child and the male
127 ordered to pay child support to submit to applicable scientific
128 tests. The court shall provide that such scientific testing be
129 done no more than 30 days after the court issues its order.
130 (b) If the male ordered to pay child support willfully
131 fails to submit to scientific testing or if the mother or legal
132 guardian or custodian of the child willfully fails to submit the
133 child for testing, the court shall issue an order determining
134 the relief on the petition against the party so failing to

135 submit to scientific testing. If a party shows good cause for
136 failing to submit to testing, such failure shall not be
137 considered willful. Nothing in this paragraph shall prevent the
138 child from reestablishing paternity under s. 742.10, Florida
139 Statutes.
140 (c) The party requesting applicable scientific testing
141 shall pay any fees charged for the testing. If the custodian of
142 the child is receiving services from an administrative agency in
143 its role as an agency providing enforcement of child support
144 orders, that agency shall pay the cost of the testing if it
145 requests the testing and may seek reimbursement for the fees
146 from the person against whom the court assesses the costs of the
147 action.
148 (8) If relief on a petition filed in accordance with this
149 section is granted, the clerk of the court shall, within 30 days
150 following final disposition, forward to the Office of Vital
151 Statistics of the Department of Health a certified copy of the
152 court order or a report of the proceedings upon a form to be
153 furnished by the department, together with sufficient
154 information to identify the original birth certificate and to
155 enable the department to prepare a new birth certificate. Upon
156 receipt of the certified copy or the report, the department
157 shall prepare and file a new birth certificate that deletes the
158 name of the male ordered to pay child support as the father of
159 the child. The certificate shall bear the same file number as
160 the original birth certificate. All other items not affected by
161 the order setting aside a determination of paternity shall be
162 copied as on the original certificate, including the date of

163 registration and filing. If the child was born in a state other
164 than Florida, the clerk shall send a copy of the report or
165 decree to the appropriate birth registration authority of the
166 state where the child was born. If the relief on a petition
167 filed in accordance with this section is granted and the mother
168 or legal guardian or custodian requests that the court change
169 the child's surname, the court may change the child's surname.
170 If the child is a minor, the court shall consider whether it is
171 in the child's best interests to grant the request to change the
172 child's surname.
173 (9) The rendition of an order granting a petition filed
174 pursuant to this section shall not affect the legitimacy of a
175 child born during a lawful marriage.
176 (10) If relief on a petition filed in accordance with this
177 section is not granted, the court shall assess the costs of the
178 action and attorney's fees against the petitioner.
179 (11) Nothing in this section precludes an individual from
180 seeking relief from a final judgment, decree, or order of
181 proceeding pursuant to Rule 1.540, Florida Rules of Civil
182 Procedure, or from challenging a paternity determination
183 pursuant to s. 742.10(4), Florida Statutes.
184 Section 2. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 303 CS Dart-Firing Stun Guns
**SPONSOR(S):** Kravitz
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 214, SB 560

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Criminal Justice Committee | 7 Y, 1 N, w/CS | Cunningham | Kramer |
| 2) Criminal Justice Appropriations Committee | 4 Y, 0 N | Burns | DeBeaugrine |
| 3) Justice Council | | Cunningham | De La Paz |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Approximately 230 law enforcement agencies in Florida have authorized their officers to use dart-firing stun guns. Although many of these agencies have developed policies and procedures regarding training and use of the devices, there is no state law requiring that officers receive such training. This bill would require the Criminal Justice Standards and Training Commission, housed within the Florida Department of Law Enforcement, to establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns, and incorporate dart-firing stun gun training into the Basic Recruit Training Programs for each discipline. This bill sets forth the circumstances under which a law enforcement, correctional, or correctional probation officer may use a dart-firing stun gun. This bill also defines the term "dart-firing stun gun" and authorizes the open and concealed carrying of dart-firing stun guns for purposes of self defense.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill will require the Criminal Justice Standards and Training Commission to establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns.

Maintain Public Security – This bill requires that law enforcement, correctional, and correctional probation officers receive a minimum of 4 hours training in the use of dart-firing stun guns as part of their respective Basic Recruit Training Programs.

B. EFFECT OF PROPOSED CHANGES:

In recent years, there has been a growing interest in the use of less-than-lethal weapons by law enforcement agencies. One such weapon, the stun gun, is a hand-held weapon that delivers an electric shock, effectively incapacitating an individual. One of the most widely-used types of stun gun is the type that fires electrodes that are tethered to the device.[1] These "dart-firing" devices are currently in use by over 7,000 of the 18,000 law enforcement agencies in the United States.[2] This widespread use of dart-firing stun guns by law enforcement has drawn attention to the training officers receive in using the devices (or lack thereof), as well as whether the devices are being used properly in the field.[3]

Definitions

Section 790.001(15), F.S., defines "remote stun gun" as "any nonlethal device with a tethered range not to exceed 16 feet and which shall utilize an identification and tracking system which, upon use, disperses coded material traceable to the purchaser through records kept by the manufacturer on all remote stun guns and all individual cartridges sold which information shall be made available to any law enforcement agency upon request."[4] Section 790.001(14), F.S., defines "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."[5] The term "dart-firing stun gun" is not currently defined in the Florida Statutes.

Currently, Florida law authorizes the open carrying of remote stun guns and other nonlethal electric weapons or devices which do not fire a dart or projectile and are designed solely for defensive purposes.[6] If carried for lawful self-defense purposes, the above weapons may be carried in a concealed manner.[7]

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[1] A number of new types of stun gun are being developed including stun guns that administer the electric shock through a stream of liquid, through a laser, and through rubber bullet-type projectiles. http://en.wikipedia.org/wiki/Taser.

[2] *Use of Tasers by Selected law Enforcement Agencies*, Report to the Chairman, Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives, May, 2005.

[3] *See, e.g., Police Taser 6-Year-Old*, Fox News, November 12, 2004; *Police, Principal Defend Officer's Use Of Taser On 15-Year-Old* Girl, wftv.com, June 2, 2005; *Man Dies After Police Use Taser Gun To Subdue Him*, nbc6.net, June 29, 2005; *Florida Family Sues Sheriff Over Inmate Death, Claims Taser Used*, Associated Press, October 7, 2005.

[4] In addition to firing tethered probes, remote stun guns may be used in a "touch stun" mode, where the probes are not launched, but rather, the device itself actually makes contact with the subject being stunned. This "touch stun" application was the sole method of delivering the electrical current in "electric weapons," the precursor to remote stun guns.

[5] It should be noted that by statutory definition, "remote stun guns" and "electronic weapons" would not be considered firearms. A firearm is a firearm because it expels a projectile "by the action of an explosive." s. 790.001(6), F.S. The most widely-distributed modern models of remote stun guns use nitrogen cartridges to launch the tethered probes. (*Electronic Control Weapons, Concepts and Issues Paper;* IACP National Law Enforcement Policy Center; 1996, rev. Jan. 2005.)

[6] s. 790.053, F.S.

[7] s. 790.01, F.S.

This bill deletes the term "remote stun gun" and its definition contained in s. 790.001, F.S., and creates the definition of the term "dart-firing stun gun." "Dart-firing stun gun" is defined as "any device having one or more tethered darts that are capable of delivering an electrical current." This bill conforms statutes relating to the open and concealed carrying of weapons other statutory references, which will authorize the open and concealed carrying of dart-firing stun guns for purposes of self defense.

Training:

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.[8] Every prospective law enforcement officer (LEO), correctional officer (CO), and correctional probation officer (CPO) must successfully complete a CJSTC-developed Basic Recruit Training Program in order to receive their certification. At this time, the CJSTC does not include training in the use of dart-firing stun guns in the curricula for the LEO, CO, or CPO Basic Recruit Training Programs. In addition, Florida law does not require that LEOs, COs, CPOs receive any type of training in the use of dart-firing stun guns. Instead, the majority of agencies who authorize their officers to carry dart-firing stun guns have developed specific policies regarding their use, or have incorporated such training into their existing policies.

This bill requires the CJSTC to establish standards for instructing LEOs, COs, and CPOs in the use of dart-firing stun guns and to incorporate such training into the Basic Recruit Training Programs.[9] The dart-firing stun gun training portion of the Basic Recruit Training Program must include instruction on the effects the device has on persons, and must last a minimum of 4 hours. After completing the Basic Recruit Training Program, LEOs, COs, and CPOs who have been authorized by their agency to use a dart-firing stun gun must complete a 1-hour annual training course on the use of dart-firing stun guns.

Use of Force:

Currently, Florida Statutes do not specify the circumstances under which any tool of police enforcement can legally be used. The responsibility to "establish uniform minimum training standards for the training of officers in the various criminal justice disciplines" has been statutorily assigned to the CJSTC.[10] As stated above, the CJSTC currently does not include instruction in the use of dart-firing stun guns in its curricula for the Basic Recruit Training Programs for LEOs, COs, and CPOs. However, included in all three of these programs is instruction on the "Use of Force Resistance Matrix." The matrix outlines six levels of resistance and six corresponding levels of response and is used as a guide for officers to apply in real life situations. It appears that Florida law enforcement agencies that use dart-firing stun guns teach their officers to deploy the weapon between Resistance Level 3 and Resistance Level 4 of the Matrix.[11]

This bill specifies that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation during which the subject of the arrest or custodial situation escalates resistance to the officer from passive physical to active physical resistance and:

- has the apparent ability to physically threaten the office or others; or
- is preparing or attempting to flee.

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[8] http://www.fdle.state.fl.us/cjst/commission/index.html

[9] The definitions of "law enforcement officer," "correctional officer," and "correctional probation officer," found in s. 943.10, F.S., will apply to these terms as used in the bill.

[10] s. 943.12(5), F.S.

[11] Resistance Level 3 (Passive Physical), is defined as "a subject refuses to comply with or respond physically...makes no attempt to physically defeat your actions but forces you to use physical maneuvers to establish control." Resistance Level 4 (Active Physical) is where a subject makes physically evasive movements to prevent an officer from taking control (e.g. bracing or tensing themselves, pushing or pulling away, taking a fighting stance, not allowing the officer to approach, or running away). *Response to Resistance Matrix*, Basic Recruit Curriculum, Module 5, Unit 1, Lesson 1, Florida Department of Law Enforcement Instructor's Manual, 2005.

This language would appear to place the use of dart-firing stun guns within Level 4 of the Use of Force Resistance Matrix.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 790.001(15), F.S., deleting the term "remote stun gun" and creating the definition of the term "dart-firing stun gun."

**Section 2.** Amends s. 790.01, F.S., changing references to "remote stun gun" to "dart-firing stun gun" in relation to carrying concealed weapons.

**Section 3.** Amends s. 790.053, F.S, changing references to "remote stun gun" to "dart-firing stun gun" in relation to the open carrying of weapons.

**Section 4.** Amends s. 790.054, F.S., changing references to "remote stun gun" to "dart-firing stun gun" in relation to the penalties for using such a device against an on-duty law enforcement officer.

**Section 5.** Creates s. 943.1717, F.S., providing that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation where the person subject to the arrest or custody escalates resistance to active physical resistance and either has the apparent ability to physically threaten the officer or others or is preparing or attempting to flee or escape; requiring the CJSTC to establish standards for instructing LEOs, COs, and CPOs in the use of dart-firing stun guns and the effects of stun guns on persons; requiring that basic skills courses for LEOs, COs, and CPOs include a minimum of four hours instruction on the use of dart-firing stun guns; requiring LEOs, COs, and CPOs who have been authorized by their agency to use a dart-firing stun gun to complete a 1-hour annual training course on the use of dart-firing stun guns.

**Section 6.** This act takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and retailers of dart-firing stun guns may benefit in that dart-firing stun guns will be needed for training purposes.

D. FISCAL COMMENTS:

The Basic Recruit Training Program for LEOs consists of 672 hours of training, while COs and CPOs must undergo 532 and 424 hours of training, respectively.[12] The Florida Department of Law Enforcement's (FDLE) analysis of this bill states that the bill's 4-hour dart-firing stun gun training requirement will have a negligible fiscal impact because the additional hours can be included among the flexible hours currently available in the FDLE Basic Recruit Training Programs.

Other agencies could incur increased costs if the academies that provide their training choose not to include the dart-firing stun gun training within the current curriculum but choose to add the additional 4 hours to existing requirements. While this has the potential to produce a significant impact, FDLE staff believe that most agencies that allow officers to use stun guns already provide training.

## 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 action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify whether the 4 hours of training would be included in the current hourly training requirements for LEOs (672), COs (532), and CPOs (424) or whether the 4 hours would be in addition to those training requirements.

The bill provides that COs and CPOs must undergo a minimum of 4-hours training in the use of dart-firing stun guns as part of their respective Basic Recruit Training Programs. The Department of Corrections reports that they do not use "dart-firing stun guns" and have no plans to use such devices in the future.[13] The Florida Highway Patrol and the Department of Transportation (Motor Carrier Compliance) have also reported that their agencies do not use dart-firing stun guns.

The bill provides that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation where the person subject to the arrest or custody escalates resistance to the officer from "passive physical resistance" to "active physical resistance." The above-quoted terms are not defined in the bill or otherwise in statute.

As noted above, there are many different types of stun guns (touch guns, some that fire probes, etc...), and different types (guns that deliver the shock through a stream of water or via laser) are being

[12] Rule 11B-35.002, F.A.C.

[13] The Department reports that although they currently use hand-held electronic immobilization devices (EIDs), such devices are not considered "dart-firing" and would not fall under the purview of the bill.

developed. This bill specifically addresses the use of "dart-firing stun guns," thus excluding from its provisions any other type of stun gun that an LEO, CO, or CPO may carry.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Criminal Justice Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute. The strike-all amendment addressed some of the issues raised in the original bill analysis. Specifically, the amendment:

- Defined the term "dart-firing stun gun" and conformed other current statutory provisions to that definition.
- Broadened the required officer training of the potential effects of dart-firing stun guns so that it is not limited to people who are under the influence of drug or alcohol.
- Eliminates the annual training requirement for officers who are not authorized by their agency to use dart-firing stun guns.

CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to dart-firing stun guns; amending s.
7 790.001, F.S.; defining "dart-firing stun gun" for the
8 purposes of ch. 790, F.S.; deleting the definition of
9 "remote stun gun"; amending ss. 790.01 and 790.053, F.S.,
10 relating to the carrying of concealed weapons and the open
11 carrying of weapons, to conform; authorizing the carrying
12 of a dart-firing stun gun, both openly and in a concealed
13 manner, for purposes of lawful self-defense; amending s.
14 790.054, F.S.; prohibiting the use of a dart-firing stun
15 gun against a law enforcement officer who is on duty;
16 providing a penalty; creating s. 943.1717, F.S.; providing
17 circumstances during which law enforcement, correctional,
18 and correctional probation officers may use a dart-firing
19 stun gun; requiring the Criminal Justice Standards and
20 Training Commission to establish standards for instruction
21 in the use of dart-firing stun guns; requiring that a
22 minimum number of hours in such training be included in
23 the basic skills course required for certification;

24 requiring annual training for certain officers; providing
25 an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Subsection (15) of section 790.001, Florida
30 Statutes, is amended to read:
31 790.001 Definitions.--As used in this chapter, except
32 where the context otherwise requires:
33 (15) "Dart-firing ~~Remote~~ stun gun" means any ~~nonlethal~~
34 device having one or more ~~with a~~ tethered darts that are capable
35 of delivering an electrical current ~~range not to exceed 16 feet~~
36 ~~and which shall utilize an identification and tracking system~~
37 ~~which, upon use, disperses coded material traceable to the~~
38 ~~purchaser through records kept by the manufacturer on all remote~~
39 ~~stun guns and all individual cartridges sold which information~~
40 ~~shall be made available to any law enforcement agency upon~~
41 ~~request~~.
42 Section 2. Subsections (4) and (5) of section 790.01,
43 Florida Statutes, are amended to read:
44 790.01 Carrying concealed weapons.--
45 (4) It is not a violation of this section for a person to
46 carry for purposes of lawful self-defense, in a concealed
47 manner:
48 (a) A self-defense chemical spray.
49 (b) A nonlethal stun gun or dart-firing ~~remote~~ stun gun or
50 other nonlethal electric weapon or device that ~~which does not~~

51 ~~fire a dart or projectile and~~ is designed solely for defensive
52 purposes.
53 (5) This section does not preclude any prosecution for the
54 use of an electric weapon or device, a dart-firing ~~or remote~~
55 stun gun, or a self-defense chemical spray during the commission
56 of any criminal offense under s. 790.07, s. 790.10, s. 790.23,
57 or s. 790.235, or for any other criminal offense.
58 Section 3. Section 790.053, Florida Statutes, is amended
59 to read:
60 790.053 Open carrying of weapons.--
61 (1) Except as otherwise provided by law and in subsection
62 (2), it is unlawful for any person to openly carry on or about
63 his or her person any firearm or electric weapon or device.
64 (2) A person may openly carry, for purposes of lawful
65 self-defense:
66 (a) A self-defense chemical spray.
67 (b) A nonlethal stun gun or dart-firing ~~remote~~ stun gun or
68 other nonlethal electric weapon or device that ~~which does not~~
69 ~~fire a dart or projectile and~~ is designed solely for defensive
70 purposes.
71 (3) Any person violating this section commits a
72 misdemeanor of the second degree, punishable as provided in s.
73 775.082 or s. 775.083.
74 Section 4. Section 790.054, Florida Statutes, is amended
75 to read:
76 790.054 Prohibited use of self-defense weapon or device
77 against law enforcement officer; penalties.--A person who
78 knowingly and willfully uses a self-defense chemical spray, ~~or~~ a

79 nonlethal stun gun or other nonlethal electric weapon or device,
80 or a dart-firing ~~remote~~ stun gun against a law enforcement
81 officer engaged in the performance of his or her duties commits
82 a felony of the third degree, punishable as provided in s.
83 775.082, s. 775.083, or s. 775.084.
84 Section 5. Section 943.1717, Florida Statutes, is created
85 to read:
86 943.1717 Use of dart-firing stun guns.--
87 (1) A decision by a law enforcement officer, correctional
88 officer, or correctional probation officer to use a dart-firing
89 stun gun must involve an arrest or a custodial situation during
90 which the person who is the subject of the arrest or custody
91 escalates resistance to the officer from passive physical
92 resistance to active physical resistance and the person:
93 (a) Has the apparent ability to physically threaten the
94 officer or others; or
95 (b) Is preparing or attempting to flee or escape.
96 (2) The Criminal Justice Standards and Training Commission
97 shall establish standards for instructing law enforcement,
98 correctional, and correctional probation officers in the use of
99 dart-firing stun guns. The instructional standards must include
100 the effect that a dart-firing stun gun may have on a person.
101 (3) Each basic skills course required for certification as
102 a law enforcement, correctional, or correctional probation
103 officer must include instruction on the use of dart-firing stun
104 guns. The portion of the basic skills course on the use of stun
105 guns must be a minimum of 4 hours' duration.

106 (4) After completing the basic skills course, each law
107 enforcement, correctional, and correctional probation officer
108 who is authorized by his or her agency to use a dart-firing stun
109 gun must complete an annual training course on the use of dart-
110 firing stun guns. The annual training course on the use of dart-
111 firing stun guns must be a minimum of 1 hour's duration.
112 Section 6. This act shall take effect upon becoming a law.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 519 CS Internet Screening in Public Libraries
**SPONSOR(S):** Kravitz
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 960

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 5 Y, 1 N, w/CS | Shaddock | Bond |
| 2) Transportation & Economic Development Appropriations Committee | 17 Y, 1 N | McAuliffe | Gordon |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


This bill addresses the access by adults and children to internet pornography in public libraries. The bill requires public libraries to adopt an internet safety policy and install technology protection measures on all public computers. The protection measures are to prevent adults from using the libraries computers to access child pornography or obscene visual depictions, and to prevent minors from accessing child pornography and visual depictions that are obscene or harmful to minors. The protection measures can be disabled upon an adult's request to use the computer for bona fide research or other lawful purposes. Libraries are precluded from maintaining a record of the adults who request this disablement.

The bill authorizes the Division of Library and Information Services to adopt rules requiring the head of each administrative unit to give an annual written statement, under penalty of perjury, that all public library locations within the unit are in compliance with this section, as a condition of receiving state funds.

This bill appears to have a minimal negative fiscal impact on local governments. This bill does not appear to have a fiscal impact on state government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates additional responsibilities for public libraries and their administrative units. The bill establishes rule-making authority in the Department of State, Division of Library and Information Services.

Empower Families -- This bill seeks to benefit families by decreasing the possibility of children and adults being exposed to pornography at public libraries.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Federal Law

In 2000, Congress enacted the Children's Internet Protection Act ("CIPA"), which requires public libraries participating in certain internet technology programs to certify that they are using computer filtering software to prevent the on-screen depiction of obscenity, child pornography, or other material harmful to minors.[1] The Supreme Court upheld CIPA in *United States v. Am. Library Ass'n*, 539 U.S. 194 (2003), determining the law did not violate the First Amendment's free speech clause nor did it impose an unconstitutional condition on public libraries. CIPA does not impose any penalties on libraries that choose not to install filtering software; however, libraries that choose to offer unfiltered internet access will not receive federal funding for acquiring educational internet resources.[2]

State Law

Currently, state law does not contain any requirements that public libraries place internet filters on the public computers. Nevertheless, there are a number of statutes that prohibit the display of obscene materials to minors and child pornography.

"Obscenity" is defined in s. 847.001(10), F.S., as:

> the status of material which:
>
> (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
>
> (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and
>
> (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

This definition of obscenity is taken directly from the Supreme Court's definition in *Miller v. California*, 413 U.S. 15 (1973).[3]

"Harmful to minors" is defined in s. 847.001(6), F.S., as:

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[1] National Conference of State Legislatures, *Children and the Internet: Laws Relating to Filtering, Blocking and Usage Policies in Schools and Libraries*, Feb. 17, 2005.
[2] *U.S. v. Am. Libraries Ass'n*, 539 U.S. 194, 212 (2003)(plurality opinion).
[3] *Haggerty v. State*, 531 So. 2d 364, 365 (Fla. 1st DCA 1988).

[A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

(a) Predominantly appeals to the prurient, shameful, or morbid interests of minors;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

Section 847.0133, F.S., prohibits any person from knowingly selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor.[4] [5] Section 847.0137, F.S., prohibits the transmission of any image, data, or information, constituting child pornography through the internet or any other medium. Section 847.0138, F.S., prohibits the transmission of material harmful to minors to a minor by means of electronic device or equipment. Section 847.0139, F.S., provides immunity from civil liability for anyone reporting to a law enforcement officer what the person reasonably believes to be child pornography or the transmission to a minor of child pornography or any information, image, or data that is harmful to minors. Section 847.03, F.S., requires any officer arresting a person charged with an offense under s. 847.011, F.S., relating to acts relating to lewd or obscene materials, to seize such materials at the time of the arrest.

Current Library Internet Policies

The Department of State, Division of Library and Information Services, conducted a survey of Florida's public libraries to ascertain their internet use policies and filtering practices.[6] Out of 149 county and municipal libraries in Florida's 67 counties, 139 libraries responded to the survey. All of the libraries who answered the survey had locally adopted internet use policies, and 138 of the libraries prohibited the display of obscene or offensive images.[7] Of the libraries responding to the survey, 110 currently had filtering software or technology on their computers, and twenty-three did not filter.[8] Fourteen counties have one or more libraries that do not have filters, another four libraries only filter computers in the children's or youth section of the library, and three of the counties that did not have filters indicated that they would be installing filters soon or were in the process of negotiating with vendors.[9]

Three libraries reported that they were not CIPA compliant, twenty-nine libraries stated that CIPA did not apply to them, and the other 107 libraries indicated that they were CIPA compliant.[10]

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[4] Obscene materials means "any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose." Section 847.0133, F.S.

[5] The term "obscene" has the same meaning in s. 847.0133, F.S as it has in s. 847.001, F.S.

[6] Department of State, Division of Library and Information Services, *Internet Policies & Filtering in Florida's Public Libraries Report*, March 21, 2005 (hereinafter "*Internet Policies*").

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

**Effect of Bill**

Definitions

The bill creates a new section, s. 257.44, F.S., requiring internet screening in public libraries. A number of terms that are crucial to an understanding of the requirements and prohibitions provided for in the bill are detailed below. The bill defines "public library" as "any library that is open to the public and that is established or maintained by a county, municipality, consolidated city-county government, special district, or special tax district, or any combination thereof."[11] Excluded from this definition are libraries open to the public that are maintained or established by a community college or state university. A "public computer" is any computer made available to the public and that has internet access.[12]

This bill requires a public library to enforce an internet safety policy providing for:

- Installation and operation of a protection measure on all public computers in the library that restricts access by adults to visual depictions that are obscene or constitute child pornography and that restricts access by minors to visual depictions that are obscene, constitute child pornography, or are harmful to minors, and

- Disablement of the protection measure when an adult requests to use the computer for bona fide research or other lawful purpose.

A "technology protection measure" is software or equivalent technology that blocks or filters internet access to the visual depictions that are obscene, contain child pornography, or that are harmful to minors.[13]

The definition of child pornography is the same definition that appears in s. 847.001, F.S. For the purposes of this bill, harmful to minors is defined as:

> [A]ny picture, image, graphic image file, or other visual depiction that:
>
> 1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
>
> 2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals; and
>
> 3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.[14]

"Obscene" is defined as it is currently in s. 847.001, F.S.[15] "Administrative unit" is defined as "the entity designated by a local government body as responsible for administering all public libraries established or maintained by that local government body."[16]

[11] Section 257.44(1)(g).
[12] Section 257.44(1)(f).
[13] Section 257.44(1)(i).
[14] Section 257.44(1)(c).
[15] Section 257.44(1)(e).
[16] Section 257.44(1)(a).

Internet Policy

Each public library is required to post a conspicuous notice informing library patrons of the internet safety policy and indicating that the policy is available for review.[17] Libraries must disable the protection measure upon the request of any adult who wishes to use the computer for bona fide research or other lawful purpose,[18] and the library may not maintain a record containing the names of any adult who has requested the protection measure be disabled.[19]

Rule-Making Authority

The Division of Library and Information Services must adopt administrative rules requiring the head of each administrative unit to annually attest in writing, under penalty of perjury, that all libraries within the administrative unit are in compliance with the internet safety policy as a condition of the receipt of any state funds being distributed under ch. 257, F.S.[20]

C. SECTION DIRECTORY:

Section 1 creates s. 257.44, F.S., requiring internet screening in public libraries.

Section 2 provides a legislative finding that the installation and operation of technology protection measures in public libraries to protect against adult access to obscene visual depictions or child pornography, or access by minors to obscene visual depictions, child pornography, or images that are harmful to minors, fulfills an important state interest.

Section 3 provides an effective date of October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The fiscal analysis provided by the Department of State states that there is no fiscal impact to the Department. However, this bill would appear to have a minimal but unknown fiscal impact on state government. The Department of State is required to promulgate rules concerning annual compliance by libraries, and the Department is required to collect and maintain those annual attestations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The Department of State estimates that this bill will require recurring expenditures of $108,240 annually for libraries not currently using filtering software. The department estimates that the total recurring cost to all libraries regulated by this bill for filtering software is $666,600.

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[17] Section 257.44(2)(b).
[18] Section 257.44(2)(a)(2).
[19] Section257.44(2)(c).
[20] Section 257.44(4).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although the bill requires counties and municipalities to spend funds or take an action requiring the expenditure of funds, the impact is less than $1.8 million and is insignificant. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

2. Other:

Access by Minors

This bill may raise First Amendment concerns since the statute creates a new definition of "harmful to minors" that extends beyond the current definition found in s. 847.001(10), F.S., which is similar to the Supreme Court's definition of obscenity. Although obscenity is not a protected category of speech, "'[s]exual expression which is indecent but not obscene is protected by the First Amendment."[21] In other words, obscene material is unprotected by the Constitution but indecent material is constitutionally protected. Hence, the new definition should be reviewed to determine whether it would infringe upon Constitutional protected speech.

For the purposes of this bill, harmful to minors is defined as:

> [A]ny picture, image, graphic image file, or other visual depiction that:
>
> 1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
>
> 2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals; and
>
> 3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.[22]

This "harmful to minors" standard is a content-based regulation of speech[23], which must be narrowly tailored to promote a compelling government interest.[24] However, internet access in a public library is

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[21] *Simmons v. State*, 886 So. 2d 399, 492-03 (Fla. 1st DCA 2004) (quoting *Sable Comm. of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989)).

[22] Section 257.44(1)(c).

[23] According to 16A Am. Jur. 2d, Constitutional Law s. 460:

> [t]he most exacting scrutiny test is applied to regulations that suppress, disadvantage, or impose different burdens upon speech on the basis of its content, and to laws that compel speakers to utter or distribute speech bearing a particular message, but regulations that are unrelated to content are subject to an intermediate level of scrutiny reflecting the less substantial risk of excising ideas or viewpoints from public dialogue.... Regulations of speech that are regarded as content-neutral receive an intermediate rather than a strict scrutiny under the First Amendment; this includes regulations that restrict the time, place, and

not a traditional or designated public forum,[25] and a library "does not acquire internet terminals in order to create a public forum for Web publishers to express themselves."[26]

The protection of children from harmful material is a compelling state interest, as "common sense dictates that a minor's rights are not absolute," and the legislature has the right to protect minors from the conduct of others.[27] The legislature has the responsibility and authority to protect all of the children in the state, and the state "has the prerogative to safeguard its citizens, particularly children, from potential harm when such harm outweighs the interests of the individual."[28]

"A library's need to exercise judgment in making collection decisions depends on its traditional role in identifying suitable and worthwhile material; it is no less entitled to play that role when it collects material from the internet than when it collects material from any other source."[29] Thus, internet access in public libraries is not afforded the broadest level of free speech protection, and the government is free to regulate the content of speech and to determine which topics are appropriate for discussion, although to the extent that internet access might be considered a limited public forum, it is treated as a public forum for its topics of discussion.[30] A government-run public forum requires that content-based prohibitions be narrowly drawn to effectuate a compelling state interest.[31]

"The state has a compelling interest in protecting the physical and psychological well-being of children, which extends to shielding minors from material that is not obscene by adult standards, but the means must be carefully tailored to achieve that end so as not to unnecessarily deny adults access to material which is indecent (constitutionally protected), but not obscene (unprotected)."[32]

The Supreme Court has "repeatedly" recognized that the government has an interest in protecting children from harmful materials.[33] As with CIPA, any internet materials that are suitable for adults but not for children may be accessed by an adult simply by asking a librarian to unblock or disable the filter provided that the adult desires to access the material for "bona fide research or other lawful purposes."[34]

Request for Unblocking

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> manner of expression in order to ameliorate the undesirable secondary effects of sexually explicit expression. Therefore, as a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of ideas or views expressed are content-based and subject to strict scrutiny under the First Amendment, while laws that confer benefits or impose burdens on speech without reference to ideas or views expressed are in most instances content-neutral. Regulations which permit the government to discriminate on the basis of the content of a speaker's message ordinarily cannot be tolerated under the First Amendment.

[24] *Simmons v. State*, 886 So. 2d at 403 (internal citations omitted).

[25] Whether or not a place is designated a traditional or designated public form can be significant. The following quotation from 16A Am. Jur. 2d, Constitutional Law, s. 518 is particularly enlightening:

> Even protected speech is not equally permissible in all places and at all times; nothing in the Constitution requires the government freely to grant access to all who wish to exercise their right to free speech on every type of government property without regard to the nature of the property or to the disruption that might be caused by a speaker's activities. The right to communicate is not limitless; even peaceful picketing may be prohibited when it interferes with the operation of vital governmental facilities. Thus, the government's ownership of property does not automatically open that property to the public for First Amendment purposes. However, the Constitution forbids a state from enforcing certain exclusions from a forum generally open to the public, even if the state is not required to create the forum in the first place.

[26] *Am. Library Ass'n*, 539 U.S. at 205-06.

[27] *B.B. v. State*, 659 So. 2d 256, 259 (Fla. 1995)(citing *In re T.W.*, 551 So.2d 1186 (Fla.1989).

[28] *Simmons*, 886 So. 2d at 405 (citing *Jones v. State*, 640 So. 2d 1084, 1085-87 (Fla. 1994)).

[29] *Am. Library Ass'n.* 539 U.S at 208.

[30] *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983).

[31] *Id.* at 46.

[32] *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004).

[33] *Id.* (citing *Ginsberg v. New York*, 390 U.S. 629, 639 (1968); *FCC v. Pacifica Found.*, 438 U.S. 726, 749 (1978); *Morris v. State*, 789 So. 2d 1032, 1036 (Fla. 1st DCA 2001)).

[34] *Am. Library Ass'n*, 539 U.S. at 209.

CIPA provides for the disabling of the filtering software upon request. Specifically, CIPA provides: "[a]n administrator, supervisor, or other authority *may disable* a technology protection measure under paragraph (1) to enable access for a bona fide research or other lawful purpose." 20 U.S.C. s. 9134(f)(3) (emphasis added). The bill provides that "each public library shall enforce an Internet safety policy that provides for:" "[d]isablement of the technology protection measure by an employee of the public library upon an adult's request to use the computer for bona fide research or other lawful purpose."[35] In discussing CIPA's express requirement that the filtering software be disabled for bona fide research or other lawful purposes the Supreme Court stated that even if there is embarrassment by a person requesting the lifting of the software, "the Constitution does not guarantee the right to acquire information at a public library without any risk of embarrassment."[36]

Access by Adults

The constitutional standards regarding adult access to indecent materials are different from those applicable to minors. It is possible that a court might find that an adult's constitutional right to access such material is hindered by the inherent time delay required to stop the filtering software for the adult patrons benefit. There is no definitive line for determining when an extended delay in granting an adult's request to unblock the software might be considered an unreasonable infringement upon an adult's right to conduct bona fide research and pursue other lawful uses of the internet. For as Justice Kennedy opined in his concurrence in the plurality opinion in *Am. Library Ass'n*:

> If, on the request of an adult user, a librarian will unblock filtered material or disable the internet software filter without significant delay, there is little to this case. The Government represents this is indeed the fact.
>
> ****
>
> If some libraries do not have the capacity to unblock specific Web sites or to disable the filter or if it is shown that an adult user's election to view constitutionally protected internet material is burdened in some other substantial way, that would be the subject for an as-applied challenge, not the facial challenge made in this case.
>
> ****
>
> There are, of course, substantial Government interests at stake here. The interest in protecting young library users from material inappropriate for minors is legitimate, and even compelling, as all Members of the Court appear to agree. Given this interest, and the failure to show that the ability of adult library users to have access to the material is burdened in any significant degree, the statute is not unconstitutional on its face.[37]

B. RULE-MAKING AUTHORITY:

This bill requires the Department of State, Division of Library and Information Services, to adopt rules pursuant to s. 120.536(1), F.S., and s. 120.54, F.S., requiring the head of each administrative unit to annually attest in writing, under penalty of perjury, that all public library locations within the administrative unit are in compliance with s. 257.44(2), which requires each public library to enforce an internet safety policy.

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[35] Section 257.44(2)(a).
[36] *Am. Library Ass'n*, 539 U.S. at 209.
[37] *Am. Library Ass'n*, 539 U.S. at 214-15 (Kennedy, J., concurring).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Filtering Difficulties

The following is an enlightening quote from Justice Stevens' dissent in *Am. Library Ass'n*,

> Due to the reliance on automated text analysis and the absence of image recognition technology, a Web page with sexually explicit images and no text cannot be harvested using a search engine. This problem is complicated by the fact that Web site publishers may use image files rather than text to represent words, i.e., they may use a file that computers understand to be a picture, like a photograph of a printed word, rather than regular text, making automated review of their textual content impossible. For example, if the Playboy Web site displays its name using a logo rather than regular text, a search engine would not see or recognize this Playboy name in that logo.[38]

Harmful to Minors

Section 847.001(6), F.S., provides a definition for "harmful to minors." The instant bill seeks to establish a new definition for "harmful to minors" for the purposes of this bill. It is unclear why a different definition of "harmful to minors" is included in the bill.

Visual Depictions

Section 257.44(1)(i), F.S., defines technology protection measure as "software or equivalent technology that blocks or filters internet access to the visual depiction that are proscribed under subsection (2) [the internet safety policy]". This definition would seem not to include audio depictions. The CIPA provides additional protection against other materials that may be prohibited by providing: "(2) Access to other materials[:] Nothing in this subsection shall be construed to prohibit a library from limiting internet access to or otherwise protecting against materials other than those referenced in subclauses (I), (II), and (III) of paragraph (1)(A)(i) [items that are obscene, child pornography, or harmful to minors]" 20 U.S.C. s. 9134.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 8, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment removed the civil action provision from the bill. The bill was then reported favorably with a committee substitute.

[38] *Am. Library Ass'n*, 539 U.S. at 221 (Stevens, J., dissenting).

CHAMBER ACTION

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1 The Civil Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to Internet screening in public libraries;
7 creating s. 257.44, F.S.; defining terms; requiring public
8 libraries to provide technology that protects against
9 Internet access to specified proscribed visual depictions;
10 allowing adults to request disablement of the technology
11 for specified purposes; prohibiting a public library from
12 maintaining a record of adults who request such
13 disablement; requiring a public library to post notice of
14 its Internet safety policy; directing the Division of
15 Library and Information Services within the Department of
16 State to adopt rules requiring a written attestation of
17 compliance as a condition of state funding; providing a
18 cause of action is not authorized for a violation by a
19 public library; providing a finding of important state
20 interest; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Section 257.44, Florida Statutes, is created to
25 read:
26 257.44 Internet screening in public libraries.--
27 (1) As used in this section, the term:
28 (a) "Administrative unit" means the entity designated by a
29 local government body as responsible for administering all
30 public libraries established or maintained by that local
31 government body.
32 (b) "Child pornography" has the same meaning as in s.
33 847.001.
34 (c) "Harmful to minors" means any picture, image, graphic
35 image file, or other visual depiction that:
36 1. Taken as a whole and with respect to minors, appeals to
37 a prurient interest in nudity, sex, or excretion;
38 2. Depicts, describes, or represents, in a patently
39 offensive way with respect to what is suitable for minors, an
40 actual or simulated sexual act or sexual contact, an actual or
41 simulated normal or perverted sexual act, or a lewd exhibition
42 of the genitals; and
43 3. Taken as a whole, lacks serious literary, artistic,
44 political, or scientific value as to minors.
45 (d) "Minor" means an individual who is younger than 18
46 years of age.
47 (e) "Obscene" has the same meaning as in s. 847.001.
48 (f) "Public computer" means a computer that is made
49 available to the public and that has Internet access.
50 (g) "Public library" means any library that is open to the
51 public and that is established or maintained by a county,

52 municipality, consolidated city-county government, special
53 district, or special tax district, or any combination thereof.
54 The term does not include a library that is open to the public
55 and that is established or maintained by a community college or
56 state university.
57 (h) "Reasonable efforts" means the public library, in
58 implementing the policy required by subsection (2), in its
59 ordinary course of business:
60 1. Posts its Internet safety policy;
61 2. Uses a technology protection measure on all public
62 computers; and
63 3. Disables the technology protection measure upon an
64 adult's request to use the computer for bona fide research or
65 other lawful purpose.
66 (i) "Technology protection measure" means software or
67 equivalent technology that blocks or filters Internet access to
68 the visual depictions that are proscribed under subsection (2).
69 (2)(a) Each public library shall enforce an Internet
70 safety policy that provides for:
71 1. Installation and operation of a technology protection
72 measure on all public computers in the public library which
73 protects against access through such computers by adults to
74 visual depictions that are obscene or constitute child
75 pornography and by minors to visual depictions that are obscene,
76 constitute child pornography, or are harmful to minors; and
77 2. Disablement of the technology protection measure by an
78 employee of the public library upon an adult's request to use
79 the computer for bona fide research or other lawful purpose.

80 (b) Each public library shall post a notice in a
81 conspicuous area of the public library which indicates that an
82 Internet safety policy has been adopted and informs the public
83 that the Internet safety policy is available for review at each
84 public library.
85 (c) A public library may not maintain a record of names of
86 adults who request that the technology protection measure be
87 disabled under this subsection.
88 (3) The Division of Library and Information Services
89 within the Department of State shall adopt rules pursuant to ss.
90 120.536(1) and 120.54 that require the head of each
91 administrative unit to annually attest in writing, under penalty
92 of perjury, that all public library locations for which the
93 administrative unit is responsible are in compliance with
94 subsection (2) as a condition of the receipt of any state funds
95 distributed under this chapter.
96 (4) This section does not authorize a cause of action in
97 favor of any person due to a public library's failure to comply
98 with subsection (2).
99 Section 2. In accordance with s. 18, Art. VII of the State
100 Constitution, the Legislature finds that the installation and
101 operation by public libraries of technology protection measures
102 that protect against access by adults to visual depictions that
103 are obscene or constitute child pornography and by minors to
104 visual depictions that are obscene, constitute child
105 pornography, or are harmful to minors fulfills an important
106 state interest.
107 Section 3. This act shall take effect October 1, 2006.

HB 543

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 543 CS Condominiums
**SPONSOR(S):** Goodlette
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1556

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 6 Y, 0 N, w/CS | Shaddock | Bond |
| 2) Business Regulation Committee | 14 Y, 0 N, w/CS | Livingston | Liepshutz |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Ownership of a condominium unit is a unique form of real estate ownership. A condominium owner is entitled to both the exclusive ownership and possession of a unit and an undivided interest as a tenant in common with the other unit owners in the common areas. In other words, a condominium is a single real-estate unit contained within a multi-unit condominium in which a person has both separate ownership of a unit and a common interest, along with the condominium's other owners, in the common areas.

Currently, in order to terminate a condominium, even after a catastrophic event, the consent of all the unit owners and all the holders of the recorded liens affecting any of the condo parcels is required. This bill amends the law regarding condominium termination to:

- Authorize the termination a condominium for economic waste or impossibility;
- Provide alternative methods for the allocation of proceeds from the sale of condominium property;
- Lower the total vote requirement for termination of a condominium depending on the circumstances; and
- Provide a method by which a court may entertain a petition to approve a plan of termination of a condominium.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the probability that condominium unit owners will have increased flexibility in terminating the condominium for economic waste or impossibility.

B. EFFECT OF PROPOSED CHANGES:

Condominiums are creatures of statute, and are thereby subject to the control and regulation of the legislature, which has broad discretion in its regulatory efforts, especially in fashioning remedies necessary to protect the interests of those persons involved. "The condominium concept must operate within the applicable statutory and constitutional provisions."[1]

Basically, a condominium is a parcel of real estate that has been subdivided into contiguous lots. The area above the land can be "subdivided into a number of three-dimensional air spaces, each susceptible of being separately conveyed and incumbered."[2]

Condominium unit owners operate as a democracy, of necessity more restrictive in the use of condominium property than might be acceptable given traditional forms of property ownership. Thus, a condominium owner "relinquishes some degree of freedom of choice and agrees to subordinate some of his traditional ownership rights when he elects condominium ownership. While a titleholder of a condominium unit has fundamental property rights, he enjoys them coextensively with other members of the condominium project, and thus does not have an exclusive interest in the condominium property."[3]

A "declarant" is a grantor that establishes or joins in the creation of a declaration of condominium. A "unit" refers to the physical portion of a condominium designated for separate ownership or occupancy. An individual who purchases or owns an apartment in a condominium is generally referred to as a "unit owner."[4]

Current Law Regarding Termination

Chapter 718, F.S., the "Condominium Act," governs condominium associations. Section 718.117, F.S. provides the general rules and procedures relating to the termination of a condominium, and those provisions are set forth below.

**Termination**

In order to terminate a condominium, the consent of all the unit owners and all the holders of the recorded liens affecting any of the condo parcels is required.[5]

**Vacancy on the Board**

Unless provided otherwise, a vacancy in the board during a winding up proceeding, resulting from the resignation or expiration of term of any director, can be filled by a majority vote of the unit owners.[6]

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[1] 31 CJS § 193, Estates.
[2] *Id.*
[3] *Id.*
[4] 15a Am. Jur. 2d s. 1, Condo.
[5] *See* s. 718.117(1), F.S., unless the declaration provides otherwise.
[6] Section 718.117(3), F.S.

**Natural Disaster**

If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, or if they are deceased or unable to act, or if they fail or refuse to act, or their whereabouts cannot be ascertained, any interested person may petition the circuit court to determine the identity of the directors, or, if determined to be in the best interest of the unit owners, to appoint a receiver to wind up the affairs of the association after hearing upon such notice to such persons as the court may direct.

The receiver will be vested with the powers of the board of directors, as provided in the declaration and bylaws and statute and such other powers that are necessary to wind up the affairs of the association. The order appointing the receiver will provide for the payment of a reasonable fee for the services of the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.[7]

**Terminated Association**

An association that has been terminated continues to exist, however, for the limited purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, to dispose of and convey its property, and to collect and divide its assets"[8]

**Distribution of Assets**

After determining that all known debts and liabilities of an association in the process of winding up have been paid or provided for, all remaining assets must be distributed.[9] If the winding up is pursuant to a court proceeding, the distribution may not be made until after any prescribed period ordered by the court for the presentation of claims.[10]

Assets held by an association upon a valid condition requiring return which condition has occurred or will occur need to be returned in accordance with the condition.[11] The remaining assets are to be distributed in the following manner: (1) if the declaration or bylaws provides the manner of disposition, the assets are to be disposed of in that manner; and (2) if the declaration or bylaws do not provide the manner of disposition, the assets are to be distributed among the unit in the same shares as each owner previously owned in the common elements.[12] All liens must be transferred to the share in the condominium property attributable to the unit originally encumbered by the lien in its same priority

The distribution of the assets can be made by money, property, or securities, and the distribution can be in installments or as a whole. But distribution must be made as soon as reasonably consistent with the beneficial liquidation of the assets.[13]

Effect of the Bill

The bill amends s. 718.117, F.S. regarding the method and process for termination of a condominium. Section 718.117(1), F.S. provides legislative findings that: "condominiums are created as authorize by statute;" "in circumstances that may create economic waste, areas of blight or obsolescence of the condominium property for its intended use, and lower property tax values...it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation;" and "it is contrary to the public policy of this state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made

[7] Section 718.117(4), F.S.
[8] Section 718.117(9), F.S.
[9] 10 Fla. Jur. 2d s. 43, Condominiums, Etc., (referencing s. 718.117(5), F.S.).
[10] Section 718.117(5), F.S.
[11] Section 718.117(6), F.S.
[12] Section 718.117(6)(a), (b), (7), F.S.
[13] 10 Fla. Jur. 2d s. 43, Condominiums, Etc. (citing s. 718.117(8), F.S.).

impossible by law or regulation." This section, further, provides that it will apply to all condominiums in Florida in existence or after the effective date of this act.[14]

**Termination**
**Condominium**

This bill provides, notwithstanding any contrary provision in the declaration, a condominium may be terminated by a plan of termination (hereinafter "plan of termination" or "plan") approved by either the lesser of a majority of the total voting interests or as otherwise provided in the declaration, in the following circumstances: (1) when the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or (2) when it becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.[15]

**Condominiums that are Timeshares**

Notwithstanding the provisions above, a condominium in which 75% or more of the units are timeshare units may only be terminated by a plan of termination that is approved by 80% of the total voting interests of the association and the holders of 80% of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium (unless the declaration provides for a lower voting percentage).[16]

**Optional Termination**

Except as provided elsewhere in this bill[17] or unless the declaration provides for a lower percentage, a condominium may be terminated by a plan of termination approved by at least 80% of the total voting interests of the condominium.[18]

**Jurisdiction of Court**

If 80% of the total voting interests fail to approve a plan of termination but fewer than 20% of the total voting interests vote to disapprove a plan, the circuit court will have jurisdiction to entertain a petition by the association or by one or more unit owners and approve the plan of termination.[19] This action may be a class action.[20]

All unit owners and the association must be parties to the action, and the action may be brought against the nonconsenting unit owners. Service of process on unit owners may be by publication, but the plaintiff must furnish each unit owner not personally served with process a copy of the petition and plan of termination, and after entry of judgment, a copy of the final decree of the court, by mail at the owner's last known address.[21]

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[14] Section 718.117(1), F.S.
[15] Section 718.117(2)(a), F.S.
[16] Section 718.117(2)(b), F.S.
[17] *See* ss. 718.117(2) and (4), F.S.
[18] Section 718.117(3), F.S. This portion does not apply to condominiums in which 75% or more of the units are timeshare units.
[19] Section 718.117(4)(a), F.S.
[20] *Id.*
[21] Section 718.117(4)(b), F.S.

**Mortgage Leinholders**

After the consideration of whether the rights and interests of unit owners are equitably addressed in the plan, the plan of termination may be approved or rejected by the court. The court may modify the plan to provide for an equitable distribution of the interests of unit owners prior to approving the plan.[22] [23]

**Associations Powers of Termination**

Notwithstanding any contrary provision in the declaration or chapter 718, F.S.,[24] approval of a plan by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75% of the units are timeshare units is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien. Additionally, should approval be required and not given and the lienholder objects to the plan of termination, the lienor may object to the plan by following statutory procedures and have the lien assigned to the appropriate property upon sale.

The condominium association will continue in existence following approval of the plan, with all powers it had before. Notwithstanding any contrary provision, after approval of the plan, the board has essentially the same powers and duties currently provided for in s. 718.117(2).[25]

**Natural Disaster**

The bill provides a contingency framework, s. 718.117(8), F.S., for the directors of the association in the event of a natural disaster. That framework is essentially identical to the existing one contained in s. 718.117(4), F.S.

**Plan of Termination**

The plan must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee.[26] A copy of the proposed plan must be given to all unit owners in the same manner as for notice of an annual meeting. That notice must be provided at least 14 days prior to the meeting during which the plan is to be voted upon. Or notice must be provided prior to or simultaneously with the distribution of the solicitation seeking execution of the plan or written consent to or joinder in the plan.[27] A unit owner may agree to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan.[28]

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[22] Section 718.117(4)(c), F.S.
[23] Nevertheless, this subsection does not apply to condominiums in which 75% or more of the units are timeshare units, s. 718.117(4)(d), F.S.
[24] Section 718.117(6), F.S.
[25] Section 718.117(7), F.S. Those powers and duties include the ability to: employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs; conduct the affairs of the association as necessary for the liquidation or termination; carry out contracts and collect, pay, and settle debts and claims for and against the association; defend suits brought against the association; sue in the name of the association for all sums due or owed to the association or to recover any of its property; perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes; sell at public or private sale or to exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interests of the association, and to execute bills of sale and deeds of conveyance in the name of the association; collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association; and contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.
[26] Section 718.117(9), F.S.
[27] *Id.*
[28] *Id.*

A plan must specify:[29]

- The name, address, and powers of the termination trustee;
- A date after which the plan of termination is void if it has not been recorded;
- The interests of the respective unit owners in the association property, common surplus, and other assets of the association, which will be the same as the respective interests of the unit owners in the common elements immediately before the termination, unless otherwise provided;
- The interests of the respective unit owners in any proceeds from any sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any of the methods prescribed in s. 718.117(12) (see the discussion below regarding the allocation of property). If, condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms; and
- Any interests of the respective unit owners in any insurance proceeds or condemnation proceeds that are not used for repair or reconstruction. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may apportion those proceeds pursuant to any of the methods prescribed in s. 718.117(12) (see the discussion below regarding the allocation of property).[30]

The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.[31]

In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded.[32]

**Allocation of Proceeds of Sale of Condominium Property**

Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination.[33] The market values are to be determined by one or more independent appraisers selected by the association or termination trustee.[34]

The portion of proceeds allocated to the units will be further apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods: 1) the respective values of the units based on the fair-market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee; 2) the respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or 3) the respective interests of the units in the common elements specified in the declaration immediately before the termination.[35]

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[29] Section 718.117(10), F.S.
[30] *Id.*
[31] Section 718.117(11)(a), F.S.
[32] Section 718.117(11)(b), F.S.
[33] Section 718.117(12)(a), F.S.
[34] *Id.*
[35] Section 718.117(12)(b), F.S.

The three methods of apportionment listed above do not prohibit any other method of apportioning the proceeds of sale allocated to the units agreed upon in the plan of termination. However, the portion of the proceeds from the common elements will be divided among the units based upon their respective interests in the common elements as provided in the declaration. [36]

Liens that encumber a unit are transferred to the proceeds of the sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. [37]

**Termination Trustee**

The association will serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee will be vested with the powers given to the board. [38]

If the association does not serve as the termination trustee, the trustee's powers are coextensive with those of the association to the extent not prohibited in the plan or the order of appointment. If the association is not the termination trustee, the association will transfer any association property to the trustee. If the association is dissolved, the trustee will also have the powers necessary to conclude the affairs of the association. [39]

**Title Vested in Termination Trustee**

If termination is pursuant to a plan, the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved. [40]

**Notice**

Within 30 days after a plan has been recorded, the termination trustee must deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan must be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan. [41]

Within 90 days after the effective date of the plan, the trustee must provide to the division[42] a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan was recorded. [43]

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[36] Section 718.117(12)(c), F.S.
[37] Section 718.117(12)(d), F.S.
[38] Section 718.117(13), F.S.
[39] *Id.*
[40] Section 718.117(14), F.S.
[41] Section 718.117(15)(a), F.S.
[42] Division refers to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. Section 718.103(17), F.S.
[43] Section 718.117(15)(b), F.S.

**Right to Contest**

A unit owner or lienor may contest a plan by initiating a summary procedure, pursuant to s. 51.011, F.S., within 90 days after the date the plan is recorded. A unit owner or lienor who fails to contest the plan within that period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property.[44]

In an action contesting a plan, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. However, the apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in s. 718.117(12) (see the discussion above regarding the allocation of property).[45]

The court must adjudge the rights and interests of the parties and order the plan to be implemented if it is fair and reasonable or the court may modify and approve the plan of termination based on findings during the court proceedings, but the court must void a plan that is determined not to be fair and reasonable. In such an action, the prevailing party may recover reasonable attorney's fees and costs.[46]

**Distribution**

Following termination, the condominium property, association property, common surplus, and other assets of the association are held by the termination trustee, as trustee for unit owners and holders of liens on the units, in their order of priority.[47]

Not less than 30 days prior to the first distribution, the termination trustee must deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good-faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount.[48] The deadline must be at least 15 days after the date the notice was mailed.[49]

If a unit owner or lienor files a timely objection with the termination trustee, the trustee does not have to distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim.[50] In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs and court costs.[51]

The proceeds of any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets must be distributed in the following priority:[52]

1. To pay the costs of implementing the plan, including demolition, removal, and disposal fees, termination trustee's fees and costs, accounting fees and costs, and attorney's fees and costs;

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[44] Section 718.117(16), F.S.
[45] *Id.*
[46] *Id.*
[47] Section 718.117(17)(a), F.S.
[48] Section 718.117(17)(b), F.S.
[49] Section 718.117(17)(b), F.S.; the notice may be sent with or after the notice required by s. 718.117(15).
[50] Section 718.117(17)(b), F.S.
[51] *Id.*
[52] Section 718.117(17)(c), F.S.

2. To lienholders of liens recorded prior to the recording of the declaration;

3. To lienholders of liens of the association which have been consented to;[53]

4. To creditors of the association, as their interests appear;

5. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor;

6. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor;

7. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor.

After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee will distribute the remaining assets pursuant to the plan.[54] If the termination is by court proceeding, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.[55]

Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, will be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to the priority order above.[56]

Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.[57]

**Association Status**

The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs.[58]

**Creation of Another Condominium**

The termination of a condominium does not bar the creation, by the termination trustee, of another condominium affecting any portion of the same property.[59]

**Exclusion**

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[53] Section 718.121(1), F.S., requires the unanimous consent of the unit owners before a lien is valid against the condominium as a whole.
[54] Section 718.117(17)(d), F.S.
[55] *Id.*
[56] Section 718.117(17)(e), F.S.
[57] Section 718.117(17)(f), F.S.
[58] Section 718.117(18), F.S., this section is essentially s. 718.117(9), F.S.
[59] Section 718.117(19), F.S., is essentially s. 718.117(10), F.S.

This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7), F.S.[60]

C. SECTION DIRECTORY:

**Section 1:** Amends s. 718.117, F.S., to provide for termination of a condominium.

**Section 2:** Provides an effective date of July 1, 2006.

## 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:

This bill provides increased opportunity for condominium owners who are a part of an uneconomic condominium to terminate that condominium; thereby allowing for greater flexibility in the investment or reinvestment of capital.

## 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:

   The bill with CS adopted in Business Regulation Committee addressed the concerns noted below.

   Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[61] "A statute contravenes the constitutional

[60] Section 718.117(20), F.S., is essentially s. 718.117(11), F.S.

[61] Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . . "

prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."[62] [63] While the right to contract and use ones property as an individual sees fit is a "fundamental right" guaranteed by both the United States and Florida constitutions, the "degree of such guarantees must be determined in the light of social and economic conditions which prevail at a given time."[64]

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.[65] The *Pomponio* Court indicated that the "well-accepted" principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

> [T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.
> Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

*U.S. Fidelity and Guar. Co.*, 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

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[62] 10a Fla. Jur. s. 414, Constitutional Law.
[63] The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.
[64] *Palm Beach Mobile Homes, Inc. v. Strong*, 300 So. 2d 881, 884 (Fla. 1974).
[65] The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

The language of the proposed s. 718.117, F.S., specifically the requirement that "this section shall apply to all condominiums in this state in existence on or after the effective date of this act,"[66] would seem to qualify under the Florida Supreme Court's definition of impairment of contract.[67] Therefore, the critical inquiry would seem to be the balancing test performed by the courts to determine the permissibility of the impairment. While not an exhaustive list, this bill would seem to have at least two significant factors which would mitigate in its favor. First, all condominiums are created by statute and subject to the control of the legislature.[68] Second, the bill makes a legislative finding that the public policy of this state is driving the changes in this bill.[69]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Civil Justice Committee adopted two amendments which modified the bill in the following manner:

- To require that the plan of termination specify any interest of the respective unit owners in any insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination.

- To provide that when the portion of proceeds allocated to the units will be further apportioned among the individual units, that apportionment is deemed to be fair and reasonable if it is determined by the unit owners who are approving the plan of termination provided that is by one of three delineated methods.

The bill was then reported favorably with a committee substitute.

On February 21, 2006, the Business Regulation Committee adopted three amendments and voted the bill favorably with CS. The changes include the following:

- additional intent language was adopted to be responsive to the balancing test under the Supreme Court's definition of impairment of contract;

- clarified the rights of lienholders by specifying that a lienholder may object to the plan of termination by following statutory procedures and have the lien assigned to the appropriate property upon sale; and

- expanded authority for the court to modify and approve the plan of termination based on findings during court proceedings.

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[66] Section 718.117(1), F.S.

[67] As the Fourth District Court of Appeal noted it is only the retroactive application of a statute "which gives rise to questions of unreasonable impairment of contract obligations and remedies." *Cenville Investors, Inc. v. Condominium Owners Org. of Century Village East, Inc.*, 556 So. 2d 1197, 1200 (Fla. 4th DCA 1990).

[68] Section 718.104, F.S. provides "[e]very condominium created in this state shall be created pursuant to this chapter." *See Winkelman v. Toll*, 661 So. 2d 102, 105 (Fla. 4th DCA 1995)(stating "[a] condominium is strictly a create of statute.").

[69] The Supreme Court of Florida referenced *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977) which cited to *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934) for the proposition that "laws intended to regulate existing contractual relationships must serve a legitimate public purpose . . . Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." *Pomponio*, 378 So. 2d at 778.

CHAMBER ACTION

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1 The Business Regulation Committee recommends the following:
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3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to condominiums; amending s. 718.117,
7 F.S.; substantially revising provisions relating to the
8 termination of the condominium form of ownership of a
9 property; providing legislative findings; providing
10 grounds; providing powers and duties of the board of
11 administration of the association; waiving certain notice
12 requirements following natural disasters; providing
13 requirements for a plan of termination; providing for the
14 allocation of proceeds from the sale of condominium
15 property; providing powers and duties of a termination
16 trustee; providing notice requirements; providing a
17 procedure for contesting a plan of termination; providing
18 rules for the distribution of property and sale proceeds;
19 providing for the association's status following
20 termination; allowing the creation of another condominium
21 by the trustee; specifying an exclusion; providing an
22 effective date.
23

24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Section 718.117, Florida Statutes, is amended
27 to read:
28 (Substantial rewording of section. See
29 s. 718.117, F.S., for present text.)
30 718.117 Termination of condominium.--
31 (1) LEGISLATIVE FINDINGS.--The Legislature finds that
32 condominiums are created as authorized by statute. In
33 circumstances that may create economic waste, areas of blight,
34 or obsolescence of the condominium property for its intended use
35 and thereby lower property tax values, the Legislature further
36 finds that it is the public policy of this state to provide by
37 statute a method to preserve the value of the property interests
38 and the rights of alienation thereof that owners have in the
39 condominium property both before and after termination. The
40 Legislature further finds that it is contrary to the public
41 policy of this state to require the continued operation of a
42 condominium when to do so would constitute economic waste or
43 when the ability to do so is made impossible by law or
44 regulation. The provisions of this section shall apply to all
45 condominiums in this state in existence on or after the
46 effective date of this act.
47 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
48 IMPOSSIBILITY.--
49 (a) Notwithstanding any provision to the contrary in the
50 declaration, the condominium form of ownership of a property may
51 be terminated by a plan of termination approved by the lesser of

52 a majority of the total voting interests or as otherwise
53 provided in the declaration for approval of termination, in the
54 following circumstances:
55 1. When the total estimated cost of repairs necessary to
56 restore the improvements to their former condition or bring them
57 into compliance with applicable laws or regulations exceeds the
58 combined fair market value of all units in the condominium after
59 completion of the repairs; or
60 2. When it becomes impossible to operate or reconstruct a
61 condominium in its prior physical configuration because of land-
62 use laws or regulations.
63 (b) Notwithstanding paragraph (a), a condominium in which
64 75 percent or more of the units are timeshare units may only be
65 terminated pursuant to a plan of termination approved by 80
66 percent of the total voting interests of the association and the
67 holders of 80 percent of the original principal amount of
68 outstanding recorded mortgage liens of timeshare estates in the
69 condominium, unless the declaration provides for a lower voting
70 percentage.
71 (3) OPTIONAL TERMINATION.--Except as provided in
72 subsections (2) and (4) or unless the declaration provides for a
73 lower percentage, the condominium form of ownership of the
74 property may be terminated pursuant to a plan of termination
75 approved by at least 80 percent of the total voting interests of
76 the condominium. This subsection does not apply to condominiums
77 in which 75 percent or more of the units are timeshare units.
78 (4) JURISDICTION.--

79 (a) If 80 percent of the total voting interests fail to
80 approve the plan of termination but fewer than 20 percent of the
81 total voting interests vote to disapprove of the plan, the
82 circuit court shall have jurisdiction to entertain a petition by
83 the association or by one or more unit owners and approve the
84 plan of termination, and the action may be a class action.
85 (b) All unit owners and the association must be parties to
86 the action. The action may be brought against the nonconsenting
87 unit owners as a class action. Service of process on unit owners
88 may be by publication, but the plaintiff must furnish each unit
89 owner not personally served with process a copy of the petition
90 and plan of termination, and after entry of judgment, a copy of
91 the final decree of the court, by mail at the owner's last known
92 address.
93 (c) After the consideration of whether the rights and
94 interests of unit owners are equitably set forth in the plan of
95 termination as required by this section, the plan of termination
96 may be approved or rejected by the court. Consistent with the
97 provisions of this section, the court may also modify the plan
98 of termination to provide for an equitable distribution of the
99 interests of unit owners prior to approving the plan of
100 termination.
101 (d) This subsection does not apply to condominiums in
102 which 75 percent or more of the units are timeshare units.
103 (5) EXEMPTION.--A plan of termination is not an amendment
104 subject to s. 718.110(4).
105 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
106 to the contrary in the declaration or this chapter, approval of

107 a plan of termination by the holder of a recorded mortgage lien
108 affecting a condominium parcel in which fewer than 75 percent of
109 the units are timeshare units is not required unless the plan of
110 termination will result in less than the full satisfaction of
111 the mortgage lien affecting the condominium parcel. Should such
112 approval be required and not given, and should the holder of a
113 recorded mortgage lien object to the plan of termination, such
114 lienor may contest the plan as provided in subsection (16). At
115 the time of sale, the lien shall be transferred to the
116 proportionate share of the proceeds assigned to the condominium
117 parcel in the plan of termination or as subsequently modified by
118 the court.
119 (7) POWERS IN CONNECTION WITH TERMINATION.--The
120 association shall continue in existence following approval of
121 the plan of termination, with all powers it had before approval
122 of the plan. Notwithstanding any contrary provision in the
123 declaration or bylaws, after approval of the plan, the board has
124 the power and duty:
125 (a) To employ directors, agents, attorneys, and other
126 professionals to liquidate or conclude its affairs.
127 (b) To conduct the affairs of the association as necessary
128 for the liquidation or termination.
129 (c) To carry out contracts and collect, pay, and settle
130 debts and claims for and against the association.
131 (d) To defend suits brought against the association.
132 (e) To sue in the name of the association for all sums due
133 or owed to the association or to recover any of its property.

134 (f) To perform any act necessary to maintain, repair, or
135 demolish unsafe or uninhabitable improvements or other
136 condominium property in compliance with applicable codes.
137 (g) To sell at public or private sale or to exchange,
138 convey, or otherwise dispose of assets of the association for an
139 amount deemed to be in the best interests of the association,
140 and to execute bills of sale and deeds of conveyance in the name
141 of the association.
142 (h) To collect and receive rents, profits, accounts
143 receivable, income, maintenance fees, special assessments, or
144 insurance proceeds for the association.
145 (i) To contract and do anything in the name of the
146 association which is proper or convenient to terminate the
147 affairs of the association.
148 (8) NATURAL DISASTERS.--
149 (a) If, after a natural disaster, the identity of the
150 directors or their right to hold office is in doubt, if they are
151 deceased or unable to act, if they fail or refuse to act, or if
152 they cannot be located, any interested person may petition the
153 circuit court to determine the identity of the directors or, if
154 found to be in the best interests of the unit owners, to appoint
155 a receiver to conclude the affairs of the association after a
156 hearing following notice to such persons as the court directs.
157 (b) The receiver shall have all powers given to the board
158 pursuant to the declaration, bylaws, and subsection (7), and any
159 other powers that are necessary to conclude the affairs of the
160 association and are set forth in the order of appointment. The
161 appointment of the receiver is subject to the bonding

162 requirements of such order. The order shall also provide for the
163 payment of a reasonable fee to the receiver from the sources
164 identified in the order, which may include rents, profits,
165 incomes, maintenance fees, or special assessments collected from
166 the condominium property.
167 (9) PLAN OF TERMINATION.--The plan of termination must be
168 a written document executed in the same manner as a deed by unit
169 owners having the requisite percentage of voting interests to
170 approve the plan and by the termination trustee. A copy of the
171 proposed plan of termination shall be given to all unit owners,
172 in the same manner as for notice of an annual meeting, at least
173 14 days prior to the meeting at which the plan of termination is
174 to be voted upon or prior to or simultaneously with the
175 distribution of the solicitation seeking execution of the plan
176 of termination or written consent to or joinder in the plan. A
177 unit owner may document assent to the plan of termination by
178 executing the plan or by consent to or joinder in the plan in
179 the manner of a deed. A plan of termination and the consents or
180 joinders of unit owners and, if required, consents or joinders
181 of mortgagees must be recorded in the public records of each
182 county in which any portion of the condominium is located. The
183 plan of termination is effective only upon recordation or at a
184 later date specified in the plan.
185 (10) PLAN OF TERMINATION; REQUIRED PROVISIONS.--The plan
186 of termination must specify:
187 (a) The name, address, and powers of the termination
188 trustee.

189 (b) A date after which the plan of termination is void if
190 it has not been recorded.
191 (c) The interests of the respective unit owners in the
192 association property, common surplus, and other assets of the
193 association, which shall be the same as the respective interests
194 of the unit owners in the common elements immediately before the
195 termination, unless otherwise provided in the declaration.
196 (d) The interests of the respective unit owners in any
197 proceeds from any sale of the condominium property. The plan of
198 termination may apportion those proceeds pursuant to any of the
199 methods prescribed in subsection (12). If, pursuant to the plan
200 of termination, condominium property or real property owned by
201 the association is to be sold following termination, the plan
202 must provide for the sale and may establish any minimum sale
203 terms.
204 (e) Any interests of the respective unit owners in any
205 insurance proceeds or condemnation proceeds that are not used
206 for repair or reconstruction at the time of termination. Unless
207 the declaration expressly addresses the distribution of
208 insurance proceeds or condemnation proceeds, the plan of
209 termination may apportion those proceeds pursuant to any of the
210 methods prescribed in subsection (12).
211 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
212 TERMINATION.--
213 (a) The plan of termination may provide that each unit
214 owner retains the exclusive right of possession to the portion
215 of the real estate that formerly constituted the unit, in which
216 case the plan must specify the conditions of possession.

217 (b) In the case of a conditional termination, the plan
218 must specify the conditions for termination. A conditional plan
219 will not vest title in the termination trustee until the plan
220 and a certificate executed by the association with the
221 formalities of a deed, confirming that the conditions in the
222 conditional plan have been satisfied or waived by the requisite
223 percentage of the voting interests, have been recorded.
224 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
225 PROPERTY.--
226 (a) Unless the declaration expressly provides for the
227 allocation of the proceeds of sale of condominium property, the
228 plan of termination must first apportion the proceeds between
229 the aggregate value of all units and the value of the common
230 elements, based on their respective fair-market values
231 immediately before the termination, as determined by one or more
232 independent appraisers selected by the association or
233 termination trustee.
234 (b) The portion of proceeds allocated to the units shall
235 be further apportioned among the individual units. The
236 apportionment is deemed fair and reasonable if it is determined
237 by the unit owners approving the plan of termination by any of
238 the following methods:
239 1. The respective values of the units based on the fair-
240 market values of the units immediately before the termination,
241 as determined by one or more independent appraisers selected by
242 the association or termination trustee;

243 2. The respective values of the units based on the most
244 recent market value of the units before the termination, as
245 provided in the county property appraiser's records; or
246 3. The respective interests of the units in the common
247 elements specified in the declaration immediately before the
248 termination.
249 (c) The methods of apportionment in paragraph (b) do not
250 prohibit any other method of apportioning the proceeds of sale
251 allocated to the units agreed upon in the plan of termination.
252 The portion of the proceeds allocated to the common elements
253 shall be apportioned among the units based upon their respective
254 interests in the common elements as provided in the declaration.
255 (d) Liens that encumber a unit shall be transferred to the
256 proceeds of sale of the condominium property and the proceeds of
257 sale or other distribution of association property, common
258 surplus, or other association assets attributable to such unit
259 in their same priority. The proceeds of any sale of condominium
260 property pursuant to a plan of termination may not be deemed to
261 be common surplus or association property.
262 (13) TERMINATION TRUSTEE.--The association shall serve as
263 termination trustee unless another person is appointed in the
264 plan of termination. If the association is unable, unwilling, or
265 fails to act as trustee, any unit owner may petition the court
266 to appoint a trustee. Upon recording or at a later date
267 specified in the plan, title to the condominium property vests
268 in the trustee. Unless prohibited by the plan, the termination
269 trustee shall be vested with the powers given to the board
270 pursuant to the declaration, bylaws, and subsection (7). If the

271 association is not the termination trustee, the trustee's powers
272 shall be coextensive with those of the association to the extent
273 not prohibited in the plan of termination or the order of
274 appointment. If the association is not the termination trustee,
275 the association shall transfer any association property to the
276 trustee. If the association is dissolved, the trustee shall also
277 have such other powers necessary to conclude the affairs of the
278 association.
279 (14) TITLE VESTED IN TERMINATION TRUSTEE.--If termination
280 is pursuant to a plan of termination under subsection (2) or
281 subsection (3), the unit owners' rights and title as tenants in
282 common in undivided interests in the condominium property vest
283 in the termination trustee when the plan is recorded or at a
284 later date specified in the plan. The unit owners thereafter
285 become the beneficiaries of the proceeds realized from the plan
286 of termination. The termination trustee may deal with the
287 condominium property or any interest therein if the plan confers
288 on the trustee the authority to protect, conserve, manage, sell,
289 or dispose of the condominium property. The trustee, on behalf
290 of the unit owners, may contract for the sale of real property,
291 but the contract is not binding on the unit owners until the
292 plan is approved pursuant to subsection (2) or subsection (3).
293 (15) NOTICE.--
294 (a) Within 30 days after a plan of termination has been
295 recorded, the termination trustee shall deliver by certified
296 mail, return receipt requested, notice to all unit owners,
297 lienors of the condominium property, and lienors of all units at
298 their last known addresses that a plan of termination has been

299 recorded. The notice shall include the book and page number of
300 the public records in which the plan was recorded, notice that a
301 copy of the plan shall be furnished upon written request, and
302 notice that the unit owner or lienor has the right to contest
303 the fairness of the plan.
304 (b) The trustee, within 90 days after the effective date
305 of the plan, shall provide to the division a certified copy of
306 the recorded plan, the date the plan was recorded, and the
307 county, book, and page number of the public records in which the
308 plan was recorded.
309 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest
310 a plan of termination by initiating a summary procedure pursuant
311 to s. 51.011 within 90 days after the date the plan is recorded.
312 A unit owner or lienor who does not contest the plan within such
313 90-day period is barred from asserting or prosecuting a claim
314 against the association, the termination trustee, any unit
315 owner, or any successor in interest to the condominium property.
316 In an action contesting a plan of termination, the person
317 contesting the plan has the burden of pleading and proving that
318 the apportionment of the proceeds from the sale among the unit
319 owners was not fair and reasonable. The apportionment of sale
320 proceeds is presumed fair and reasonable if it was determined
321 pursuant to the methods prescribed in subsection (12). The court
322 shall adjudge the rights and interests of the parties and order
323 the plan of termination to be implemented if it is fair and
324 reasonable. The court may modify the plan to apportion the
325 proceeds in a fair and reasonable manner as required by this
326 section based upon the proceedings and order the modified plan

327 of termination to be implemented. The court shall void a plan
328 that is determined not to be fair and reasonable. In such
329 action, the prevailing party may recover reasonable attorney's
330 fees and costs.
331 (17) DISTRIBUTION.--
332 (a) Following termination of the condominium, the
333 condominium property, association property, common surplus, and
334 other assets of the association shall be held by the termination
335 trustee, as trustee for unit owners and holders of liens on the
336 units, in their order of priority.
337 (b) Not less than 30 days prior to the first distribution,
338 the termination trustee shall deliver by certified mail, return
339 receipt requested, a notice of the estimated distribution to all
340 unit owners, lienors of the condominium property, and lienors of
341 each unit at their last known addresses stating a good-faith
342 estimate of the amount of the distributions to each class and
343 the procedures and deadline for notifying the termination
344 trustee of any objections to the amount. The deadline must be at
345 least 15 days after the date the notice was mailed. The notice
346 may be sent with or after the notice required by subsection
347 (15). If a unit owner or lienor files a timely objection with
348 the termination trustee, the trustee does not have to distribute
349 the funds and property allocated to the respective unit owner or
350 lienor until the trustee has had a reasonable time to determine
351 the validity of the adverse claim. In the alternative, the
352 trustee may interplead the unit owner, lienor, and any other
353 person claiming an interest in the unit and deposit the funds
354 allocated to the unit in the court registry, at which time the

355 condominium property, association property, common surplus, and
356 other assets of the association are free of all claims and liens
357 of the parties to the suit. In an interpleader action, the
358 trustee and prevailing party may recover reasonable attorney's
359 fees and costs and court costs.
360 (c) The proceeds of any sale of condominium property or
361 association property and any remaining condominium property or
362 association property, common surplus, and other assets shall be
363 distributed in the following priority:
364 1. To pay the costs of implementing the plan of
365 termination, including demolition, removal, and disposal fees,
366 termination trustee's fees and costs, accounting fees and costs,
367 and attorney's fees and costs.
368 2. To lienholders of liens recorded prior to the recording
369 of the declaration.
370 3. To lienholders of liens of the association which have
371 been consented to under s. 718.121(1).
372 4. To creditors of the association, as their interests
373 appear.
374 5. To unit owners, the proceeds of any sale of condominium
375 property subject to satisfaction of liens on each unit in their
376 order of priority, in shares specified in the plan of
377 termination, unless objected to by a unit owner or lienor.
378 6. To unit owners, the remaining condominium property,
379 subject to satisfaction of liens on each unit in their order of
380 priority, in shares specified in the plan of termination, unless
381 objected to by a unit owner or a lienor as provided in paragraph
382 (b).

383 7. To unit owners, the proceeds of any sale of association
384 property, the remaining association property, common surplus,
385 and other assets of the association, subject to satisfaction of
386 liens on each unit in their order of priority, in shares
387 specified in the plan of termination, unless objected to by a
388 unit owner or a lienor as provided in paragraph (b).
389 (d) After determining that all known debts and liabilities
390 of an association in the process of termination have been paid
391 or adequately provided for, the termination trustee shall
392 distribute the remaining assets pursuant to the plan of
393 termination. If the termination is by court proceeding or
394 subject to court supervision, the distribution may not be made
395 until any period for the presentation of claims ordered by the
396 court has elapsed.
397 (e) Assets held by an association upon a valid condition
398 requiring return, transfer, or conveyance, which condition has
399 occurred or will occur, shall be returned, transferred, or
400 conveyed in accordance with the condition. The remaining
401 association assets shall be distributed pursuant to paragraph
402 (c).
403 (f) Distribution may be made in money, property, or
404 securities and in installments or as a lump sum, if it can be
405 done fairly and ratably and in conformity with the plan of
406 termination. Distribution shall be made as soon as is reasonably
407 consistent with the beneficial liquidation of the assets.
408 (18) ASSOCIATION STATUS.--The termination of a condominium
409 does not change the corporate status of the association that
410 operated the condominium property. The association continues to

411 exist to conclude its affairs, prosecute and defend actions by
412 or against it, collect and discharge obligations, dispose of and
413 convey its property, and collect and divide its assets, but not
414 to act except as necessary to conclude its affairs.
415 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of
416 a condominium does not bar the creation, by the termination
417 trustee, of another condominium affecting any portion of the
418 same property.
419 (20) EXCLUSION.--This section does not apply to the
420 termination of a condominium incident to a merger of that
421 condominium with one or more other condominiums under s.
422 718.110(7).
423 Section 2. This act shall take effect July 1, 2006.

HB 673

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 673 CS Residential Tenancies
**SPONSOR(S):** Stargel
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 636

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 5 Y, 1 N, w/CS | Poblete | Bond |
| 2) Business Regulation Committee | 16 Y, 0 N, w/CS | Livingston | Liepshutz |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Current residential landlord-tenant law does not specifically provide for a landlord and a tenant to contract for liquidated damages in the event a rental agreement is breached by early termination. A liquidated damages clause, generally, is a means for two parties to a contract to agree in advance what the damages are for a future breach of the contract.

This bill amends residential landlord-tenant law to provide guidelines for landlords and tenants to use in a contract for liquidated damages. The total liquidated damages and any early termination fee cannot exceed two months' rent. This bill also amends the remedies available to a landlord upon breach by a tenant to provide that, in addition to any other remedy, a landlord may also collect any unpaid rent, other charges that may be due under the rental agreement, and any rental concessions that the tenant received.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – This bill increases the ability of landlords and tenants to enter into contract terms that they agree upon.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The 1973 Florida Residential Landlord and Tenant Act governs residential landlord-tenant law.[1] A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time. Should a tenant breach a rental agreement by leaving prior to the end of the rental term, a landlord may choose one of three remedies provided in s. 83.595, F.S.:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant;
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from renting to another tenant; or
- Stand by and do nothing, holding the tenant liable for the rent as it comes due.

A clause for liquidated damages is a means for two parties to a contract to agree in advance what the damages are for a future breach of the contract. A liquidated damages clause is incorporated into a contract because it provides the following benefits[2]:

- The establishment of an exact amount of recovery in the event of a beach.
- The simplification or elimination of the need to prove actual damages, thereby leading to a reduction in the costs, time, and inconvenience of litigation.
- The reinforcement of contractual obligations and added deterrence to breach.

Section 83.47(1)(a), F.S., provides that to the extent any provision in a rental agreement purports to waive or preclude the rights, remedies, and requirements set forth in the Florida Residential Landlord and Tenant Act, that provision is void and unenforceable. Section 83.47(1)(b), F.S., also makes void and unenforceable any provision that purports to limit or preclude any liability arising under law between a landlord and a tenant.

In 2004, a circuit court in Palm Beach found that the remedies set forth in s. 83.595, F.S., are exclusive because s. 83.47, F.S., prohibits rental agreement terms that conflict with specific rights in the Florida Residential Landlord and Tenant Act, including those regarding liquidated damages. This class action judgment therefore found a liquated damages clause in a landlord's standard lease agreement to be invalid.[3]

Effect of proposed changes

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[1] Part II of ch. 83, F.S.

[2] Luepke, Henry F., "How to Draft and Enforce a Liquidated Damages Clause." 61 J. Mo. B. 324

[3] Order dated December 1, 2004, in *Yates v. Equity Residential Properties Trust*, 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. 502002CA014116XXOCAB. Equity's standard lease had two separate fees that, in effect, charged a tenant 3 months rent as a penalty for early termination of the lease.

This bill amends s. 83.595, F.S., to provide a landlord an additional remedy that a landlord may elect should a tenant breach a rental agreement by leaving prior to the end of the rental term.

This bill creates paragraph (d) to provide that a landlord and a tenant may contract for liquidated damages. A landlord is entitled to both liquidated damages and an early termination fee if specified in the rental agreement and the total amount charged does not exceed an amount equal to two months' rent. If a landlord elects this remedy, the landlord must treat the rental agreement as terminated, and the other remedies provided for in s. 83.595(1)(a)-(c), F.S., are no longer available to the landlord. This remedy does not apply when the breach is a failure to give notice of the end of the rental agreement as provided in s. 83.575, F.S.[4]

This bill also creates subsection (2) to provide that, in addition to the remedies in s. 83.595(1), F.S., a landlord may charge a tenant who breaches a lease for any unpaid rent, other charges that may be due under the rental agreement, and any rental concessions that the tenant received in consideration for entering into the rental agreement. Rental concessions include any amount by which all or part of the base rent, options, services, or any other thing of value are reduced in exchange for entering into the rental agreement.

This bill also provides that the act will take effect upon becoming law and shall apply to any rental agreement containing provisions for such remedies and entered into prior to the effective date. In effect, a liquidated damages clause in a rental agreement entered into prior to or after the effective date of this bill will be valid and enforceable.

C. SECTION DIRECTORY:

Section 1. Amends s. 83.595, F.S., to allow a landlord and a tenant to contract for liquidated damages and to provide for additional damages a landlord may collect should a tenant breach a rental agreement by early termination.

Section 2. Provides that the act will take effect upon becoming law and apply to any rental agreement providing for such remedies and entered into prior to the effective date.

## 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:

[4] Section 83.575, F.S., allows for a rental agreement provision requiring a tenant to notify a landlord before vacating the premises at the end of a rental term. The provision may not require more than 60 days' notice. A landlord must provide written notice to a tenant specifying the obligations under the notification provision as well as the termination date. If, after written notice, a tenant breaches such a provision, the tenant may be liable for liquidated damages as specified in the rental agreement.

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, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

In cases involving statutes, which the Legislature clearly intended to be retroactive in application, the court must determine whether such application is constitutionally permissible.[5] Even if the Legislature expressly states its intent to have a statute applied retroactively, a court will not permit the retroactive application of a statute if doing so would impair vested rights, create new obligations, or impose new penalties.[6]

A vested right is "more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand . . ."[7] The right to pursue a cause of action once it has accrued is generally considered a vested right so a statute that subsequently takes effect may not be applied to eliminate or curtail the cause of action.[8] Furthermore, "it is impermissible for a statute to be applied retroactively to prevent the enforcement of a judgment that was obtained before the effective date of the statute."[9]

> Where contract rights are involved, the invalidation of the retroactive application of civil legislation may be based on the conclusion that the legislation impairs the obligation of contract . . .[10] [T]here must be a lawful contract . . . in existence which is the subject of impairment.[11]

Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[12] "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."[13] [14]

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[5] See *Romine v. Fla. Birth Related Neurological Injury Compensation Ass'n*, 842 So.2d 148, 153 (Fla. 5th DCA 2003).
[6] *See id.*
[7] *Id.* at 1218.
[8] *See id.* at 1220.
[9] *Id.*
[10] *R.A.M. of S. Fla., Inc. v. WCI Comm., Inc.*, 869 So.2d 1210, 1217 (Fla. 2d DCA 2004).
[11] *Id.* at 1219.
[12] Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . . "
[13] 10a Fla. Jur. s. 414, Constitutional Law.
[14] The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

This bill amends s. 83.595, F.S., to allow a landlord and a tenant to contract for liquidated damages and to charge certain fees in the event a tenant breaches a rental agreement by early termination. This bill provides that the act will take effect upon becoming law and apply to any rental agreement providing for such remedies and entered into prior to the effective date.

A rental agreement is a contract between a landlord and a tenant. It is possible that courts will interpret a retroactive application of this bill as an impairment of the substantive rights of parties to an existing lawful contract. A retroactive application of this bill to contracts entered into prior to the effective date of this bill and which courts have found to have an invalid and unenforceable liquidated damages clause would, in effect, prevent the enforcement of the judgment obtained. Under current case law, preventing the enforcement of such judgments obtained prior to the effective date of a statute by retroactive application of that statute is unconstitutional.

The same analysis may apply to contracts with such clauses which were entered into prior to the effective date of this bill but which have not undergone litigation. Courts have held that legislation which impairs vested rights, creates new obligations or imposes new penalties is unconstitutional. With a retroactive application of this bill, a court may find that a tenant's vested right is impaired or that a tenant has a newly created obligation under the contract or both.

Under current law, a liquidated damages clause is invalid and unenforceable. Therefore, if a rental agreement provides for liquidated damages, the right to pursue a cause of action against the validity of the provision may be considered a vested right. Applying this bill retroactively would eliminate this cause of action, thereby impairing a vested right, since a liquidated damages clause would, in effect, become valid and enforceable. It may also be seen as creating a new obligation in that it will require the tenant to pay liquidated damages in the event of a breach by early termination.

On the other hand, courts may find that a tenant has no such vested rights in contracts containing a liquidated damages clause or that there are no newly created obligations. A landlord and a tenant are free to agree to the terms of a rental agreement which is a private contract between two or more parties. If liquidated damages were agreed to in a rental agreement entered into prior to the effective date of this bill, the intent to apply this bill retroactively may be seen as being within the bounds of legislative authority.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Civil Justice Committee adopted one amendment which modified the bill in the following manner and reported the bill favorably with committee substitute.

- Made the remedy in subsection (2), whereby a landlord may collect any unpaid rent, other charges due, and rental concessions, available to a landlord in addition to the remedies for a breach of a rental agreement by a tenant's early termination, found under subsection (1).
- Provided that the bill will take effect upon becoming law.
- Provided that the bill would apply to any rental agreement involving such remedies and entered into prior to the effective date.

On March 16, 2006, the Business Regulation Committee adopted four amendments which modified the bill in the following manner and reported the bill favorably with committee substitute.

- Amends the definition of “rental agreement” to include ‘amendments” and “addenda.”
- Technical - adds a reference to the term “rental agreement.”
- Expands the definition of "rental concessions" to include "services or any other thing of value."
- Creates a definition of "early termination fee" to include any assessment against the tenant when a dwelling unit is vacated and it excludes from the definition services actually rendered, first month's unpaid rent, and damage charges.

CHAMBER ACTION

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1 The Business Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to residential tenancies; amending s.
7 83.43, F.S.; revising and providing definitions; amending
8 s. 83.595, F.S.; allowing a landlord to terminate a rental
9 agreement and recover liquidated damages for breach of the
10 agreement or charge the tenant an early termination fee,
11 or both, under certain circumstances; providing a limit on
12 the combined total damages and fee; specifying liability
13 of the tenant for rent, other charges otherwise due, and
14 rental concessions under certain circumstances; providing
15 application; providing an effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Subsection (7) of section 83.43, Florida
20 Statutes, is amended, and subsection (17) is added to that
21 section, to read:

22 83.43 Definitions.--As used in this part, the following
23 words and terms shall have the following meanings unless some
24 other meaning is plainly indicated:
25 (7) "Rental agreement" means any written agreement,
26 including amendments or addenda, or oral agreement if for less
27 duration than 1 year, providing for use and occupancy of
28 premises.
29 (17) "Early termination fee" means any charge, fee, or
30 forfeiture, contained in a written rental agreement, which is
31 assessed to a tenant when a tenant vacates a dwelling unit
32 before the end of the rental agreement. An early termination fee
33 does not include:
34 (a) Charges for services actually rendered to the tenant.
35 (b) Unpaid rent through the end of the month in which the
36 tenant occupied the dwelling unit.
37 (c) Charges for damages to the dwelling unit.
38 Section 2. Section 83.595, Florida Statutes, is amended to
39 read:
40 83.595 Choice of remedies upon breach by tenant.--
41 (1) If the tenant breaches the rental agreement ~~lease~~ for
42 the dwelling unit and the landlord has obtained a writ of
43 possession, or the tenant has surrendered possession of the
44 dwelling unit to the landlord, or the tenant has abandoned the
45 dwelling unit, the landlord may:
46 (a) Treat the rental agreement ~~lease~~ as terminated and
47 retake possession for his or her own account, thereby
48 terminating any further liability of the tenant; ~~or~~

49 (b) Retake possession of the dwelling unit for the account
50 of the tenant, holding the tenant liable for the difference
51 between the rent ~~rental~~ stipulated to be paid under the rental
52 ~~lease~~ agreement and what, in good faith, the landlord is able to
53 recover from a reletting; ~~or~~
54 (c) Stand by and do nothing, holding the lessee liable for
55 the rent as it comes due; or~~.~~
56 (d) If provided for in the rental agreement, recover
57 liquidated damages upon the breach or charge the tenant a fee
58 for early termination of the rental agreement upon the tenant's
59 giving the landlord notice as provided for in the rental
60 agreement. The landlord shall be entitled to both liquidated
61 damages and an early termination fee, provided the combined
62 total for liquidated damages and the early termination fee does
63 not exceed an amount equal to 2 months' rent. The landlord shall
64 treat such a rental agreement as terminated and charge the
65 tenant liquidated damages or the early termination fee as
66 specified in the rental agreement. In such event, the remedies
67 set forth in paragraphs (a), (b), and (c) are not available to
68 the landlord. This paragraph shall not apply when the breach is
69 failure to give notice at the end of the rental agreement as
70 provided in s. 83.575.
71 (2) The landlord may charge the tenant for any unpaid
72 rent, other charges due under the rental agreement through the
73 end of the month in which the landlord retakes possession of the
74 dwelling unit, and any rental concessions that the tenant has
75 received. For purposes of this subsection, the term "rental
76 concessions" means any amount contained in the rental agreement

77 by which all or a portion of the base rent or options is reduced
78 or any service or thing of value is given in consideration for
79 the tenant's entering into the rental agreement.
80 (3) ~~(2)~~ If the landlord retakes possession of the dwelling
81 unit for the account of the tenant pursuant to paragraph (1)(b),
82 the landlord has a duty to exercise good faith in attempting to
83 relet the premises, and any rent ~~rentals~~ received by the
84 landlord as a result of the reletting shall be deducted from the
85 balance of rent due from the tenant. For purposes of this
86 section, "good faith in attempting to relet the premises" means
87 that the landlord shall use at least the same efforts to relet
88 the premises as were used in the initial rental or at least the
89 same efforts as the landlord uses in attempting to rent ~~lease~~
90 other similar rental units but does not require the landlord to
91 give a preference in leasing the premises over other vacant
92 dwelling units that the landlord owns or has the responsibility
93 to rent.
94 Section 3. This act shall take effect upon becoming a law
95 and shall apply to any rental agreement entered into prior to
96 the effective date of this act in which the parties agreed to
97 the remedies authorized in this act.

# HB 919

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 919 CS Law Enforcement Investigations
**SPONSOR(S):** Grant and others
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Criminal Justice Committee | 8 Y, 0 N, w/CS | Cunningham | Kramer |
| 2) Justice Council | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Currently, making false reports concerning the *commission* of a criminal act is a crime. Whether it's a crime to give law enforcement officers false information that simply *relates* to a criminal investigation is less clear.

This bill makes it a first degree misdemeanor for a person to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

This bill takes effect October 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

Safeguard Individual Liberty → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

Maintain Public Security → This bill makes it a first degree misdemeanor to knowingly and willfully give false information or false reports to law enforcement officers in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

*Section 817.49 and 837.05, Florida Statutes*
Florida Statutes contain two sections that specifically relate to giving false information to law enforcement officers. Sections 817.49 and 837.05, F.S., criminalize giving false information regarding the *commission* of a crime to a law enforcement officer (e.g. calling a law enforcement agency and falsely reporting that your neighbor stole your car). However, these statutes do not appear to criminalize giving false information to a law enforcement officer when the information does not relate to the *commission* of a crime (e.g. lying to a law enforcement officer when he or she asks if you know the whereabouts of a family member).

*Section 843.02, Florida Statutes*
Section 843.02, F.S., entitled "Resisting officer without violence to his or her person", makes it a crime to resist, obstruct, or oppose officers in the lawful execution of any legal duty without offering or doing violence to the officer. The statute has been held to, in some instances, prohibit persons from giving false information to a law enforcement officer. For example, in *Caines v. State*, 500 So.2d 728, Fla. 2nd DCA 1987), the court held that a defendant who gave a false name and address to an officer after being arrested violated s. 843.02, F.S. In contrast, the court in *Steele v. State*, 537 So.2d 711 (Fla. 5th DCA 1989), held that a defendant who was not under arrest and who gave an officer a false name did not violate s. 843.02, F.S., because there was no evidence that the officer was engaged in a criminal investigation, or that the officer was impeded in an investigation by the misinformation.

The majority of "resisting an officer by giving false information" cases have involved defendants who were being arrested or were the subject of a criminal investigation. There is little caselaw as to whether individuals who are not the subject of a criminal investigation can be charged with resisting and officer by making false statements. Thus, in instances where an officer is investigating a crime and, in the course of doing so, interviews potential witnesses, family members, etc, who give the officer false information, it is unclear whether s. 843.02, F.S., could be used as a basis for prosecution.

**Effect of the Bill**
This bill makes it a first degree misdemeanor[1] for a person to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 837.055, F.S.; prohibiting knowingly and willfully giving false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation

[1] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a $1,000 fine. *See* ss. 775.082 and 775.083.

**Section 2.** This bill takes effect October 1, 2006.

## 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:

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

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment adds an intent element, thus making it a crime to intentionally give false information to a law enforcement officer who is conducting a felony or missing person investigation *with the intent to mislead the officer or impede the investigation.*

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to law enforcement investigations; creating s. 837.055, F.S.; prohibiting knowingly and willfully giving false information to law enforcement officers under certain circumstances; providing penalties; providing an effective date.

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

Section 1. Section 837.055, Florida Statutes, is created to read:

837.055 False information to law enforcement during investigation.--Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect October 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1029 CS Carrying of Firearms in National Forests
**SPONSOR(S):** Baxley and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1546

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Criminal Justice Committee | 7 Y, 0 N | Cunningham | Kramer |
| 2) Environmental Regulation Committee | 6 Y, 1 N, w/CS | Perkins | Kliner |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Section 790.11, F.S., currently prohibits persons from carrying any gun or firearm of any description within the limits of a national forest area (except during hunting season), without first obtaining a permit. Section 790.12, F.S. provides that the board of county commissioners of the county where such national forest area is located may grant a special permit for the carrying of firearms. Any person who violates any of the above provisions commits a second degree misdemeanor.

In regards to state parks, Department of Environmental Protection Rule 62D-2.014(10), F.A.C., currently prohibits persons from using, carrying, or possessing firearms of any type in any *state park* unless used for authorized resource management.

This bill repeals the statutes prohibiting persons from carrying firearms in *national forests*, authorizing special permits for the carrying of firearms in national forests, and providing penalties for violations. The bill also directs DEP to amend rule 62D-2.014(10) F.A.C., relating to the prohibition of possessing a firearm in state parks, to allow for the possession of weapons in compliance with all applicable Florida Statutes. The rule shall be amended to indicate that such weapons shall be at all times in the possession of a responsible party or properly secured within or to a vehicle or temporary housing, which includes motor homes, travel trailers, recreational vehicles, campers, tents, or other enclosed structures, while in state parks.

This bill takes effect October 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

National Forests & Wildlife Management Areas

The U.S. Department of Agriculture (USDA) Forest Service is a Federal agency that manages public lands in national forests and grasslands.[1] The Forest Service manages public lands, known collectively as the National Forest System, located in 44 States, Puerto Rico, and the Virgin Islands.[2] Nationwide, there are 155 national forests, which comprise 8.5 percent of the total land area in the United States.[3]

There are four national forests in Florida: Apalachicola, Choctawhatchee, Ocala, and Osceola National Forest.[4] According to the U.S. Department of Agriculture Forest Service, all of the National Forests in Florida are also Wildlife Management Areas (WMAs), which are regulated, in part, by Florida's Fish and Wildlife Conservation Commission (FWCC). The result of this dual-designation is that FWCC regulates the *wildlife*, while the USDA Forest Service regulates the *land* (e.g. resources, timber, hiking trails, etc...).

There do not appear to be any federal regulations specifically prohibiting persons from carrying firearms in National Forests. However, Title 36 of the Code of Federal Regulations, relating in part to National Forests, prohibits persons from *discharging* a firearm or any other implement capable of taking human life causing injury, or damaging property in or within 150 yards of a residence, building, campsite, developed recreation site, or occupied area; across or on a National Forest System road or a body of water adjacent thereto; or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge; or into or within any cave.[5] Additionally, in regards to hunting laws, the federal government defers to state hunting laws.[6]

There do not appear to be any state statutes specifically prohibiting persons from carrying firearms in WMAs. However, FWCC's rules currently prohibit persons from possessing any gun on any WMA during any period in which hunting by the use of a gun is prohibited unless otherwise authorized by permit from the executive director.[7] As a constitutionally created agency, the FWCC is free to exercise its constitutional responsibilities, and the Legislature may only "enact laws in aid of" the FWCC "which are not inconsistent with" those constitutional responsibilities. The FWCC is also exempt from Chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities. Court rulings consistently hold that the Legislature is constitutionally prohibited adopting statutes in conflict with FWCC rules.[8]

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[1] http://www.fs.fed.us/aboutus/meetfs.shtml
[2] *Id.*
[3] *Id.*
[4] http://www.fs.fed.us/r8/florida/about
[5] 36 C.F.R. 261.10(d)
[6] 36 C.F.R. 261.8
[7] Rule 68A-15.004(6), F.A.C.
[8] Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Commission, 498 So.2d 629 (Fla.3 DCA 1986); Whitehead v. Rogers, 223 So.2d 330 (Fla.1969); State ex rel. Griffin v. Sullivan, 158 Fla. 870, 30 So.2d 919 (1947); Price v. City of St. Petersburg, 158 Fla. 705, 29 So.2d 753 (1947).

Section 790.11, F.S., currently prohibits persons from carrying any gun or firearm[9] of any description within the limits of a National Forest (except during hunting season), without first obtaining a permit.[10] Section 790.12, F.S. provides that the board of county commissioners of the county where such National Forest area is located may grant a special permit for the carrying of firearms.[11] However, the officer or employee of the United States Government in charge of such National Forest area must first recommend in writing that the permit should be granted.[12] Section 790.14, F.S., states that any person who violates any of the above provisions commits a second degree misdemeanor[13].

State Parks

There do not appear to be any state statutes specifically prohibiting persons from carrying firearms in *state parks*. However, the Department of Environmental Protection (DEP) has adopted rules that prohibit persons from using, carrying, or possessing firearms of any type in any *state park*[14] unless used for authorized resource management.[15]

**Effect of the Bill**

HB 1029 repeals ss. 790.11, 790.12, and 790.14, F.S., prohibiting persons from carrying firearms in *national forests*, authorizing special permits for the carrying of firearms in national forests, and providing penalties for violations. The bill amends the "Lawful ownership, possession, and use of firearms and other weapons" statute (s. 790.25, F.S.), deleting the references to ss. 790.11, 790.12, and 790.14, F.S.

HB 1029 also directs DEP to amend rule 62D-2.014(10) F.A.C., relating to the prohibition of possessing a firearm in state parks, to allow for the possession of weapons in compliance with all applicable Florida Statutes. The rule shall be amended to indicate that such weapons shall be at all times in the possession of a responsible party or properly secured within or to a vehicle or temporary housing, which includes motor homes, travel trailers, recreational vehicles, campers, tents, or other enclosed structures, while in state parks.

C. SECTION DIRECTORY:

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[9] Section 790.001, F.S., defines "firearm" as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

[10] The statute provides an exception for carrying a gun or firearm on state roads when securely locked within a vehicle. *See* s. 790.11, F.S.

[11] If a national forest lies in more than one county, the permit must be granted by the board of county commissioners of each of the several counties involved before it is valid. *See* s. 790.12, F.S.

[12] s. 790.12, F.S. In 1997, the Office of General Counsel of the USDA issued a legal opinion regarding s. 790.012, F.S., (requiring counties to get a written recommendation from the U.S. Government employee in charge of the National Forest before issuing a permit allowing someone to carry a firearm in a National Forest). The opinion states that "Nothing in the language of s. 790.12 imposes an explicit or implied duty upon the Forest Service to make such recommendations. Furthermore, even assuming *arguendo* that s. 790.12 could reasonably be interpreted as requiring the Forest Service to make such recommendations, the Supremacy Clause of the United States Constitution would prevent its application." The opinion went on to recommend that the federal government not make any recommendations relating to permits discussed in s. 790.12, F.S.

[13] A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and by a fine of up to $500. *See* ss. 775.082 and 775.083, F.S.

[14] Florida's state park system is one of the largest in the country with 159 parks spanning more than 723,000 acres and 100 miles of beach. State parks include all real property in the State of Florida under the jurisdiction of the Florida Department of Environmental Protection, Division of Recreation and Parks, or which may come under its jurisdiction regardless of the property's designation. Among the designations included in the state park system are state park, state recreation area, state archaeological site, state historic site, state geological site, state botanical site, state preserve, state garden, state museum, state reserve, state cultural site, state wildlife park, state folk cultural center, and state trail. *See* Rule 62D-2.013(1), F.A.C.

[15] Rule 62D-2.014(10), F.A.C.

Section 1. Repeals ss. 790.11, 790.12, and 790.14, F.S.

Section 2. Amending s. 790.25, F.S., correcting cross-references.

Section 3. Directing the Department of Environmental Protection to amend rules in the Florida Administrative Code.

Section 4. This act takes effect October 1, 2006.

## 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:

   As noted above, s. 790.12, F.S. provides that the board of county commissioners of the county where such national forest area is located may grant a special permit for the carrying of firearms. Counties may lose permit revenue to the extent that persons are no longer required to obtain a permit to carry a firearm in a national forest. However, as noted in footnote 11 above, the federal government has, since 1997, declined to recommend that counties issue permits to carry firearms in National Forests. Thus, it would not appear that counties would incur a significant fiscal impact from a loss of permit revenue.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take 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 directs the Department of Environmental Protection to adopt amendments to Rule 62D-2.014(1), F.A.C., to allow the possession of weapons in compliance with all applicable Florida Statutes in state parks. The rule is to include that such weapons shall be at all times in the possession of a responsible party or properly secured within or to a vehicle or temporary housing, which includes motor homes, travel trailers, recreational vehicles, campers, tents, or other enclosed structures, while in state parks.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by Criminal Justice Committee:
As noted above, the FWCC currently has a rule prohibiting persons from possessing any gun on any WMA during any period in which hunting by the use of a gun is prohibited unless otherwise authorized by permit from the executive director. Because all National Forests in Florida are also WMAs, the FWCC rule would apply in National Forests. Thus, even though the bill has the effect of removing the firearm prohibition in regards to National Forests, people would still be prohibited from carrying firearms in WMAs (and therefore National Forests). In order to effectuate the purpose of the bill (i.e. remove the prohibition on carrying firearms in National Forests), the bill should direct the FWCC to amend its rules (e.g. the bill could direct the FWCC to amend its rules to allow firearms in WMAs that are also National Forests).

The FWCC reports that, effective July 1, 2006, an amended version of its firearms rule will take effect. The amended rule would allow persons with concealed weapons permits to carry firearms in WMAs at any time. This amended rule would still conflict with the provisions of the bill in the manner described above.

It should be noted that repealing the statutes and rules prohibiting persons from carrying firearms in National Forests/WMAs and state parks does not mean that persons will automatically be able to openly carry weapons in such areas, carry concealed weapons in such areas without a permit, etc... The laws that apply to the carrying, use, etc... of firearms would apply (e.g. section 790.053, F.S., prohibiting persons from openly carrying firearms, would apply; s. 790.06, F.S., requiring a permit to carry a concealed weapon, would apply and require anyone in a National Forest/WMA or state park to have a permit to carry a concealed weapon).

It should also be noted that the bill does not affect the provisions of 36 C.F.R. 261.10(d), discussed above, relating to the *discharge* of a firearm in a National Forest.

Comments by Environmental Regulation Committee:
As stated earlier, the constitutionally created agency FWCC is free to exercise its constitutional responsibilities, and the Legislature may only "enact laws in aid of" the FWCC "which are not inconsistent with" those constitutional responsibilities. The FWCC is also exempt from Chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities. Court rulings consistently hold that the Legislature is constitutionally prohibited adopting statutes in conflict with FWCC rules.[16]

The bill authorizes the use of possessing a firearm in state parks which may expand the scope of the bill in subject matter relating to firearms in national parks as referenced in the title of the bill (lines 2 and 3).

[16] Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Commission, 498 So.2d 629 (Fla.3 DCA 1986); Whitehead v. Rogers, 223 So.2d 330 (Fla.1969); State ex rel. Griffin v. Sullivan, 158 Fla. 870, 30 So.2d 919 (1947); Price v. City of St. Petersburg, 158 Fla. 705, 29 So.2d 753 (1947).

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Environmental Regulation Committee favorably adopted one amendment to HB 1029. The amendment directs DEP to amend rule 62D-2.014(10) F.A.C., relating to the prohibition of possessing a firearm in state parks, to allow for the possession of weapons in compliance with all applicable Florida Statutes. The rule shall be amended to indicate that such weapons shall be at all times in the possession of a responsible party or properly secured within or to a vehicle or temporary housing, which includes motor homes, travel trailers, recreational vehicles, campers, tents, or other enclosed structures, while in state parks.

CHAMBER ACTION

1 The Environmental Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5
6 A bill to be entitled
7 An act relating to the carrying of firearms in national
8 forests; repealing s. 790.11, F.S., which prohibits the
9 carrying of firearms in national forests; repealing s.
10 790.12, F.S., which authorizes the granting of a special
11 permit for the carrying of firearms in a national forest;
12 repealing s. 790.14, F.S., which provides a penalty for
13 violation of ss. 790.11 and 790.12, F.S.; amending s.
14 790.25, F.S.; correcting cross-references; requiring the
15 Department of Environmental Protection to amend the
16 correlative rule in the Florida Administrative Code to
17 allow the possession of weapons in compliance with all
18 Florida Statutes; providing requirements with respect to
19 amendment of the rule; providing an effective date.
20
21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Sections 790.11, 790.12, and 790.14, Florida
24 Statutes, are repealed.
25 Section 2. Paragraph (b) of subsection (2) of section
26 790.25, Florida Statutes, is amended to read:
27 790.25 Lawful ownership, possession, and use of firearms
28 and other weapons.--
29 (2) USES NOT AUTHORIZED.--
30 (b) The protections of this section do not apply to the
31 following:
32 1. A person who has been adjudged mentally incompetent,
33 who is addicted to the use of narcotics or any similar drug, or
34 who is a habitual or chronic alcoholic, or a person using
35 weapons or firearms in violation of ss. 790.07-790.115 ~~790.07-~~
36 ~~790.12~~, 790.145-790.19 ~~790.14-790.19~~, 790.22-790.24;
37 2. Vagrants and other undesirable persons as defined in s.
38 856.02;
39 3. A person in or about a place of nuisance as defined in
40 s. 823.05, unless such person is there for law enforcement or
41 some other lawful purpose.
42 Section 3. The Department of Environmental Protection
43 shall amend rule 62D-2.014(10), Florida Administrative Code, to
44 allow the possession of weapons in compliance with all
45 applicable Florida Statutes. The rule shall be amended to
46 indicate that such weapons shall be at all times in the
47 possession of a responsible party or properly secured within or
48 to a vehicle or temporary housing, which shall include motor
49 homes, travel trailers, recreational vehicles, campers, tents,
50 or other enclosed structures, while in state parks.

51 Section 4. This act shall take effect October 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1047 CS Parental Relocation with a Child
**SPONSOR(S):** Stargel
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2184

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 7 Y, 0 N, w/CS | Shaddock | Bond |
| 2) Future of Florida's Families Committee | 7 Y, 0 N | Preston | Collins |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


This bill creates a procedure that a primary residential parent must follow when seeking to relocate with a minor child. Under current law, only a limited number of primary residential parents must give notice of a planned relocation with the minor child. This bill requires any primary residential parent seeking to relocate more than 50 miles with a minor child to first notify all persons entitled to visitation of the planned move. Absent an objection, the move is allowed. If an objection is filed, this bill gives the court guidelines for determining whether to allow the relocation.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Empower Families** – This bill increases the burdens of government on family decision-making.

B. EFFECT OF PROPOSED CHANGES:

**Current Law**

In single-parent families with children, a primary residential parent's attempt to relocate is addressed in two ways; with only one provided for in statute. When a residency restriction clause is provided in the final judgment of divorce, a framework exists in the statutes for what a court is to consider when reviewing a primary residential parent's petition for relocation.[1] That framework provides a court is to consider the following factors to determine whether the primary residential parent should be permitted to relocate with the child:

- Whether the move would be likely to improve the general quality of life for both the residential parent and the child.
- The extent to which visitation rights have been allowed and exercised.
- Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.
- Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.
- Whether the cost of transportation is financially affordable by one or both parties.
- Whether the move is in the best interests of the child.[2]

Section 61.13(2)(d), F.S., is explicit that "[n]o presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent." In essence, the existing statute "imposes a fact-specific framework that allows the trial court to base a relocation decision 'on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate.'"[3]

The existing statute is effective when a petition for relocation by a primary residential parent has been filed. However, in the absence of a residency restriction clause in the final judgment, many times the primary residential parent simply moves without authorization. The following excerpt from the Fourth District Court of Appeal, in *Leeds v. Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002), describes this scenario which it described as a "catch 22."

> The "catch 22" scenario unfolds as follows. Absent a residency restriction clause, the custodial parent is free to move the children without the consent of, or

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[1] Section 61.13(2)(d), F.S.

[2] Section 61.13(2)(d), F.S., was enacted to overrule a line of cases as this excerpt from *Berrebbi v. Clarke*, 870 So. 2d 172, 173-74 (Fla. 2d DCA 2004) explains:

> Section 61.13(2)(d) overrules a presumption previously adopted by the *Mize v. Mize*, 621 So.2d 417 (Fla.1993), and *Russenberger v. Russenberger*, 669 So.2d 1044 (Fla.1996), line of cases that a request for relocation should be favored when the request is made in good faith. *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2d DCA 1999); *Flint* [*v. Fortson*], 744 So.2d 1217 [(Fla. 4th DCA 1999)]. Instead, the statute imposes a fact-specific framework that allows the trial court to base a relocation decision "on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate."

[3] *Berrebbi*, 870 So. 2d at 174 (citing *Flint v. Fortson*, 744 So.2d 1217, 1218)(Fla. 4th DCA 1999).

even notice to, the non-custodial parent. A trial court is prohibited from including a residency restriction clause in a final judgment unless the custodial parent seeks to relocate. An intent to relocate is often first revealed when the move takes place. At that point, the non-custodial parent's only option is to seek a modification of custody. However, to secure a modification of custody, he or she must show a substantial change of circumstances, and that the modification will be in the best interest of the children. [Section] 61.13(1)(a) Fla. Stat (2001). Until recently, relocation of the children without notice or consent was not a substantial change of circumstances that would support modification of the custody provisions of a final judgment. The non-custodial parent is up the custody creek without the proverbial paddle.

This "catch 22" scenario has been reduced by the recent amendment of section 61.13. It now provides that refusal to honor a non-custodial parent's visitation rights without just cause will support a modification of custody. But, the non-custodial parent must still show that the modification is in the best interest of the children. [Section] 61.13(4)(c)5 Fla. Stat. (2001). Boiled down to its essentials, under existing law, a custodial parent can conceal his or her intent to relocate the children, then after entry of the final judgment relocate to a place for [*sic*] enough away to effectively deny visitation to the non-custodial parent, and leave the non-custodial parent with the uphill battle.

At that point, much has changed, and an element of greatly increased hostility has been injected into the case. The judge's role is transformed from a thoughtful consideration of statutory criteria before the move to a fragile balancing act. The court must consider the significant economic factors inherent in a relocation, such as the purchase/sale of a residence, rent and utility deposits, school enrollment, and many other expenditures made by the custodial parent who relocates. The court must also consider the additional disruption of the children's lives that will occur if the court orders the custodial parent to return, or, by modifying custody, orders the children to be relocated a second time, this time without the presence and support of the parent with whom the children have lived. The longer the relocated parent can delay resolution of the issue, the greater the impact on the children of an additional relocation. In many cases, consideration of these factors, particularly those relating to disruption of the children's lives, actually bolsters the position of the relocated parent. The circumstances to be reviewed have already altered the pre-existing status quo.

For a non-custodial parent to be guaranteed of notification before a relocation takes place, a residency restriction clause must be in existence by agreement or order. All that an inclusion of such a provision will do to is allow the parties to either agree to the move or request leave of court to relocate. This will allow the trial court to review the factors outlined in section 61.13(2)(d), Florida Statutes (2001), in an objective and thoughtful manner instead of having to address these sensitive issues after the fact. It will prevent the infamous flights in the night that send families into the land of panic, chaos, and hostility, and which cause such disruption in the lives of children.[4]

**Effect of Bill**

[4] *Leeds v. Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002)(internal citations omitted).

The bill provides a mechanism for a court to determine the appropriateness of any relocation by a primary residential parent before the relocation. The bill defines the following terms:

- "Change of residence address" means the relocation of a child to a primary residence more than 50 miles away from his or her current primary place of residence, unless the move places the primary residence of the minor child less than 50 miles from the nonresidential parent.

- "Child" means any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or is the subject of any order granting to a parent or other person any right to residential care, custody, or visitation as provided under state law.

- "Court" means the circuit court in an original proceeding which has proper venue and jurisdiction in accordance with the UCCJEA, the circuit court in the county in which either parent and the child reside, or the circuit court in which the original action was adjudicated.

- "Other person" means an individual who is not the parent and who, by court order, maintains the primary residence of a child or has visitation rights with a child.

- "Parent" means any person so named by court order or express written agreement that is subject to court enforcement or a person reflected as a parent on a birth certificate and in whose home a child maintains a primary or secondary residence.

- "Person entitled to be the primary residential parent of a child" means a person so designated by court order or by an express written agreement that is subject to court enforcement or a person seeking such a designation, or, when neither parent has been designated as primary residential parent, the person seeking to relocate with a child.

- "Principal or primary residence of a child" means the home of the designated primary residential parent. When rotating custody is in effect, each parent shall be considered to be the primary residential parent.

- "Relocation" means a change in the principal residence of a child for a period of 60 consecutive days or more but does not include a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.

A primary residential parent must notify the other parent and every other person entitled to visitation with the child of the proposed relocation. The primary residential parent must file a "Notice of Intent to Relocate" ("Notice") outlining the parent's intention to relocate with the child.

The Notice shall list the details of the proposed move and it must provide:

- If known, a description of the location of the new residence, including the state, city, and specific physical address.

- If known, the mailing address, if not the same as the physical address.

- If known, the home telephone number of the intended new residence.

- The date of the intended move.

- A detailed statement of the specific reasons for the proposed relocation of the child. If one of the reasons for the move is based on a written job offer, that written job offer must be attached.

- A proposal for a revised post-relocation schedule of visitation with the child.

- A statement that absent an objection the relocation will be permitted without a hearing. In order to properly file an objection, it must be in writing filed with the court, and served on the other parent within 30 days after service of the Notice.

- The mailing address of the parent or other person seeking to relocate to which an objection should be sent.

The Notice must be signed under oath under penalty of perjury. The contents of the Notice are not privileged; however, the Notice shall initially not be filed with the court, but instead, the Notice shall be served upon the nonrelocating parent and other persons entitled to visitation with the child. A primary residential parent required to give Notice, has a continuing duty to provide current and updated information in the Notice.

A parent seeking relocation must also prepare a "Certificate of Filing Notice of Intent to Relocate" ("Certificate"). This Certificate must certify the date the Notice was served on the other parent or other person entitled to receive the Notice.

The Notice and Certificate must be served on the other parent and on every person entitled to visitation. In cases where there is a pending action regarding the child, service may be according to court rule. Otherwise, the service must comply with the requirements of chapters 48 and 49, F.S.

As the Notice warns, if after 30 days after service no written objection is filed, the relocation is deemed authorized and may occur. If an objection is filed, the objection must include the specific factual basis for seeking a prohibition of the relocation, including a statement of the amount of participation or involvement the objecting party currently has or has had in the life of the child.

If a parent relocates a child without complying with the Notice procedure, that action subjects a parent to contempt and other proceedings to compel the return of the child. Further, the parent's failure to follow this procedure may be taken into account by a court in any action seeking a determination or modification of residence, custody, or visitation with the child as:

- A factor in making a determination regarding the relocation of a child.

- A factor in determining whether residence or contact, access, visitation, and time-sharing arrangements should be modified.

- A basis for ordering the temporary or permanent return of the child.

- Sufficient cause to order the parent seeking to relocate the child to pay reasonable expenses and attorney's fees incurred by the objecting party.

- For the award of reasonable attorney's fees and costs, including interim travel expenses incident to visitation or securing the return of the child.

The court may also order the return of the child, if a relocation has previously taken place, or other appropriate relief. But to require such action, the court must find: the Notice was not timely provided; the child was already relocated without Notice, written agreement or court approval; and based upon the evidence presented at a preliminary hearing, there is a likelihood that after a final hearing the court will not approve the relocation.

On the other hand, the court may grant a temporary order permitting the relocation. But the court must find the Notice was timely provided, and the evidence presented at a preliminary hearing demonstrates that there is a likelihood that after a final hearing the court will approve the relocation.

If temporary relocation of a child is permitted, the court may require the relocating parent to provide reasonable security, financial or otherwise, and guarantee that the court-ordered contact with the child will not be interrupted or interfered with by the relocating parent. However, if temporary relocation is authorized, the court may not give any weight to that determination in reaching its final decision.

No presumption will arise in favor of or against a request to relocate with the child when a primary residential parent seeks to move and the move will materially affect the current schedule of contact, access, and time-sharing with the nonrelocating parent. The court must evaluate all of the following factors in reaching a decision regarding a relocation:

- The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.

- The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

- The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, visitation, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent once he or she is out of the jurisdiction of the court.

- The child's preference, taking into consideration the age and maturity of the child.

- Whether the relocation will enhance the general quality of life for both the parent seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.

- The reasons of each parent or other person for seeking or opposing the relocation.

- The current employment and economic circumstances of each parent or other person and whether or not the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.

- That the relocation is sought in good faith, the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.

- The career and other opportunities available to the objecting parent or objecting other person if the relocation occurs.

- A history of substance abuse or domestic violence as defined in s. 741.28, F.S., or which meets the criteria of s. 39.806(1)(d), F.S., by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

- Any other factor affecting the best interest of the child or as set forth in s. 61.13, F.S.[5]

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[5] Currently, s. 61.13(2)(d), F.S., provides the following factors are to be considered by a court in making a determination as to whether the primary residential parent may relocate with a child: whether the move would be likely to improve the general quality of life for both the residential parent and the child; the extent to which visitation rights have been allowed and exercised; whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements; whether the substitute visitation will be adequate to foster a continuing meaningful

If an objection is filed, the person seeking to relocate has the burden of proof and that person must initiate a court proceeding seeking court permission to relocate. The initial burden is on the person wishing to relocate to prove by a preponderance of the evidence that relocation is in the best interest of the child. If that burden is satisfied, the burden shifts to the nonrelocating parent or other person to show by a preponderance of the evidence the opposite.

If relocation is permitted, the court may, in its discretion, order contact with the nonrelocating parent, including access, visitation, time-sharing, telephone, Internet, web-cam, and other arrangements sufficient to ensure that the child has continuing and meaningful contact with the nonrelocating persons. This is only if that contact is financially affordable and in the best interest of the child.

Moreover, if applicable, the court must specify how the transportation costs will be allocated between the parents and other persons entitled to contact with the child(ren). And the court may adjust the child support award, as appropriate, considering the costs of transportation and the respective net incomes of the parents in accordance with state child support guidelines.

An evidentiary hearing on a pleading seeking temporary or permanent relocation must be accorded priority on the court's calendar. Throughout the process established in this bill, if a person seeking relocation of a child is entitled to have certain information prevented from disclosure due to an existing public records exception, the court may enter an order modifying the disclosure requirements of the bill.

The provisions of this section apply: before July 1, 2006, if the existing order defining custody, primary residence, and visitation or a written agreement does not expressly govern the relocation of the child; to an order, whether temporary or permanent, regarding primary residence of a child or visitation with a child issued after July 1, 2006; and to any relocation or proposed relocation, whether permanent or temporary, of a child during any pending proceeding wherein residence of or visitation with a child is an issue.

To the extent that a provision of this section conflicts with an existing order or enforceable written agreement signed by both parents, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the principal residence address of a parent.

Finally, the bill removes the existing framework found in s. 61.13(2)(d), F.S., for dealing with a primary residential parent's relocation.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 61.13(2)(d), F.S., by deleting standards for determining whether to allow a primary residential parent to move a child.

**Section 2.** Creates s. 61.13001, F.S., relating to parental relocation of children.

**Section 3.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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relationship between the child and the secondary residential parent; whether the cost of transportation is financially affordable by one or both parties; and whether the move is in the best interests of the child.

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 & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice committee adopted one amendment to the bill. The amendment made the following changes:

- Removed a requirement that the Notice of Intent to Relocate be filed 45 days before the intended move.
- Deleted s. 61.13(2)(d), F.S., regarding relocation of primary residential parent, which conflicts with the newly created statute.
- Provided for the exclusion of all information that may be privileged under the public records laws.

The bill was then reported favorably with a committee substitute.

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to parental relocation with a child;
7 amending s. 61.13, F.S.; deleting standards for
8 determining whether to allow a primary residential parent
9 to move a child; creating s. 61.13001, F.S.; providing
10 definitions; providing for notification of certain persons
11 of the intent to relocate the child and providing
12 procedures therefor; requiring certain information to be
13 provided on a Notice of Intent to Relocate; providing
14 procedures for objecting to the relocation of a child;
15 providing applicability of public records law; providing
16 for content of an objection to relocation; authorizing the
17 court to grant a temporary order restraining the
18 relocation of a child under certain circumstances;
19 prohibiting certain presumptions and requiring certain
20 factors to be evaluated by the court with regard to
21 relocation of a child; assigning the burden of proof in
22 cases of relocation of a child; authorizing the court to
23 order certain contact with the child by the nonrelocating

24 party; granting priority for certain hearings and trials
25 under s. 61.13001, F.S.; providing applicability;
26 providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Paragraph (d) of subsection (2) of section
31 61.13, Florida Statutes, is amended to read:
32 61.13 Custody and support of children; visitation rights;
33 power of court in making orders.--
34 (2)
35 ~~(d) No presumption shall arise in favor of or against a~~
36 ~~request to relocate when a primary residential parent seeks to~~
37 ~~move the child and the move will materially affect the current~~
38 ~~schedule of contact and access with the secondary residential~~
39 ~~parent. In making a determination as to whether the primary~~
40 ~~residential parent may relocate with a child, the court must~~
41 ~~consider the following factors:~~
42 ~~1. Whether the move would be likely to improve the general~~
43 ~~quality of life for both the residential parent and the child.~~
44 ~~2. The extent to which visitation rights have been allowed~~
45 ~~and exercised.~~
46 ~~3. Whether the primary residential parent, once out of the~~
47 ~~jurisdiction, will be likely to comply with any substitute~~
48 ~~visitation arrangements.~~
49 ~~4. Whether the substitute visitation will be adequate to~~
50 ~~foster a continuing meaningful relationship between the child~~
51 ~~and the secondary residential parent.~~

52 ~~5. Whether the cost of transportation is financially~~
53 ~~affordable by one or both parties.~~
54 ~~6. Whether the move is in the best interests of the child.~~
55 Section 2. Section 61.13001, Florida Statutes, is created
56 to read:
57 61.13001 Parental relocation with a child.--
58 (1) DEFINITIONS.--As used in this section:
59 (a) "Change of residence address" means the relocation of
60 a child to a primary residence more than 50 miles away from his
61 or her current primary place of residence, unless the move
62 places the primary residence of the minor child less than 50
63 miles from the nonresidential parent.
64 (b) "Child" means any person who is under the jurisdiction
65 of a state court pursuant to the Uniform Child Custody
66 Jurisdiction and Enforcement Act or is the subject of any order
67 granting to a parent or other person any right to residential
68 care, custody, or visitation as provided under state law.
69 (c) "Court" means the circuit court in an original
70 proceeding which has proper venue and jurisdiction in accordance
71 with the Uniform Child Custody Jurisdiction and Enforcement Act,
72 the circuit court in the county in which either parent and the
73 child reside, or the circuit court in which the original action
74 was adjudicated.
75 (d) "Other person" means an individual who is not the
76 parent and who, by court order, maintains the primary residence
77 of a child or has visitation rights with a child.
78 (e) "Parent" means any person so named by court order or
79 express written agreement that is subject to court enforcement

80 or a person reflected as a parent on a birth certificate and in
81 whose home a child maintains a primary or secondary residence.
82 (f) "Person entitled to be the primary residential parent
83 of a child" means a person so designated by court order or by an
84 express written agreement that is subject to court enforcement
85 or a person seeking such a designation, or, when neither parent
86 has been designated as primary residential parent, the person
87 seeking to relocate with a child.
88 (g) "Principal or primary residence of a child" means the
89 home of the designated primary residential parent. For purposes
90 of this section only, when rotating custody is in effect, each
91 parent shall be considered to be the primary residential parent.
92 (h) "Relocation" means a change in the principal residence
93 of a child for a period of 60 consecutive days or more but does
94 not include a temporary absence from the principal residence for
95 purposes of vacation, education, or the provision of health care
96 for the child.
97 (2) NOTICE OF INTENT TO RELOCATE WITH A CHILD.--A parent
98 who is entitled to primary residence of the child shall notify
99 the other parent, and every other person entitled to visitation
100 with the child, of a proposed relocation of the child's
101 principal residence. The form of notice shall be according to
102 this section:
103 (a) The parent seeking to relocate shall prepare a Notice
104 of Intent to Relocate. The following information must be
105 included with the Notice of Intent to Relocate and signed under
106 oath under penalty of perjury:

107 1. A description of the location of the intended new
108 residence, including the state, city, and specific physical
109 address, if known.
110 2. The mailing address of the intended new residence, if
111 not the same as the physical address, if known.
112 3. The home telephone number of the intended new
113 residence, if known.
114 4. The date of the intended move or proposed relocation.
115 5. A detailed statement of the specific reasons for the
116 proposed relocation of the child. If one of the reasons is based
117 upon a job offer which has been reduced to writing, that written
118 job offer must be attached to the Notice of Intent to Relocate.
119 6. A proposal for a revised postrelocation schedule of
120 visitation with the child.
121 7. Substantially the following statement, in all capital
122 letters and in the same size type, or larger, as the type in the
123 remainder of the notice:
124
125 AN OBJECTION TO THE PROPOSED RELOCATION MUST BE MADE IN
126 WRITING, FILED WITH THE COURT, AND SERVED ON THE PARENT OR
127 OTHER PERSON SEEKING TO RELOCATE WITHIN 30 DAYS AFTER
128 SERVICE OF THIS NOTICE OF INTENT TO RELOCATE. IF YOU FAIL
129 TO TIMELY OBJECT TO THE RELOCATION, THE RELOCATION WILL BE
130 ALLOWED WITHOUT FURTHER NOTICE AND WITHOUT A HEARING.
131
132 8. The mailing address of the parent or other person
133 seeking to relocate to which the objection filed under

134 subsection (4) to the Notice of Intent to Relocate should be
135 sent.
136
137 The contents of the Notice of Intent to Relocate are not
138 privileged. For purposes of encouraging amicable resolution of
139 the relocation issue, a copy of the Notice of Intent to Relocate
140 shall initially not be filed with the court but instead served
141 upon the nonrelocating parent, other person, and every other
142 person entitled to visitation with the child, and the original
143 thereof shall be maintained by the parent or other person
144 seeking to relocate.
145 (b) The parent seeking to relocate shall also prepare a
146 Certificate of Filing Notice of Intent to Relocate. The
147 certificate shall certify the date that the Notice of Intent to
148 Relocate was served on the other parent and on every other
149 person entitled to visitation with the child.
150 (c) The Notice of Intent to Relocate, and the Certificate
151 of Filing Notice of Intent to Relocate, shall be served on the
152 other parent and on every other person entitled to visitation
153 with the child. If there is a pending court action regarding the
154 child, service of process may be according to court rule.
155 Otherwise, service of process shall be according to chapters 48
156 and 49.
157 (d) A person giving notice of a proposed relocation or
158 change of residence address under this section has a continuing
159 duty to provide current and updated information required by this
160 section when that information becomes known.

161 (e) If the other parent and any other person entitled to
162 visitation with the child fails to timely file an objection, the
163 relocation shall be allowed and the court shall enter an order.
164 If an objection is timely filed, the burden shifts to the parent
165 or person seeking to relocate to initiate court proceedings to
166 obtain court permission to relocate prior to doing so.
167 (f) The act of relocating the child after failure to
168 comply with the notice of intent to relocate procedure described
169 in this subsection subjects the party in violation thereof to
170 contempt and other proceedings to compel the return of the child
171 and may be taken into account by the court in any initial or
172 postjudgment action seeking a determination or modification of
173 residence, custody, or visitation with the child as:
174 1. A factor in making a determination regarding the
175 relocation of a child.
176 2. A factor in determining whether residence or contact,
177 access, visitation, and time-sharing arrangements should be
178 modified.
179 3. A basis for ordering the temporary or permanent return
180 of the child.
181 4. Sufficient cause to order the parent or other person
182 seeking to relocate the child to pay reasonable expenses and
183 attorney's fees incurred by the party objecting to the
184 relocation.
185 5. For the award of reasonable attorney's fees and costs,
186 including interim travel expenses incident to visitation or
187 securing the return of the child.

188 (3) APPLICABILITY OF PUBLIC RECORDS LAW.--If the parent or
189 other person seeking to relocate a child, or the child, is
190 entitled to prevent disclosure of location information under any
191 public records exemption applicable to that person, the court
192 may enter any order necessary to modify the disclosure
193 requirements of this section in compliance with the public
194 records exemption.
195 (4) CONTENT OF OBJECTION TO RELOCATION.--An objection
196 seeking to prevent the relocation of a child shall be verified
197 and served within 30 days after service of the Notice of Intent
198 to Relocate. The objection shall include the specific factual
199 basis supporting the reasons for seeking a prohibition of the
200 relocation, including a statement of the amount of participation
201 or involvement the objecting party currently has or has had in
202 the life of the child.
203 (5) TEMPORARY ORDER.--
204 (a) The court may grant a temporary order restraining the
205 relocation of a child or ordering the return of the child, if a
206 relocation has previously taken place, or other appropriate
207 remedial relief, if the court finds:
208 1. The required notice of a proposed relocation of a child
209 was not provided in a timely manner.
210 2. The child already has been relocated without notice or
211 written agreement of the parties or without court approval.
212 3. From an examination of the evidence presented at the
213 preliminary hearing that there is a likelihood that upon final
214 hearing the court will not approve the relocation of the primary
215 residence of the child.

216 (b) The court may grant a temporary order permitting the
217 relocation of the child pending final hearing, if the court:
218 1. Finds that the required Notice of Intent to Relocate
219 was provided in a timely manner.
220 2. Finds from an examination of the evidence presented at
221 the preliminary hearing that there is a likelihood that on final
222 hearing the court will approve the relocation of the primary
223 residence of the child, which findings must be supported by the
224 same factual basis as would be necessary to support the
225 permitting of relocation in a final judgment.
226 (c) If the court has issued a temporary order authorizing
227 a party seeking to relocate or move a child before a final
228 judgment is rendered, the court may not give any weight to the
229 temporary relocation as a factor in reaching its final decision.
230 (d) If temporary relocation of a child is permitted, the
231 court may require the person relocating the child to provide
232 reasonable security, financial or otherwise, and guarantee that
233 the court-ordered contact with the child will not be interrupted
234 or interfered with by the relocating party.
235 (6) NO PRESUMPTION; FACTORS TO DETERMINE CONTESTED
236 RELOCATION.--No presumption shall arise in favor of or against a
237 request to relocate with the child when a primary residential
238 parent seeks to move the child and the move will materially
239 affect the current schedule of contact, access, and time-sharing
240 with the nonrelocating parent or other person. In reaching its
241 decision regarding a proposed temporary or permanent relocation,
242 the court shall evaluate all of the following factors:

243 (a) The nature, quality, extent of involvement, and
244 duration of the child's relationship with the parent proposing
245 to relocate with the child and with the nonrelocating parent,
246 other persons, siblings, half-siblings, and other significant
247 persons in the child's life.
248 (b) The age and developmental stage of the child, the
249 needs of the child, and the likely impact the relocation will
250 have on the child's physical, educational, and emotional
251 development, taking into consideration any special needs of the
252 child.
253 (c) The feasibility of preserving the relationship between
254 the nonrelocating parent or other person and the child through
255 substitute arrangements that take into consideration the
256 logistics of contact, access, visitation, and time sharing, as
257 well as the financial circumstances of the parties; whether
258 those factors are sufficient to foster a continuing meaningful
259 relationship between the child and the nonrelocating parent or
260 other person; and the likelihood of compliance with the
261 substitute arrangements by the relocating parent once he or she
262 is out of the jurisdiction of the court.
263 (d) The child's preference, taking into consideration the
264 age and maturity of the child.
265 (e) Whether the relocation will enhance the general
266 quality of life for both the parent seeking the relocation and
267 the child, including, but not limited to, financial or emotional
268 benefits or educational opportunities.
269 (f) The reasons of each parent or other person for seeking
270 or opposing the relocation.

271 (g) The current employment and economic circumstances of
272 each parent or other person and whether or not the proposed
273 relocation is necessary to improve the economic circumstances of
274 the parent or other person seeking relocation of the child.
275 (h) That the relocation is sought in good faith, the
276 extent to which the objecting parent has fulfilled his or her
277 financial obligations to the parent or other person seeking
278 relocation, including child support, spousal support, and
279 marital property and marital debt obligations.
280 (i) The career and other opportunities available to the
281 objecting parent or objecting other person if the relocation
282 occurs.
283 (j) A history of substance abuse or domestic violence as
284 defined in s. 741.28 or which meets the criteria of s.
285 39.806(1)(d) by either parent, including a consideration of the
286 severity of such conduct and the failure or success of any
287 attempts at rehabilitation.
288 (k) Any other factor affecting the best interest of the
289 child or as set forth in s. 61.13.
290 (7) BURDEN OF PROOF.--The parent or other person wishing
291 to relocate has the burden of proof if an objection is filed and
292 must then initiate a proceeding seeking court permission for
293 relocation. The initial burden is on the parent or person
294 wishing to relocate to prove by a preponderance of the evidence
295 that relocation is in the best interest of the child. If that
296 burden of proof is met, the burden shifts to the nonrelocating
297 parent or other person to show by a preponderance of the

298 evidence that the proposed relocation is not in the best
299 interest of the child.
300 (8) ORDER REGARDING RELOCATION.--If relocation is
301 permitted:
302 (a) The court may, in its discretion, order contact with
303 the nonrelocating parent, including access, visitation, time
304 sharing, telephone, Internet, web-cam, and other arrangements
305 sufficient to ensure that the child has frequent, continuing,
306 and meaningful contact, access, visitation, and time sharing
307 with the nonrelocating parent or other persons, if contact is
308 financially affordable and in the best interest of the child.
309 (b) If applicable, the court shall specify how the
310 transportation costs will be allocated between the parents and
311 other persons entitled to contact, access, visitation, and time
312 sharing and may adjust the child support award, as appropriate,
313 considering the costs of transportation and the respective net
314 incomes of the parents in accordance with state child support
315 guidelines.
316 (9) PRIORITY FOR HEARING OR TRIAL.--An evidentiary hearing
317 or nonjury trial on a pleading seeking temporary or permanent
318 relief filed pursuant to this section shall be accorded priority
319 on the court's calendar.
320 (10) APPLICABILITY.--
321 (a) The provisions of this section apply:
322 1. Before July 1, 2006, if the existing order defining
323 custody, primary residence, and visitation or a written
324 agreement does not expressly govern the relocation of the child.

325 2. To an order, whether temporary or permanent, regarding
326 primary residence of a child or visitation with a child issued
327 after July 1, 2006.
328 3. To any relocation or proposed relocation, whether
329 permanent or temporary, of a child during any pending proceeding
330 wherein residence of or visitation with a child is an issue.
331 (b) To the extent that a provision of this section
332 conflicts with an existing order or enforceable written
333 agreement signed by both parents, this section does not apply to
334 the terms of that order or agreement that govern relocation of
335 the child or a change in the principal residence address of a
336 parent.
337 Section 3. This act shall take effect July 1, 2006.

HB 1141

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1141 Conveyances of Land
**SPONSOR(S):** Stargel
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1434

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 7 Y, 0 N | Shaddock | Bond |
| 2) Economic Development, Trade & Banking Committee | 12 Y, 0 N | Olmedillo | Carlson |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


An Individual Retirement Account ("IRA") is an investment tool that permits qualifying individuals to save and invest for retirement, with certain federal income tax advantages. Although IRAs have long been able to invest in real estate, it was not until recently that there has been significant interest in placing real estate investments into an IRA. Current Florida law is unclear as to how an IRA can take title to real property.

The bill specifies how retirement investment plans, such as IRAs and other qualified plans, may accept, hold, and transfer title to real property.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the options of an individual regarding the conduct of his or her own affairs in the retirement arena.

B. EFFECT OF PROPOSED CHANGES:

**Background:**

Individual Retirement Accounts (IRAs) and other qualified plans are the second most popular type of account per household; behind the family checking account. Normally, IRAs and qualified plans are governed by the Internal Revenue Code and are affected by that state through state real property laws.

Investing an IRA in real estate is permitted by the federal tax code. In the early days of IRAs, the only place that an IRA owner could go to invest an IRA in real estate or another type of alternative investment was a traditional trust company. If you could meet the minimum account size, which used to be at least $300,000 of investable assets, then the bank might be willing to accommodate the IRA owner's investment preferences. Now there is a proliferation of IRA providers who specialize in nothing but self-directed IRAs.[1] Many of them have minimum account sizes that are as low as the annual IRA contribution limits.

The IRS Rules

IRAs are created under ss. 408 and 408A of the Internal Revenue Code.[2] IRAs can be created by contribution subject to annual dollar limits, or by rollover from a qualified plan. Section 408 requires a written agreement containing certain required provisions.

The IRS has issued forms 5305 and 5305A as Model IRA Agreements. Form 5305A is clear that despite the fact that the IRA owner may direct investments and retain most "traditional" powers that might otherwise create a passive trust, such direction by the IRA owner will not cause the assets of the IRA to be treated as owned by the IRA owner. All IRAs are required to be held by a trustee or custodian approved by the IRS to hold IRA assets. The IRA owner cannot normally take out distributions prior to age 59 ½ without a penalty, and except in the case of a Roth IRA,[3] must start taking distributions out by April 1st of the year after the year in which they turn 70½. No one has rights in an IRA during the lifetime of the IRA owner except the IRA owner, and there is no such thing as an irrevocable beneficiary designation during lifetime because the IRA must always belong to the individual it was established for during the lifetime of that individual.

Qualified plans[4] have rules that are basically the same as those for IRAs. There are penalties for withdrawal before the appropriate age, and in some cases withdrawals are prohibited until retirement or

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[1] A self-directed IRA is an Individual Retirement Account established with a broker instead of a mutual fund or a bank and enables the consumer to buy and sell individual stocks directly. *Self-Directed IRAs*, http://www.fool.com/foolu/askfoolu/1999/askfoolu990714.htm>.

[2] 26 U.S.C. ss. 408, 408A.

[3] "The Roth IRA provides no deduction for contributions, but instead provides a benefit that isn't available for any other form of retirement savings: if you meet certain requirements, all earnings are tax free when you or your beneficiary withdraw them. Other benefits include avoiding the early distribution penalty on certain withdrawals, and avoiding the need to take minimum distributions after age 70½." *Roth IRA 101*, (last visited Mar. 9, 2006) <http://www.fairmark.com/rothira/roth101.htm>.

[4] A qualified plan is established by an employer to provide retirement benefits for employees and their beneficiaries." *401(k) and Qualified Plans: Introduction*, (last visited Mar. 9, 2006) <http://www.investopedia.com/university/retirementplans/qualifiedplan/>.

separation from service. All plans will have a written agreement, a trustee and a plan administrator; but it is important to note that some plans allow the participant to direct investments within their account.

The Prohibited Transaction Rules

There are additional rules for alternative investing with IRAs. Section 4975 of the Internal Revenue Code deals with prohibited transactions, and the main focus of this section is self-dealing.[5] If a transaction within an IRA is deemed prohibited, it can result in the disqualification of the entire account as of the first day of the tax year within the year that the transaction occurred. This can result in unexpected income tax liability, as well as penalties for early distribution if the IRA owner is under 59½. Although there is no place in the Internal Revenue Code that defines permissible investments, s. 4975 addresses what is prohibited, subject to exceptions:[6]

- The sale, exchange, or leasing of any property between an IRA and any disqualified person;
- The lending of money or other extensions of credit between an IRA and any disqualified person;
- The furnishing of goods, services, or facilities between any disqualified person and an IRA;
- The transfer to any disqualified person or use by any disqualified person (or for the disqualified person's benefit) of the income or assets of an IRA; or
- The receipt by any disqualified person of any consideration in connection with a transaction involving my IRA.

A "disqualified person" as defined under Internal Revenue Code s. 4975 includes, but is not limited to, the following:[7]

- The IRA owner;
- The IRA owner's spouse;
- The IRA beneficiary;
- The IRA owner's ancestors and lineal descendants;
- Spouses of the IRA owner's lineal descendants;
- Anyone providing services to the IRA, including the IRA Custodian and any investment managers or advisors;
- Any corporation, partnership, trust or estate in which the IRA owner individually has a 50% or greater interest.

Provided that an IRA does not engage in a prohibited transaction, alternative types of investments will not disqualify the account and will allow the IRA owner to enjoy tax-deferred growth.

There are additional pitfalls which involve possible Unrelated Business Income Tax ("UBTI"). Retirement plan income that is generated from a trade or business regularly carried on by such account that is not substantially related to its tax-exempt purpose could be subject to UBTI, which is ordinary income at the trust tax rate, payable by the IRA account. Leveraging of real estate can create Unrelated Debt-Financed Income ("UDFI").

**Current law**

Under common law, an IRA meets the simplest definition of a trust, insofar as it is required that one person hold property for the benefit of another. The trustee or custodian must generally be a financial institution, unless the trustee can demonstrate to the IRS that it is capable of administering an IRA. Although the IRS considers all IRA custodians to be trustees as well, most IRA agreements offer a

[5] 26 U.S.C. s. 4975.
[6] 26 U.S.C. s. 4975(c)(1).
[7] 26 U.S.C. s. 4975(e)(2).

choice of some sort of institutionally managed product ("bank-managed") or what is referred to as a "self-directed" account. In the bank-managed product, the IRA owner is asked to select an investment objective and then allows the institution to make investment decisions and trade on the account based upon the investment objective established by the IRA owner.

In contrast, a self-directed account will have all of the investments chosen by the IRA owner. Sometimes self-directed IRA accounts will be invested in traditional stocks and bonds because perhaps the IRA owner has the skill and experience to pick and choose the investments of the account. In other situations, these accounts are invested in alternative types of investments, such as LLCs, limited partnerships, mortgage receivables, promissory notes, or real property. On rare occasions, it is possible to find an alternative investment within a bank-managed IRA because the IRA owner has instructed the trustee or custodian to purchase and/or retain the asset, but it is important to note that alternative investments are not products traditionally sold to IRA owners within the context of a bank-managed IRA relationship.

Section 408(h) of the Internal Revenue Code expressly states that IRA custodial accounts are treated as IRA trusts so long as the assets of the account are held by a bank, trust company or other specified entity, and that an IRA custodian is treated as a trustee for all Code purposes. In the event that federal taxes (UBIT or UDFI) are imposed on an IRA, the IRA is taxed at the trust tax rate.

The bill seeks to clarify how title is taken in regard to self-directed IRAs. Several title companies have taken the position that if the IRA has a custodian as opposed to a trustee, the IRA is no more than a passive trust under the Statute of Uses[8] and therefore the title cannot vest in the custodian or the account and would vest in the IRA owner. Such a position could have a negative impact on certain retirement investors.

On the surface one would assume that qualified plans would not be potentially impacted by this interpretation because they require a trust agreement; however, depending upon the document, if the plan allows the participant to direct the investments, there is the potential that a similar result might occur under current state law within a plan context.

Currently the only exception to the Statute of Uses that allows a custodian to take title is found in the Florida Uniform Gift to Minors Act (s. 710.111(1)(e), F.S.). There has never been a proper method for taking title to real estate in IRAs or qualified plans prescribed in the Florida Statutes, and similarly there is not currently an exception for same under the Statute of Uses.

**Effect of Proposed Changes:**

The bill would carve out an exception to the Statute of Uses for IRAs and Qualified Plans and prescribe the correct manner in which title should be taken to real property purchased within these accounts. The bill is not determinative as to whether an IRA is considered a trust under state law, but rather provides a manner for taking title by creating an exception to the Statute of Uses.

The bill provides clarification as to taking title to real property in IRAs and qualified plans by covering all title taken in a manner consistent with the Statute of Uses, whether previously recorded or not, setting forth a template for vesting title to IRA custodians and trustees as well as Qualified Plan custodians and trustees. The bill grants powers to the custodian or trustee and allows further disposition of the property by the custodian or trustee without the joinder of the beneficiary, except in the case of a revocation or termination. This presumes that the custodian or trustee will obtain whatever type of authorization they need from the IRA owner or qualified plan participant subject to the terms of the contractual agreement between the parties.

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[8] s. 689.09, F.S. "The Statute of Uses was enacted in 1535 to remedy the problems caused by dual legal and equitable ownership of land. Equitable ownership had arisen as a means of avoiding the legal requirements of land transfer and the feudal incidents of legal land ownership. The statute provided that anyone with beneficial ownership of land should henceforth be deemed to be the legal owner." *Chase Fed. Sav. And Loan Ass'n. v. Schreiber*, 479 So. 2d 90, 97 (Fla. 1986).

The bill allows third parties to rely on the powers of the custodian or trustee regardless of whether the powers clause is recorded on the deed, and third parties have no duty to inquire as to the qualifications of the trustee or custodian. Title conveyed under this section by a custodian or trustee will be taken free and clear of the claims of the IRA owner, plan participant or beneficiary.

The bill also provides that if notice of revocation or termination of an IRA or qualified plan is recorded, any disposition or encumbrance of such property will be executed by the custodian or trustee and will require the joinder of the IRA owner or plan participant, provides that the standard of care for a custodian or trustee will be that observed by a prudent person dealing with property of another and does not impose fiduciary duties on a custodian that they would not otherwise bear, but despite the remedial nature of the statute will not relieve a custodian or trustee for breach of a contractual agreement with the IRA owner or plan participant.

Further, the bill provides that when a provision is recorded that declares the interest to be personal property, that provision will be controlling for state law purposes, defines IRAs and qualified plans pursuant to the Internal Revenue Code, and defines beneficiaries to only be applicable when the IRA owner or qualified plan participant is deceased. It specifically excludes transfers under this section from the Statute of Uses, and proposes that this section will be remedial in nature and should be given liberal interpretation.

C. SECTION DIRECTORY:

Section 1, creates s. 689.072, which carves out an exception for IRAs and Qualified Plans and prescribes the correct manner in which title should be taken to real property purchased within these accounts.

Section 2, provides an effective date of July 1, 2006.

## 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:

The sentence construction on line 54 is incorrect. The first "the" in that line should be deleted for clarity and grammatical correctness.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to conveyances of land; creating s.
3 689.072, F.S.; providing for the transfer and creation of
4 custodial property in an individual retirement account or
5 certain qualified plans; incorporating statutory
6 provisions into such transfer; providing powers to the
7 custodian or trustee of such custodial property; providing
8 protections for persons dealing with the custodian or
9 trustee; exempting certain transfers from specific claims;
10 providing for the disposition of custodial property held
11 in an account, plan or custodianship that is terminated;
12 providing a standard of care for the custodian or trustee;
13 providing for certain declarations to control in specific
14 legal proceedings; providing that provisions relating to
15 deeds under statute of uses are not applicable to a
16 transfer by a custodian or trustee under the act;
17 providing for liberal construction; providing an effective
18 date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Section 689.072, Florida Statutes, is created
23 to read:
24 689.072 Real estate interests transferred to or by a
25 custodian or trustee of an individual retirement account or
26 qualified plan.--
27 (1)(a) A conveyance, deed, mortgage, lease assignment, or
28 other recorded instrument that transfers an interest in real

29 property in this state, including a leasehold or mortgagee
30 interest, to a person who is qualified to act as a custodian or
31 trustee for an individual retirement account under 26 U.S.C. s.
32 408(a)(2), as amended, in which instrument the transferee is
33 designated "custodian," "as custodian," "trustee," or "as
34 trustee" and the account owner or beneficiary of the
35 custodianship in the individual retirement account is named,
36 creates custodial property and transfers title to the custodian
37 or trustee when an interest in real property is recorded in the
38 name of the custodian or trustee, followed by the words "as
39 custodian or trustee for the benefit of (name of individual
40 retirement account owner or beneficiary) individual retirement
41 account."
42 (b) This section also applies to a qualified stock bonus,
43 pension, or profit-sharing plan created under 26 U.S.C. s.
44 401(a), as amended, in which instrument a person is designated
45 "custodian," "as custodian," "trustee," or "as trustee" and the
46 plan, plan participant, or plan beneficiary of the custodianship
47 in the plan also creates custodial property and transfers title
48 to the custodian or trustee when an interest in real property is
49 recorded in the name of the custodian or trustee, followed by
50 the words "as custodian, or trustee of the (name of plan) for
51 the benefit of (name of plan participant or beneficiary)."
52 (2) A transfer to a custodian or trustee of an individual
53 retirement account or qualified plan pursuant to this section
54 the incorporates the provisions of this section into the
55 disposition and grants to the custodian or trustee the power to
56 protect, conserve, sell, lease, encumber, or otherwise manage

57 and dispose of the real property described in the recorded
58 instrument without joinder of the named individual retirement
59 account owner, plan participant, or beneficiary, except as
60 provided in subsection (5).
61 (3) A person dealing with the custodian or trustee does
62 not have a duty to inquire as to the qualifications of the
63 custodian or trustee and may rely on the powers of the custodian
64 or trustee for the custodial property created under this section
65 regardless of whether such powers are specified in the recorded
66 instrument. A grantee, mortgagee, lessee, transferee, assignee,
67 or person obtaining a satisfaction or release or otherwise
68 dealing with the custodian or trustee regarding such custodial
69 property is not required to inquire into:
70 (a) The identification or status of any named individual
71 retirement account owner, plan participant, or beneficiary of
72 the individual retirement account or qualified plan or his or
73 her heirs or assigns to whom a custodian or trustee may be
74 accountable under the terms of the individual retirement account
75 agreement or qualified plan document;
76 (b) The authority of the custodian or trustee to act
77 within and exercise the powers granted under the individual
78 retirement account agreement or qualified plan document;
79 (c) The adequacy or disposition or any consideration
80 provided to the custodian or trustee in connection with any
81 interest acquired from such custodian or trustee; or
82 (d) Any provision of an individual retirement account
83 agreement or qualified plan document.
84 (4) A person dealing with the custodian or trustee under

85 the recorded instrument takes any interest transferred by such
86 custodian or trustee, within the authority provided under this
87 section, free of claims of the named owner, plan participant, or
88 beneficiary of the individual retirement account or qualified
89 plan or of anyone claiming by, through, or under such owner,
90 plan participant, or beneficiary.
91 (5) If notice of the revocation or termination of the
92 individual retirement account agreement, qualified plan, or
93 custodianship established under such individual retirement
94 account agreement or qualified plan is recorded, any disposition
95 or encumbrance of the custodial property must be by an
96 instrument executed by the custodian or trustee or the successor
97 and the respective owner, plan participant, or beneficiary of
98 the individual retirement account or qualified plan.
99 (6) In dealing with custodial property created under this
100 section, a custodian or trustee shall observe the standard of
101 care of a prudent person dealing with property of another
102 person. This section does not relieve the custodian or trustee
103 from liability for breach of the individual retirement account
104 agreement, custodial agreement, or qualified plan document.
105 (7) A provision of the recorded instrument that defines
106 and declares the interest of the owner, plan participant, or
107 beneficiary of the individual retirement account or qualified
108 plan to be personal property controls only if a determination
109 becomes an issue in any legal proceeding.
110 (8) As used in this section, the term "beneficiary"
111 applies only when the individual retirement account owner or
112 qualified plan participant is deceased.

113 (9)(a) This section does not apply to any deed, mortgage,
114 or instrument to which s. 689.071 applies.
115 (b) Section 689.09 does not apply to transfers of real
116 property interests to a custodian or trustee under this section.
117 (10) This section is remedial and shall be liberally
118 construed to effectively carry out its purposes.
119 Section 2. This act shall take effect July 1, 2006.

HB 1341

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1341 Fiduciary Lawyer-Client Privilege
**SPONSOR(S):** Joyner
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2190

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 7 Y, 0 N | Shaddock | Bond |
| 2) Justice Council | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


This bill creates the fiduciary lawyer-client privilege. This privilege provides that when a client acts as a fiduciary any communication between the client and lawyers is privileged and protected from disclosure.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill serves the purpose of fostering a confidential relationship between lawyer and client that enables the lawyer to understand and accurately assess the client's situation and render frank and unvarnished advice.

B. EFFECT OF PROPOSED CHANGES:

**Current Law**

The Lawyer-Client Privilege[1]

Florida recognizes a lawyer-client privilege applicable to confidential communications between a lawyer and client.[2] The lawyer-client privilege is the oldest of the privileges for confidential communications known in the common law and existed as part of the common law of Florida until its codification.[3] The privilege was first codified in 1976 and remains so to this day.

A client is defined in the evidence code as "any person, public officer, corporation, association or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer."[4] A person, bank, or trust company who serves as a trustee or personal representative is unquestionably a "client" as that term is defined.[5]

Fiduciary Obligations Owed to Beneficiary

A trustee is charged with a fundamental duty to administer a trust diligently for the benefit of the beneficiaries.[6] A personal representative has a similar duty to administer an estate diligently for the benefit of the beneficiaries and creditors.[7] A trustee has an array of duties owed to a beneficiary in addition to the duties of good faith and loyalty in administering the trust for the benefit of the beneficiaries.[8] Because the fiduciary's efforts must be driven and circumscribed by these duties, courts have come to differing conclusions about whether the lawyer-client privilege overrides the fiduciary's duties to a beneficiary.

The existing statute does not expressly address whether the privilege applies to communications between a client, who is acting as a fiduciary by a written instrument in administering fiduciary property, and an attorney. A few recent cases on this issue are discussed below.

In *Tripp v. Salkovitz*, 919 So. 2d 716 (Fla. 2d DCA 2006) the court ruled that the trial court could not entirely preclude the guardian and the attorney from raising the attorney-client privilege at a deposition.

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[1] The bulk of this analysis is derived from materials graciously supplied by the Real Property Probate & Trust Law Section of the Florida Bar and a Florida Bar Journal article by Jack A. Falk, Jr. entitled *The Fiduciary's Lawyer-Client Privilege: Does It Protect Communications from Discovery by a Beneficiary?*

[2] Section 90.502, F.S.

[3] Jack A. Falk, Jr., *The Fiduciary's Lawyer-Client Privilege: Does It Protect Communications from Discovery by a Beneficiary?*, Florida Bar Journal, Volume LXXVII, No. 3, 18 citing (*Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); *American Tobacco Co. v. State*, 697 So. 2d 1249, 1252 (Fla. 4th D.C.A. 1997); s. 2.01, F.S. (1849); *Keir v. State*, 152 Fla. 389, 11 So. 2d 886, 888 (1943)).

[4] Section 90.502(1)(b), F.S.

[5] Falk, *supra*.

[6] Section 737.301, F.S.

[7] Section 733.602, F.S.

[8] Falk, citing (*Griffin v. Griffin*, 463 So. 2d 569 (Fla. 1st D.C.A. 1985); *Van Dusen v. Southeast First Nat'l Bank of Miami*, 478 So. 2d 82, 92 (Fla. 3d D.C.A. 1985) ("The duty of loyalty owed by trustees is of the highest order.")).

Furthermore, *Jacob v. Barton*, 877 So. 2d 935, 937 (Fla. 2d DCA 2004), states that if the beneficiary is the person "who will ultimately benefit from the legal work" the fiduciary has instructed the attorney to perform, the beneficiary may be considered the "real client." When the beneficiary is determined to be the real client, the beneficiary holds the privilege and is entitled to communications between the fiduciary and the attorney.

Other cases have discussed the fiduciary's lawyer-client privilege in administering fiduciary property. The Second District Court of Appeal appeared to embrace an exception to the privilege in *Barnett Banks Trust Co. v. Compson,* 629 So. 2d 849 (Fla. 2d DCA 1993), even though the court refused to permit the beneficiary access to communications between the fiduciary and lawyer. There, the court employed the analysis set forth in the seminal case decided in 1976 in Delaware, *Riggs National Bank v. Zimmer*, 355 A. 2d 709 (Del. Ch. 1976), which held that communications between the fiduciary and lawyer about administering fiduciary property were not privileged. The *Compson* court did not permit the beneficiary to avail herself of the rule in *Riggs* because she sought to deplete, rather than return, trust assets. Her interests in the litigation were found to be antagonistic to the trust, unlike the beneficiary in *Riggs.*

The First District Court of Appeal noted in *First Union Nat'l Bank v. Turney*, 824 So. 2d 172, 185-86 (Fla. 1st DCA 2001), that usually a lawyer retained by a trust represents the trustee, not the beneficiary. *See also Compson*, 629 So. 2d at 851. The court in *In re Estate of Gory*, 570 So. 2d 1381 (Fla. 4th DCA 1990), addressed an alleged conflict involving the personal representative's lawyer and determined that the lawyer did not have a lawyer-client relationship with the beneficiaries.

The court in *First Union Nat'l Bank v. Turney*, 824 So. 2d 172 (Fla. 1st DCA 2001), side-stepped a determination of whether to apply an exception to the fiduciary privilege by instead applying the crime fraud exception to permit discovery. The court therefore did not have to decide whether a "fiduciary exception to the attorney-client privilege existed in Florida." *Turney*, 824 So. 2d at 186.

**Effect of Bill**

The bill provides that communications between a fiduciary, who is acting under a written instrument to administer fiduciary property, and a lawyer, are privileged to the same extent as other clients who seek legal advice.

C. SECTION DIRECTORY:

Section 1 creates s. 90.5021, F.S.

Section 2 provides an effective date of July 1, 2006.

## 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 & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the fiduciary lawyer-client privilege;
3 creating s. 90.5021, F.S.; providing that a client acts as
4 a fiduciary when serving in certain positions; providing
5 that a communication between a lawyer and a client acting
6 as a fiduciary is privileged and protected from
7 disclosure; providing construction in application;
8 providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 90.5021, Florida Statutes, is created
13 to read:
14 90.5021 Fiduciary lawyer-client privilege.--
15 (1) For the purpose of this section, a client acts as a
16 fiduciary when serving as a personal representative or a trustee
17 as defined in s. 731.201, an administrator ad litem as described
18 in s. 733.308, a curator as described in s. 733.501, a guardian
19 or guardian ad litem as defined in s. 744.102, a conservator as
20 defined in s. 710.102, or an attorney in fact as described in
21 chapter 709.
22 (2) A communication between a lawyer and a client acting
23 as a fiduciary is privileged and protected from disclosure under
24 s. 90.502 to the same extent as if the client were not acting as
25 a fiduciary. In applying s. 90.502 to a communication under this
26 section, the person or entity acting as a fiduciary is
27 considered the only, real client of the lawyer.
28 Section 2. This act shall take effect July 1, 2006.

# HB 1527

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1527 CS Parental Notification of Termination of a Minor's Pregnancy
**SPONSOR(S):** Stargel
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 4 Y, 3 N, w/CS | Shaddock | Bond |
| 2) Justice Council | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The Parental Notice of Abortion Act requires the physician performing or inducing the termination of the pregnancy of a minor to give at least 48 hours' actual notice to one parent or the legal guardian of the minor. If actual notice is not possible, the physician may give constructive notice by sending the notice certified mail return receipt requested. The Act permits a minor to seek a judicial waiver of the notice requirement.

This bill increases the notice requirements for a physician prior to performing or inducing the termination of the minor's pregnancy. The bill provides specific factors a court must consider in determining whether to grant a judicial waiver.

The bill increases the evidentiary threshold, to clear and convincing, that the evidence must meet before a court will permit a waiver of the notice requirement for the minor's best interest. The bill also prohibits a court from looking to the financial best interest of the minor, or the potential financial impact on the minor or her family, if she does not terminate her pregnancy in this best interest standard.

Finally, the bill increases the time limits for a court to rule on a request for judicial waiver of the notice requirement.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the notice requirements for a physician to provide a pregnant minor's parent or guardian before performing or inducing the termination of the minor's pregnancy.

Empower families -- This bill provides specific factors a court must consider in determining to permit a pregnant minor to avoid notifying her parent or guardian prior to the termination of a minor's pregnancy.

B. EFFECT OF PROPOSED CHANGES:

The Florida Constitution provides in part:

> [T]he 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.[1]

The legislature has codified the requirement for notification in the "Parental Notice of Abortion Act"[2] ("Act"), which requires that a physician that intends on performing or inducing the termination of the pregnancy of a minor give notice to one of the parents of the pregnant minor before performing or inducing the termination. A physician's violation of the notice requirements is grounds for disciplinary action.[3] Alternatively, prior notice is not required in a medical emergency, or where the minor seeks and obtains a judicial waiver of the notice requirement under limited circumstances.

**Actual Notice to a Parent**

Section 390.01114(3), F.S., requires that the physician give at least 48 hours' actual notice to one parent or the legal guardian of the minor. Section 390.01114(2)(a), F.S., defines "actual notice" as notice "that is given directly, in person or by telephone, to a parent or legal guardian of a minor, by a physician, at least 48 hours before the inducement or performance of a termination of pregnancy, and documented in the minor's files."

This bill amends s. 390.01114(3)(a), F.S. to add that, if actual notice is given by telephone, the notice must be confirmed in writing, signed by the physician, and mailed to the last known address of the parent both by regular mail and by certified mail, return receipt requested, delivery restricted.

**Constructive Notice to a Parent**

If actual notice is not possible, the physician may give constructive notice by sending the notice certified mail return receipt requested.[4] Section 390.01114(2)(c), F.S., defines "constructive notice" as "notice that 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. After the 72 hours have passed, delivery is deemed to have occurred."

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[1] Article X, s. 22, Fla.Const.
[2] Section 390.01114, F.S.
[3] Section 390.01114(3)(c), F.S. The applicable disciplinary provisions are found at ss. 458.331 and 459.015, F.S.
[4] Section 390.01114(3)(a), F.S.

This bill amends the definition of constructive notice in s. 390.01114(2)(c), F.S., to add a requirement that a copy of the written notice also be sent by regular mail.

**Waiver of Notice - Medical Emergency**

Notice is not required if a medical emergency exists and there is insufficient time to comply with the notice requirements. If a medical emergency exists, the physician may terminate the pregnancy but must document the reason for the medical necessity and provide notice after performing the procedure.

"Medical emergency" is defined as "a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a 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."[5]

This bill amends s. 390.01114(3)(b), F.S., to add that, in the event of a medical emergency, the physician must:

- Make reasonable attempts to contact the parent or legal guardian
- Provide notice directly, in person, or by telephone, to the parent or guardian of the minor, detailing the medical emergency and any additional risks to the minor.
- If the physician is unable to contact the parent or guardian within 24 hours after the termination, the physician must sign and mail a notice detailing the medical emergency to the parent or guardian by certified mail and by regular mail, return receipt requested, and delivery restricted to the parent or guardian.

**Waiver of Notice - Prior Waiver by Parent**

Section 390.01114(3)(b)2., F.S., provides that a person entitled to notice may waive the requirement of receiving notice from the physician provided the waiver is in writing.

This bill amends s. 390.01114(3)(b)2., F.S., to add a requirement that any such waiver must be specific, in writing, notarized, and dated not more than 30 days before the termination of the pregnancy.

**Judicial Waiver - Jurisdiction**

The Act allows a minor seeking a judicial waiver to file the petition in any circuit court within the jurisdiction of the District Court of Appeal in which she resides. There are five appellate divisions in the state. The district with the least number of counties contains 2 counties,[6] and the district with the most number of counties contains 32.[7]

This bill amends s. 390.01114(4)(a), F.S., to allow the minor to petition any circuit court in the judicial circuit that she resides in. There are 20 judicial circuits in the state, ranging in size from 1 to 7 counties.

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[5] Section 390.01114(2)(d), F.S.
[6] The Third District contains Dade and Monroe counties.
[7] The First District is bounded by Escambia County in the West, Duval County in the East, and Levy County in the South.

**Judicial Waiver - Time Limits**

Section 309.01114(4)(b), F.S., provides that a court must rule on a petition for judicial waiver within 48 hours unless the minor requests an extension of time.[8] If the court does not rule on the petition within the 48 hour period, the petition is granted and the notice requirement is waived.[9]

This bill amends s. 390.01114(4)(b), F.S., to provide that a court must rule on the petition within 5 days unless the minor requests an extension of time. If the court fails to rule in that 5 days and no extension has been granted, the petition is not granted and the notice requirement is not waived.

Additionally, this bill provides, if the court has failed to rule within the 5 days, the minor may immediately petition the chief judge of the circuit for a hearing. The chief judge must ensure that a hearing is held within 48 hours after the receipt of the minor's petition to the chief judge, and that an order granting or denying the waiver is issued with 24 hours after such hearing.

This bill also adds that a court's ruling need not be a final order if the court deems that it needs more information. In such case, the court must enter a final order within 14 days after the petition by the minor has been filed. If the petition is not granted, the minor has a right to an appeal. The appellate court must rule within 7 days after receipt of the appeal, but the appellate court may remand the case with further instructions to the trial court for a ruling within 7 days after the remand.[10] This bill specifies that the standard of review by the appellate court is "abuse of discretion," accordingly the appellate court may not base its opinion on the weight of the evidence.[11]

**Judicial Waiver - Maturity**

Section 309.01114(4)(c), F.S., provides that the court must issue a judicial waiver (allowing termination of the pregnancy without notice to a parent or guardian) if the court finds, by clear and convincing evidence,[12] that the minor is sufficiently mature to make the decision to terminate her pregnancy. At the hearing, the court must hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor, must provide for a written transcript, and must issue written and specific factual findings and legal conclusions.[13]

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[8] Section 390.01114(4)(b), F.S.
[9] Section 390.01114(4)(b), F.S.
[10] In the case of *In re: Doe*, 30 Fla. L. Weekly D2575 (Fla. 2nd DCA 2005), the Second District Court of Appeal concluded that the trial court had not properly prepared a final order detailing the evidence and the court's reasoning. Due to the time constrains within the Act the court ordered the immediate issuance of a judicial waiver rather than remand for a new hearing.
[11] In the case of *In re: Doe*, 31 Fla. L. Weekly D560 (Fla. 1st DCA 2006), Judge Hawkes noted in dissent:

> The majority acknowledges a trial court's findings of fact that are supported by competent, substantial evidence are due great deference. However, most of the majority opinion outweighs the facts found by the trial court to reach a different conclusion. Because appellate courts are not permitted to reweigh the trial court's factual findings, I would affirm.

[12] "Clear and convincing evidence" is described as:

> This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy. [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

*Inquiry Concerning Davey*, 645 So. 2d 398 (Fla. 1994).
[13] Section 390.01114(4)(e), F.S.

This bill amends s. 309.01114(4)(c), F.S., to specify the factors that a court must consider when making a determination regarding maturity. The factors include: age; overall intelligence; emotional stability; credibility and demeanor as a witness; ability to accept responsibility; ability to assess the future impact of her present choices; and her ability to understand and explain the medical consequences of the abortion and apply that understanding to her decision. The court must also consider whether there has been any undue influence by another on the minor's decision to abort her pregnancy.

**Judicial Waiver - Best Interest Standard**

Section 309.01114(4)(d), F.S., provide that the court must issue a judicial waiver (allowing termination of the pregnancy without notice to a parent or guardian) if the court finds, by a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the minor by one or more parents or by a guardian. The court must also issue a judicial waiver if the court finds that "notification of a parent or guardian is not in the best interest" of the minor.

This bill amends s. 309.01114(4)(d), F.S., regarding the best interest standard, to require that evidence of the best interest of the minor must be "clear and convincing." The bill also limits the best interest provision to provide that it "must not include financial best interest or considerations, or the potential financial impact on the minor or her family if she does not terminate her pregnancy."[14]

**State Reporting**

Section 309.01114(6), F.S., requires the Supreme Court, through the office of the State Courts Administrator, to report each year by February 1st to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the number of petitions filed for judicial waiver for the prior year, and the timing and manner of disposal of those petitions by each circuit court.

This bill amends the reporting requirement to require that the reason for each waiver granted be included in the report.

**Mandatory Child Abuse Reporting**

Section 39.201, F.S., requires that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, must report such knowledge or suspicion to the Department of Children and Families. Certain professionals must give their name when making the report; that is, they cannot make an anonymous report. Judges are included in the list of such professionals. The Parental Notice of Abortion Act does not currently contain any specific requirement regarding the mandatory reporting of child abuse. The fact that a minor is pregnant will, in some instances, lead to a finding that such pregnancy is a result of abuse that warrants prosecution.

This bill creates subsection (7) in s. 309.01114, F.S., to reaffirm the requirement in current law that any person who knows or has reasonable cause to suspect that a child has been abused must report that information to the Department of Children and Families pursuant to the mandatory reporting requirements of s. 39.201, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 390.01114, F.S., relating to parental notice of the termination of a minor's pregnancy.

Section 2 provides an effective date of July 1, 2006.

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[14] In the case of *In re: Doe*, 30 Fla. L. Weekly D2575 (2nd DCA 2005), the Second District Court of Appeal reversed a trial court and ordered that a minor be granted a judicial waiver. In part, the minor alleged that it was in her best interest to not notify her parents of the pregnancy because she believed that they would ostracize her from the home, thereby causing her financial harm.

## 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:

   In general, parental notification laws do not violate the United States Constitution.[15]

   Florida previously enacted a statutory parental notification law. The Florida Supreme Court ruled that the law violated the right to privacy in the Florida Constitution.[16] In response to the ruling, the 2004 Legislature passed HJR 1, proposing an amendment to the Florida constitution that specifically allows the legislature to enact a statute regarding parental notification. The joint resolution, adopted by the electorate in the November 2004 general election,[17] provides:

   > ARTICLE X SECTION 22. 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

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[15] *Ayotte v. Planned Parenthood of Northern New England*, 126 S.Ct. 961 (2006)
[16] *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).
[17] The vote was 64.7% in favor of the amendment. See http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2004&DATAMODE=

pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

Timeframe for Review

The bill provides that a minor seeking judicial waiver of the notice requirement may petition any circuit court in the judicial circuit in which she resides. Further, the bill provides that a court must rule on the petition within 5 days unless the minor requests an extension of time.

The bill further provides that a court's ruling need not be a final order if the court deems it needs more information, but the court must enter a final order within 14 days after the petition by the minor has been filed. If the petition is not granted, the minor has a right to an appeal. The appellate court must rule within 7 days after receipt of the appeal, but the appellate court may remand the case with further instructions to the trial court for a ruling within 7 days after the remand. The standard of review of the trial court on appeal is an abuse of discretion standard, and the trial court may not be reversed based on the weight of the evidence presented to the circuit court.

The Supreme Court in *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990) addressed a situation in which 5 days were permitted by the trial court in ruling on a petition for a judicial waiver, and overall the process could have taken 22 days from filing of petition to ruling by an appellate court to resolve. The Court concluded that 22 days was "plainly insufficient to invalidate the statute on its face."[18]

It may be possible under this bill for there to be 28 days from the filing of petition to final ruling by an appellate court.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Civil Justice Committee adopted five amendments to the bill. Four of the amendments made editorial changes. The substantive amendment removed a 48 hour limitation on a minor's petition for a hearing with the circuit's chief judge when a ruling has not been entered within five days.

The bill was then reported favorably with a committee substitute.

[18] *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 514 (1990).

CHAMBER ACTION

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1 The Civil Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to parental notification of termination of
7 a minor's pregnancy; amending s. 390.01114, F.S.; amending
8 a definition; providing procedural requirements for actual
9 notice given by telephone; providing procedural
10 requirements for certain waivers of notice; revising the
11 procedures for judicial waiver of notice; revising
12 evidentiary standards for a court determining judicial
13 waiver of notice; providing factors with which a court
14 determines whether a minor is sufficiently mature;
15 revising the best interest standard; requiring the Supreme
16 Court to include in reports reasons for judicial waiver of
17 notice; providing for the application of mandatory child
18 abuse reporting provisions; 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, <u>by regular mail and</u> by certified mail,
39 return receipt requested, and delivery restricted to the parent
40 or legal guardian. After the 72 hours have passed, delivery is
41 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, the name of the physician providing notice. Notice
66 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 regular mail and by certified mail, return receipt requested,
81 and delivery restricted to the parent or legal guardian.
82 (b) Notice is not required if:
83 1. In the physician's good faith clinical judgment, a
84 medical emergency exists and there is insufficient time for the
85 attending physician to comply with the notification
86 requirements. If a medical emergency exists, the physician must
87 make reasonable attempts to contact the parent or legal
88 guardian, may proceed but must document reasons for the medical
89 necessity in the patient's medical records, and must provide
90 notice directly, in person, or by telephone, to the parent or
91 legal guardian, with details of the medical emergency and any
92 additional risks to the minor. If the parent or legal guardian
93 has not been notified within 24 hours of the termination of the
94 pregnancy, the physician must provide notice in writing
95 including details of the medical emergency and any additional
96 risks to the minor, signed by the physician, to the last known
97 address of the parent or legal guardian of the minor, by regular
98 mail and by certified mail, return receipt requested, and
99 delivery restricted to the parent or legal guardian;
100 2. Notice is waived in writing by the person who is
101 entitled to notice and such waiver is notarized, dated not more
102 than 30 days before the termination of pregnancy, and contains a
103 specific waiver of the right of the parent or legal guardian to
104 notice of the minor's termination of pregnancy;
105 3. Notice is waived by the minor who is or has been
106 married or has had the disability of nonage removed under s.
107 743.015 or a similar statute of another state;

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

136 petition for a hearing upon the expiration of the 5-day period
137 to the chief judge of the circuit, who must ensure a hearing is
138 held within 48 hours after receipt of the minor's petition and
139 an order entered within 24 hours after the hearing.
140 2. A court's ruling need not be a final order if the court
141 deems it needs more information, but a final order must be
142 entered within 14 days after the petition is filed. If the
143 circuit court does not grant judicial waiver of notice, the
144 minor has the right to appeal. An appellate court must rule
145 within 7 days after receipt of appeal, but a ruling may be
146 remanded with further instruction for a ruling within 7 days
147 after the remand. The reason for overturning a ruling on appeal
148 must be based on abuse of discretion by the circuit court and
149 may not be based on the weight of the evidence presented to the
150 circuit court since the proceeding is a nonadversarial
151 proceeding.
152 (c) If the court finds, by clear and convincing evidence,
153 that the minor is sufficiently mature to decide whether to
154 terminate her pregnancy, the court shall issue an order
155 authorizing the minor to consent to the performance or
156 inducement of a termination of pregnancy without the
157 notification of a parent or guardian. If the court does not make
158 the finding specified in this paragraph or paragraph (d), it
159 must dismiss the petition. Factors a court shall consider when
160 determining whether a minor is sufficiently mature include, but
161 are not limited to:
162 1. The minor's:
163 a. Age.

164 b. Overall intelligence.
165 c. Emotional stability.
166 d. Credibility and demeanor as a witness.
167 e. Ability to accept responsibility.
168 f. Ability to assess the future impact of her present
169 choices.
170 g. Ability to understand and explain the medical
171 consequences of abortion and apply that understanding to her
172 decision.
173 2. Whether there has been any undue influence by another
174 on the minor's decision to have an abortion.
175 (d) If the court finds, by a preponderance of the
176 evidence, that there is evidence of child abuse or sexual abuse
177 of the petitioner by one or both of her parents or her guardian,
178 or by clear and convincing evidence that the notification of a
179 parent or guardian is not in the best interest of the
180 petitioner, the court shall issue an order authorizing the minor
181 to consent to the performance or inducement of a termination of
182 pregnancy without the notification of a parent or guardian. The
183 best interest standard must not include financial best interest
184 or considerations, or the potential financial impact on the
185 minor or her family if she does not terminate her pregnancy. If
186 the court finds evidence of child abuse or sexual abuse of the
187 minor petitioner by any person, the court shall report the
188 evidence of child abuse or sexual abuse of the petitioner, as
189 provided in s. 39.201. If the court does not make the finding
190 specified in this paragraph or paragraph (c), it must dismiss
191 the petition.

192 (e) A court that conducts proceedings under this section
193 shall provide for a written transcript of all testimony and
194 proceedings and issue written and specific factual findings and
195 legal conclusions supporting its decision and shall order that a
196 confidential record be maintained, as required under s.
197 390.01116. At the hearing, the court shall hear evidence
198 relating to the emotional development, maturity, intellect, and
199 understanding of the minor, and all other relevant evidence. All
200 hearings under this section, including appeals, shall remain
201 confidential and closed to the public, as provided by court
202 rule.
203 (f) An expedited appeal shall be available, as the Supreme
204 Court provides by rule, to any minor to whom the circuit court
205 denies a waiver of notice. An order authorizing a termination of
206 pregnancy without notice is not subject to appeal.
207 (g) No filing fees or court costs shall be required of any
208 pregnant minor who petitions a court for a waiver of parental
209 notification under this subsection at either the trial or the
210 appellate level.
211 (h) No county shall be obligated to pay the salaries,
212 costs, or expenses of any counsel appointed by the court under
213 this subsection.
214 (5) PROCEEDINGS.--The Supreme Court is requested to adopt
215 rules and forms for petitions to ensure that proceedings under
216 subsection (4) are handled expeditiously and in a manner
217 consistent with this act. The Supreme Court is also requested to
218 adopt rules to ensure that the hearings protect the minor's
219 confidentiality and the confidentiality of the proceedings.

220 (6) REPORT.--The Supreme Court, through the Office of the
221 State Courts Administrator, shall report by February 1 of each
222 year to the Governor, the President of the Senate, and the
223 Speaker of the House of Representatives on the number of
224 petitions filed under subsection (4) for the preceding year, and
225 the timing and manner of disposal of such petitions by each
226 circuit court. For each petition resulting in a waiver of
227 notice, the reason for the waiver shall be reported.
228 (7) MANDATORY CHILD ABUSE REPORTING.--The requirements of
229 s. 39.201 relating to mandatory reports of child abuse apply to
230 this section.
231 Section 2. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7091 PCB CJ 06-04 Real Property Electronic Recording
**SPONSOR(S):** Civil Justice Committee, Mahon and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2106

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | 6 Y, 0 N | Shaddock | Bond |
| 2) Transportation & Economic Development Appropriations Committee | 15 Y, 0 N | McAuliffe | Gordon |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Current law provides for electronic signatures and electronic notarization of documents, but does not clearly provide for electronic recording of documents that affect real property titles. This bill adopts the Uniform Real Property Electronic Recording Act. The act starts the process towards electronic recording of real property documents with county recorders.

This bill provides county recorders the legal authority to prepare for electronic recording of real property instruments, and authorizes county recorders to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these land records. The bill equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is satisfied by an electronic document and signature.

The standards and practices for electronic recording will be promulgated by rule by the Secretary of State after consultation with an advisory council made up of five representatives of county recorders, two representatives of title companies, and two representatives of mortgage lenders.

This bill appears to require insignificant recurring expenditures by the Secretary of State. This bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates additional rulemaking power for the Secretary of State. This bill may lead to decreased administrative burdens on government and on individuals regarding the recording of documents affecting land titles.

B. EFFECT OF PROPOSED CHANGES:

**Background**[1]

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now 114 years old, "provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state."[2] In 2004, the conference finalized and approved the Uniform Real Property Electronic Recording Act ("URPERA"). Currently, the act has been enacted in four states and the District of Columbia, and is filed in the legislature of seven more.[3] The NCCUSL provided the following information regarding the proposed act:[4]

As a result of the enactments of the Uniform Electronic Transactions Act ("UETA")[5] in most states, and the Electronic Signatures in Global National Commerce Act ("E-sign") at the federal level, it is now possible to have sale contracts, mortgage instruments, and promissory notes memorialized in electronic form with the electronic signatures of the parties involved in the transaction. However, real estate transactions require another step not addressed by UETA or E-sign. Real estate transaction documents must be recorded on public records in order to protect the current interest in the real estate and clarify who owns title to the property.

Real estate records establish a chain of title which is based upon the originality and authenticity of the paper documents presented for recording. There must be an orderly conversion of recording offices in the United States for implementation of an electronic recording system. The essential starting point for this process is the URPERA.

URPERA modernizes real property law for the 21st Century. It is designed to help state administrative agencies meet the demands of the public for quick identification of title ownership. It should also streamline the real estate transaction at a benefit to consumers and every facet of the real estate industry.

There are currently certain barriers to using electronic communications to carry on real estate transactions. The law of the states of the United States has many "statute of fraud" requirements that inhibit the use of electronic communications. Statute of fraud requirements put total and express reliance upon paper documents and manual signatures to make transactions enforceable. These same

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[1] The bulk of this analysis is specifically derived from "Uniform Real Property Electronic Recording Act" promulgated by the National Conference of Commissioners on Uniform State Laws in 2004, hereinafter referred to as "NCCUSL". The members of the Drafting Committee on the Uniform Real Property Electronic Recording Act were: David D. Biklen, Owen L. Anderson, Patrick C. Guillot, Carl H. Lisman, James J. White, W. Jackson Willoughby, Lee Yeakel, Arthur R. Gaudio, Fred H. Miller, Lani Liu Ewart, Dale Whitman, William H. Henning, and William J. Pierce.
[2] *Uniform Law Commissioners*, (Mar. 6, 2006) < http://www.nccusl.org/Update/>.
[3] *A few facts about the Uniform Real Property Electronic Recording Act*, (Mar. 6, 2006) <http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp>. Florida is not included in this list.
[4] *Summary, Uniform Real Property Electronic Recording Act*, (Mar. 6, 2006) <http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-urpera.asp>.
[5] Section 668.50, F.S.

requirements have also made it more difficult to develop electronic analogues to transactions in paper that are equally enforceable.

The first step to remedy the problem took place in 1999 when the Uniform Law Commissioners promulgated the UETA. This act adjusted statute of fraud provisions to include electronic "records" and "signatures" for the memorialization of all kinds of transactions, including basic transactions in real estate. It is possible to have sale contracts, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures that will now be treated the equal of the same paper documents with manual signatures. This is the result of the wide-spread enactment of UETA and of the subsequent enactment of E-Sign by Congress.

Real estate transactions, however, require another step not addressed by either UETA or E-Sign. Real estate documents must be recorded on public records to be effective. Recording takes place in most states in a county office devoted to keeping these records. Recording protects current interests in real estate by clarifying who holds those interests. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a specific piece of real estate, establishes the marketability of that piece of real estate by the current owner of interest in it. The real estate records establish this chain of title. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for recording. These are themselves "statute of fraud" provisions that must be specifically adjusted before electronic recording may take place. Neither UETA nor E-Sign address this issue.

There must be an orderly conversion of every recording office in the United States for electronic recording to become accepted universally. That will be a complex process, but it needs a starting point in the law. The URPERA, promulgated by the Uniform Law Commissioners in 2004, is that essential start.

The URPERA establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an extension of the principles of UETA and E-Sign to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. Third, URPERA establishes the board that sets state-wide standards and requires it to set uniform standards that must be implemented in every recording office.

**Effect of Bill**

This bill adopts the URPERA, with Florida modifications. The bill defines the following terms:[6]

- "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and eligible to be recorded in the land records maintained by a county recorder.[7][8]

- "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

- "Electronic document" means a document that is received by a county recorder in an electronic form.

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[6] The Uniform Act includes a definition of "person" that is not included in this bill. The term "person" is defined, applicable to all of the Florida Statutes, at s. 1.01(3), F.S.
[7] Section 695.27(2)(a).
[8] The bill uses the generic term "county recorder" to represent the clerks of the circuit court, who are the county recorder in most of the counties in Florida, and the other officials who are designated as the county recorder in select counties.

- "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

- "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

This bill authorizes a clerk to accept and record electronic documents. Therefore, if a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this section. This bill further provides that, if a law requires, as a condition for recording, that a document be signed or notarized, that the requirement is satisfied by an electronic signature or electronic notarization. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

This bill provides that the Secretary of State shall promulgate rules creating standards for electronic recording, and requires county recorders to follow those rules should a county recorder accept documents filed electronically. The county recorder may elect to receive electronic documents. The county recorder may store those electronic documents, or the information contained in them, and create an index of the documents or information. The county recorder may also transmit electronic documents and communications to the recording party or to other parties. The county recorder may archive the electronic documents or the information in them as well as the index in order to preserve and protect them. A county recorder may enter into agreements with other jurisdictions regarding electronic recording.

This bill does not require that persons engaging in real estate transactions use electronic documents in order to have their documents recorded. It merely permits the county recorder to accept electronic documents if they are presented electronically. The county recorder must continue to receive paper documents and include those documents in the same index with the electronic ones.

In promulgating rules, the Department of State must consult with the Electronic Recording Advisory Council created by this bill. The Electronic Recording Advisory Council will consist of nine members. The Secretary of State must provide administrative support to the Electronic Recording Advisory Council. The members of the Electronic Recording Advisory Council are appointed by the Secretary of State, and members of the council are:

- Five clerks of circuit court or county recorders who are members of the Florida Association of Court Clerks & Comptrollers.

- Two persons working in the title insurance industry who are members of the Florida Land Title Association.

- One banker who is a member of the Florida Bankers Association.

- One mortgage broker who is a member of the Florida Association of Mortgage Brokers.

The first meeting of the Electronic Recording Advisory Council must be held on or before July 30, 2006. Thereafter, the council meets at the call of the chair. The members of the Electronic Recording Advisory Council serve without compensation, and cannot claim per diem and travel expenses from the Secretary of State.

To keep the standards, technology and practices of county recorders in this state in harmony with the standards, technology, the Department of State in consultation with the Electronic Recording Advisory Council, in adopting, amending, and repealing standards must consider:

- Standards and practices of other jurisdictions.

- The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.[9]

- The views of interested persons and governmental officials and entities. Among others, these persons should include county clerks and potential users of the electronic recording system such as real estate attorneys, mortgage lenders, representatives from the title and escrow industries, real estate brokers, and notaries public. Also included might be potential suppliers of hardware, software and services for electronic recording systems.

- The needs of counties of varying size, population, and resources. Because most states are quite diverse in the size, population and resources of their recording venues, it is important that the Department of State and the Electronic Recording Advisory Council consider all of their needs. This section recognizes that the standards should promote the overall good of the entire state and not just the good of certain types of recording venues.

- Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering. The authenticity of a documents stored in any recording system is of utmost importance. If forged or invalid documents are accepted for recording, landowners and those depending on their titles can be seriously affected. The Department of State and the Electronic Recording Advisory Council is also directed to consider standards for the proper preservation of electronic documents once they are in the electronic recording system.

In applying and construing s. 695.27, created by this bill, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Responding to the specific language of E-sign, this bill is designed to avoid preemption of state law under that federal legislation. This bill modifies, limits, and supersedes E-sign, 15 U.S.C. ss. 7001 et seq.,[10] but this section does not modify, limit, or supersede s. 101(c) of that act,[11] 15 U.S.C. s. 7001(c),[12] or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).[13]

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[9] The Property Records Industry Association's mission is "to serve the property records industry by facilitating recordation and access to public property records, by formulating and disseminating model standards, systems and procedures while preserving the integrity of those records." *What is PRIA's Mission?*, (last visited Mar. 6, 2006) <http://www.pria.us/index.html>.

[10] The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., was enacted on June 30, 2000. Congress enacted the Act, "to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. Careful to preserve the underlying consumer protection laws governing consumers' rights to receive certain information in writing, Congress imposed special requirements on businesses that want to use electronic records or signatures in consumer transactions. *Executive Summary*, (last visited Mar. 6, 2006) <http://www.ftc.gov/os/2001/06/esign7.htm>.

[11] In the Electronic Signatures in Global and National Commerce Act Congress:

> imposed special requirements on businesses that want to use electronic records or signatures in consumer transactions. Section 101(c)(1) of the Act provides that information required by law to be in writing can be made available electronically to a consumer only if he or she affirmatively consents to receive the information electronically and the business clearly and conspicuously discloses specified information to the consumer before obtaining his or her consent.

*Executive Summary*, (last visited Mar. 6, 2006) <http://www.ftc.gov/os/2001/06/esign7.htm>.

[12] 15 U.S.C. s.7001(c) states that a consumer's consent to receive electronic records is valid only if the consumer has affirmative consented and prior to the consent, he or she was provided a clear and conspicuous statement outlining the consumer's rights.

[13] 15 U.S.C. s.7003(b) excludes from the Electronic Signatures in Global and National Commerce Act "court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection

C. SECTION DIRECTORY:

Section 1 creates s. 695.27, F.S., to adopt the Uniform Real Property Electronic Recording Act, with Florida modifications.

Section 2 provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   There is a minimal fiscal impact on the Secretary of State for rulemaking and the administration of the Electronic Recording Advisory Council.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Electronic recording of documents may significantly lower costs to government and to the private sector.

## 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

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with court proceedings" and notices of: cancellation of utility services; defaults or foreclosures or other such proceedings on a primary residence; cancellation or termination of health or life insurance; or recall of a product because of health or safety issues, or documents required to transport toxic or dangerous materials.

B. RULE-MAKING AUTHORITY:

This bill creates additional rulemaking authority for the Secretary of State. It is anticipated that the Bureau of Archives would be assigned the responsibility for the rulemaking. An advisory body is created to assist in crafting the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

- Specified that the Electronic Recording Advisory Council is created.
- Provided that the chair of the Electronic Recording Advisory Council is appointed by the Secretary of State.

The bill was then reported favorably.

1 A bill to be entitled
2 An act relating to real property electronic recording;
3 creating s. 695.27, F.S.; providing a short title;
4 providing definitions; providing for the validity of
5 electronic documents relating to real property; providing
6 for the recording of electronic documents by the county
7 recorder; granting the Department of State rulemaking
8 authority; creating the Electronic Recording Advisory
9 Council; providing for membership and meetings of the
10 council; providing that council members shall serve
11 without compensation and may not claim per diem and travel
12 expenses from the Secretary of State; providing guidelines
13 for the department, in consultation with the council, to
14 consider in adopting, amending, and repealing standards;
15 providing for uniformity of application and construction;
16 specifying the relation to a federal act; providing an
17 effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 695.27, Florida Statutes, is created to
22 read:
23 695.27 Uniform Real Property Electronic Recording Act.--
24 (1) SHORT TITLE.--This section may be cited as the
25 "Uniform Real Property Electronic Recording Act."
26 (2) DEFINITIONS.--As used in this section:
27 (a) "Document" means information that is:
28 1. Inscribed on a tangible medium or that is stored in an

29 electronic or other medium and is retrievable in perceivable
30 form; and
31 2. Eligible to be recorded in the land records maintained
32 by a county recorder.
33 (b) "Electronic" means relating to technology having
34 electrical, digital, magnetic, wireless, optical,
35 electromagnetic, or similar capabilities.
36 (c) "Electronic document" means a document that is
37 received by a county recorder in an electronic form.
38 (d) "Electronic signature" means an electronic sound,
39 symbol, or process attached to or logically associated with a
40 document and executed or adopted by a person with the intent to
41 sign the document.
42 (e) "State" means a state of the United States, the
43 District of Columbia, Puerto Rico, the United States Virgin
44 Islands, or any territory or insular possession subject to the
45 jurisdiction of the United States.
46 (3) VALIDITY OF ELECTRONIC DOCUMENTS.--
47 (a) If a law requires, as a condition for recording, that
48 a document be an original, be on paper or another tangible
49 medium, or be in writing, the requirement is satisfied by an
50 electronic document satisfying the requirements of this section.
51 (b) If a law requires, as a condition for recording, that
52 a document be signed, the requirement is satisfied by an
53 electronic signature.
54 (c) A requirement that a document or a signature
55 associated with a document be notarized, acknowledged, verified,
56 witnessed, or made under oath is satisfied if the electronic

57 signature of the person authorized to perform that act, and all
58 other information required to be included, is attached to or
59 logically associated with the document or signature. A physical
60 or electronic image of a stamp, impression, or seal need not
61 accompany an electronic signature.
62 (4) RECORDING OF DOCUMENTS.--
63 (a) In this subsection, the term "paper document" means a
64 document that is received by the county recorder in a form that
65 is not electronic.
66 (b) A county recorder:
67 1. Who implements any of the functions listed in this
68 section shall do so in compliance with standards established by
69 rule by the Department of State.
70 2. May receive, index, store, archive, and transmit
71 electronic documents.
72 3. May provide for access to, and for search and retrieval
73 of, documents and information by electronic means.
74 4. Who accepts electronic documents for recording shall
75 continue to accept paper documents as authorized by state law
76 and shall place entries for both types of documents in the same
77 index.
78 5. May convert paper documents accepted for recording into
79 electronic form.
80 6. May convert into electronic form information recorded
81 before the county recorder began to record electronic documents.
82 7. May accept electronically any fee that the county
83 recorder is authorized to collect.
84 8. May agree with other officials of a state or a

85 political subdivision thereof, or of the United States, on
86 procedures or processes to facilitate the electronic
87 satisfaction of prior approvals and conditions precedent to
88 recording and the electronic payment of fees.
89 (5) ADMINISTRATION AND STANDARDS.--
90 (a) The Department of State, by rule pursuant to ss.
91 120.536(1) and 120.54, shall prescribe standards to implement
92 this section in consultation with the Electronic Recording
93 Advisory Council, which is hereby created. The Secretary of
94 State shall provide administrative support to the council,
95 appoint the members of the council, and appoint the chair of the
96 council. The council shall consist of nine members, as follows:
97 1. Five clerks of circuit court or county recorders who
98 are members of the Florida Association of Court Clerks and
99 Comptroller, Inc.
100 2. Two persons working in the title insurance industry who
101 are members of the Florida Land Title Association.
102 3. One banker who is a member of the Florida Bankers
103 Association.
104 4. One mortgage broker who is a member of the Florida
105 Association of Mortgage Brokers.
106 (b) The first meeting of the council shall be held on or
107 before July 30, 2006. Thereafter, the council shall meet at the
108 call of the chair.
109 (c) The members of the council shall serve without
110 compensation and shall not claim per diem and travel expenses
111 from the Secretary of State.
112 (d) To keep the standards and practices of county

113 recorders in this state in harmony with the standards and
114 practices of recording offices in other jurisdictions that enact
115 substantially this section and to keep the technology used by
116 county recorders in this state compatible with technology used
117 by recording offices in other jurisdictions that enact
118 substantially this section, the Department of State, in
119 consultation with the council, so far as is consistent with the
120 purposes, policies, and provisions of this section, in adopting,
121 amending, and repealing standards, shall consider:
122 1. Standards and practices of other jurisdictions.
123 2. The most recent standards adopted by national standard-
124 setting bodies, such as the Property Records Industry
125 Association.
126 3. The views of interested persons and governmental
127 officials and entities.
128 4. The needs of counties of varying size, population, and
129 resources.
130 5. Standards requiring adequate information security
131 protection to ensure that electronic documents are accurate,
132 authentic, adequately preserved, and resistant to tampering.
133 (6) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In
134 applying and construing this section, consideration must be
135 given to the need to promote uniformity of the law with respect
136 to its subject matter among states that enact it.
137 (7) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
138 NATIONAL COMMERCE ACT.--This section modifies, limits, and
139 supersedes the federal Electronic Signatures in Global and
140 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but this

141 section does not modify, limit, or supersede s. 101(c) of that
142 act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of
143 any of the notices described in s. 103(b) of that act, 15 U.S.C.
144 s. 7003(b).
145 Section 2. This act shall take effect upon becoming a law.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7151 PCB CJ 06-02 Adoption
**SPONSOR(S):** Civil Justice Committee and Mahon
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 408

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Civil Justice Committee | 7 Y, 0 N | Shaddock | Bond |
| 1) Future of Florida's Families Committee | 7 Y, 0 N | Davis | Collins |
| 2) Justice Council | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The bill provides a mechanism for the Department of Health to receive a notification of the filing of a petition for termination of parental rights. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

The bill also modifies the statute of repose related to adoption by providing that the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. Absent such a showing a person with indirect interest lacks standing to set aside a judgment of adoption.

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

Please see Effect of Proposed Changes section and Drafting Issues or Other Comments section for Future of Florida's Families Committee's analysis.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Empower families:** This bill strengthens families inheritance rights by clarifying that an adopted person has the same rights of inheritance as a blood descendant.

**Provides Limited Government:** The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

B. EFFECT OF PROPOSED CHANGES:

**Present Situation:**

Future of Florida's Families Committee:

**The 2003 Florida Adoption Act:** The 2003 Florida Adoption Act (Chapter 2003-58, L.O.F.), substantially revised the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involved the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaced existing constructive notice provisions as previously applied to fathers who could not be identified or located. The category of "fathers" for whom notice and consent may be required was revised to incorporate and conform to the new definition of "unmarried biological father."

Specific changes made by the 2003 legislation included:

- Deleting the statutory duty of a mother placing a child up for adoption to identify a potential unmarried biological father.
- Allowing for pre-birth execution of an affidavit of non-paternity.
- Broadening the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expanding placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revising venue provisions to include four primary venue options and waiver of venue.
- Revising a number of statutory timeframes including:
    1. Reducing the statute of repose period from two years to one year for any challenge to an adoption or termination of parental rights;
    2. Reducing in half the time period between the date of personal or constructive service and the date of a final hearing;
    3. Extending the time period from seven to 14 days in which to make adoption disclosures to birth and prospective adoptive parents;

4. Extending from 24 hours to seven days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Families (department or DCF); and
5. Changing the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement;

- Revising the statutory forms for consent to adoption, for adoption disclosure, for notice of service of process, for affidavits of non-paternity and for waiver of venue to conform to changes in the bill in those areas.

- Revising provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat fee representation and for birth mothers by expanding recovery of pre-birth and post-birth expenses.

- Deleting requirements that all proceedings for adoption be conducted by the same judge that conducted the termination of parental rights proceedings.

- Allowing private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.

Civil Justice Committee:

Florida has established a Putative Father Registry ("Registry") to attempt to preserve the rights of unmarried biological fathers in adoption cases. The Registry is established and operated through the Office of Vital Statistics of the Department of Health. If a man is concerned that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the Registry.[1]

By filing with the Registry, the potential father is claiming paternity for the child and confirms his willingness to support the child. Additionally, he consents to DNA testing, and may ultimately be required to pay child support. A claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.[2]

The possible father may change his mind and prior to the birth of the child execute a notarized revocation of the claim of paternity.[3] Once that revocation is received, the claim of paternity is deemed null and void. Plus, if a court determines that a registrant is not the father of a minor, the court will order the man's name removed from the registry.[4]

All hearings and records in adoption proceedings are confidential.[5] Court hearings are held in closed court, and all papers and records pertaining to the adoption, whether part of the permanent record of the court or a file in the office of an adoption entity, are confidential and subject to inspection only upon court order.

Generally, identifying information regarding the birth parents, adoptive parents, and adoptee may not be disclosed unless that person has authorized in writing the release of that information. Yet, a court may, upon petition of an adult adoptee, for good cause shown, appoint an intermediary or a licensed child-placing agency to contact a birth parent who has not registered with the adoption registry and advise them of the availability of the registry.

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[1] Section 63.054 (1), F.S.
[2] *Id.*
[3] Section 63.054 (5), F.S.
[4] *Id.*
[5] Section 63.162, F.S.

The statute of repose provides that an action to set aside a judgment of adoption or a judgment terminating parental rights may not be filed more than one year after the entry of the judgment terminating parental rights.

**Effect of Bill**

In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

The bill directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

Finally, the bill makes a change regarding inheritance rights. Except for the specific persons entitled to be given notice of an adoption, the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is inadequate and a person with this indirect interest lacks standing to set aside a judgment of adoption. This applies to all adoptions, including those in which a judgment of adoption has already been entered.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 63.054, F.S., to require notification of a filing of a petition for termination of parental rights.

**Section 2.** Amends s. 63.062(4), F.S., relating to an affidavit of non-paternity.

**Section 3.** Amends s. 63.182, F.S., relating to the statute of repose.

**Section 4.** Provides this bill will be effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Future of Florida's Families Committee has the following potential Constitutional concerns:

**Case Law History:**

The Florida Supreme Court recently interpreted language in s. 39.806(1)(d), F.S., which is identical to language currently in s. 63.089(4)(b)1, F.S. This language allows incarceration of a parent to be the basis for a finding of abandonment of a child supporting the termination of the parental rights of the incarcerated parent when "the period of time for which the parent is expected to be incarcerated will constitute a **substantial** portion of the period of time before the child will attain the age of 18 years (emphasis added)." In *B.C. vs. DCF*, 887 So.2d 1046 (Fla. 2004), the Court held that: (1) the statutes listing incarceration as a ground for termination of parental rights require the court to evaluate whether the time for which a parent is expected to be incarcerated **in the future** constitutes a substantial portion of the time before the child reaches the age of 18; (2) the father's remaining sentence of four years did not constitute a substantial portion of time before his child reached the age of 18 (the child was four years old at the time of the hearing); (3) for purposes of terminating parental rights on the ground of incarceration, a trial court should measure the time of remaining incarceration and minority from the date the termination petition is filed. The Florida Supreme Court had previously ruled, and this decision reaffirmed, that incarceration alone does not, as a matter of law, authorize termination of parental rights on the basis of abandonment. While the *B.C.* ruling was one of statutory interpretation, the Court based its interpretation on the long-established Constitutional principal that parental rights constitute a fundamental liberty interest. For this reason, at least when termination of parental rights is sought based on this ground in chapter 39, the State (petitioner) must, in order to prevail, establish that the termination is the least restrictive means of protecting the child from serious harm, *id* at 1053-1054.

The fundamental liberty interest in raising one's children has caused both the U.S. Supreme Court and the Florida Supreme Court to rule that when that when termination of parental rights is sought and the parent is indigent, the parent may be entitled to representation by appointed counsel.

In Department of Health and Rehabilitative Services vs. Privette, *617 So.2d 305, 1993,* the court found that there must be clear and compelling reason based primarily on a child's best interest to overcome a presumption of legitimacy even after the legal father is proven not to be the biological father. This is at least the equivalent of a burden of proof that would exist in proceedings to terminate a legal father's parental rights.

Privette, went on to say:

> " This conclusion is especially compelling in light of the fact that we must establish a neutral rule applicable to all cases of this type. While there may be some cases where the child has had little contact with the legal father, other cases will be quite the contrary. It is conceivable that a man who has established a loving, caring relationship of some years' duration with his legal child later will prove not to be the biological father. Where this is so, it seldom will be in the children's best interest to wrench them away from their legal fathers and judicially declare that they now must regard strangers as their fathers."

**Rights of unwed fathers**: The United States Supreme Court has protected a putative father's parental rights when he has established a substantial relationship with his child. A substantial relationship is the existence of a biological link, and the father's commitment to the responsibilities of fatherhood by participating in his child's upbringing.[6] The mere existence of a biological link does not merit constitutional protection.[7] The Florida Supreme Court has similarly held that the failure of an unwed father to grasp the opportunity to develop a parental relationship by accepting some measure of responsibility for the child can result in a loss of constitutional protections.[8]

The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. A showing of an indirect, inconsequential, or contingent interest is wholly inadequate. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

Case law permits certain persons to intervene in adoption proceedings. Florida Rule of Civil Procedure 1.230 governs intervention in civil actions. The rule provides that anyone with an interest in pending litigation may be permitted to intervene in the action. The Florida Supreme Court has explained when intervention should be permitted in adoption cases:

- Generally, the interest which entitles a person to intervene must be shown to be in the matter in litigation. The interest must be direct and immediate and the intervenor must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of indirect, inconsequential or contingent interest is wholly inadequate.[9]

- Whether intervention is allowed is determined on a case by case basis.[10]

One potential concern is whether the "test" established in this bill of direct, financial and immediate is sufficiently clear enough to establish what is in the child's best interest. Without defining what indirect, inconsequential, or contingent means, courts could inconsistently apply this standard.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

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[6] See Lehr v. Robertson, 463 U.S. 248 (1983). In this case, the U.S. Supreme Court held that the state's failure to give a putative father notice of pending adoption proceedings, despite the state's actual notice of his existence and whereabouts, did not deny him due process or equal protection, since he could have guaranteed that he would have received notice by mailing a postcard to the putative father registry.

[7] See Lehr at 261.

[8] See In the Matter of the Adoption of Doe, 543 So.2d 741, 748 (Fla. 1989).

[9] Stefanos v. Rivera-Berrios, 673 So. 2d 12, 13 (Fla. 1996).

[10] See Stefanos, 673 So. 2d at 13-14 (holding that a person who has had parental rights terminated may not intervene in an ongoing adoption proceeding); In re Adoption of a Minor Child, 593 So. 2d 185 (Fla. 1991)(allowing grandparents to intervene); Rickard v. McKesson, 774 So. 2d 838 (Fla. 4th DCA 2000)(allowing potential trust beneficiary to intervene).

- In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

- Alters the provisions regarding who may execute an irrevocable affidavit of paternity.

- Directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry.

- Makes a change regarding inheritance rights to clarify that an adopted person has the same rights of inheritance as a blood descendant.

- Removes the provision that would authorize the Department of Health to release an original sealed birth certificate on court order only to the Department of Children and Family Services.

The bill was then reported favorably.

1 A bill to be entitled
2 An act relating to adoption; amending s. 63.054, F.S.;
3 requiring a petitioner in a proceeding for termination of
4 parental rights to provide notice to the Office of Vital
5 Statistics of the Department of Health; prohibiting the
6 office from recording a claim of paternity after the date
7 that a termination of parental rights is filed; requiring
8 the department to remove a registrant's name from the
9 Florida Putative Father Registry upon a finding that the
10 registrant has no parental rights; amending s. 63.062,
11 F.S.; modifying consent required for adoption; amending s.
12 63.182, F.S.; providing that the interest that entitles a
13 person to notice of an adoption must be direct, financial,
14 and immediate; providing an exception; providing that a
15 showing of an indirect, inconsequential, or contingent
16 interest is wholly inadequate; providing construction and
17 applicability; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Subsections (1) and (5) of section 63.054,
22 Florida Statutes, are amended to read:
23 63.054 Actions required by an unmarried biological father
24 to establish parental rights; Florida Putative Father
25 Registry.--
26 (1) In order to preserve the right to notice and consent
27 to an adoption under this chapter, an unmarried biological
28 father must, as the "registrant," file a notarized claim of

29 paternity form with the Florida Putative Father Registry
30 maintained by the Office of Vital Statistics of the Department
31 of Health and shall include therein confirmation of his
32 willingness and intent to support the child for whom paternity
33 is claimed in accordance with state law. The claim of paternity
34 may be filed at any time prior to the child's birth, but a claim
35 of paternity may not be filed after the date a petition is filed
36 for termination of parental rights. In each proceeding for
37 termination of parental rights, the petitioner shall submit to
38 the Office of Vital Statistics of the Department of Health a
39 copy of the petition for termination of parental rights. The
40 Office of Vital Statistics of the Department of Health shall not
41 record a claim of paternity after the date that a petition for
42 termination of parental rights is filed.
43 (5) The registrant may, at any time prior to the birth of
44 the child for whom paternity is claimed, execute a notarized
45 written revocation of the claim of paternity previously filed
46 with the Florida Putative Father Registry, and upon receipt of
47 such revocation, the claim of paternity shall be deemed null and
48 void. If a court determines that a registrant is not the father
49 of the minor or has no parental rights, the court shall order
50 the Department of Health to remove the registrant's name from
51 the registry.
52 Section 2. Subsection (4) of section 63.062, Florida
53 Statutes, is amended to read:
54 63.062 Persons required to consent to adoption; affidavit
55 of nonpaternity; waiver of venue.--

56 (4) Any person whose consent is required under paragraph
57 (1)(b), or any other man, ~~paragraphs (1)(c)-(e)~~ may execute an
58 irrevocable affidavit of nonpaternity in lieu of a consent under
59 this section and by doing so waives notice to all court
60 proceedings after the date of execution. An affidavit of
61 nonpaternity must be executed as provided in s. 63.082. The
62 affidavit of nonpaternity may be executed prior to the birth of
63 the child. The person executing the affidavit must receive
64 disclosure under s. 63.085 prior to signing the affidavit.
65 Section 3. Section 63.182, Florida Statutes, is amended to
66 read:
67 63.182 Statute of repose.--
68 (1) Notwithstanding s. 95.031 or s. 95.11 or any other
69 statute, an action or proceeding of any kind to vacate, set
70 aside, or otherwise nullify a judgment of adoption or an
71 underlying judgment terminating parental rights on any ground
72 may not be filed more than 1 year after entry of the judgment
73 terminating parental rights.
74 (2)(a) Except for the specific persons expressly entitled
75 to be given notice of an adoption in accordance with this
76 chapter, the interest that entitles a person to notice of an
77 adoption must be direct, financial, and immediate and the person
78 must show that he or she will gain or lose by the direct legal
79 operation and effect of the judgment. A showing of an indirect,
80 inconsequential, or contingent interest is wholly inadequate and
81 a person with this indirect interest lacks standing to set aside
82 a judgment of adoption.
83 (b) This subsection is remedial and shall apply to all

84 adoptions, including those in which a judgment of adoption has
85 already been entered.
86 Section 4. This act shall take effect upon becoming a law.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 7165 PCB JU 06-05 Obsolete, Erroneous, and Inconsistent Provisions; Preservation of Certain Constitutional Provisions as Statutes
**SPONSOR(S):** Judiciary Committee
**TIED BILLS:** **IDEN./SIM. BILLS:** SJR 7086

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Judiciary Committee | 9 Y, 3 N | Thomas | Hogge |
| 1) | | | |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The proposed joint resolution makes technical and other non-substantive changes to numerous sections of the Florida Constitution. These changes were identified by the Division of Statutory Revision. The changes include:

- grammatical, punctuation, and spelling corrections
- removal of obsolete language
- gender neutral revisions

The proposed joint resolution also transfers seven sections of the State Constitution to statute and provides that the provisions transferred to statute can only be amended by a two-thirds vote of both chambers of the Legislature during the first five years after transfer. The provisions being transferred to statute are:

- Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims.
- Section 9 of Article II, which pertains to English as the official language of Florida.
- Section 7 of Article IX, which pertains to a system of governance for the state university system.
- Section 21 of Article X, which pertains to the confinement of pregnant pigs.
- Section 24 of Article X, which pertains to a state minimum wage.
- Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents.
- Section 26 of Article X, which pertains to a prohibition on having a medical license after repeated medical malpractice.

Additionally, the proposed joint resolution repeals language providing for term limits on federal officeholders that was found to be unconstitutional by the Florida Supreme Court in 1999.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately $50,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect on January 2, 2007.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The proposed joint resolution does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

**Revision or Amendment to the State Constitution**

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.[1] Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election: 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.[2]

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.[3] However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.[4]

**Florida Constitution – Organization of Articles**

| | |
|---|---|
| ARTICLE I | DECLARATION OF RIGHTS |
| ARTICLE II | GENERAL PROVISIONS |
| ARTICLE III | LEGISLATURE |
| ARTICLE IV | EXECUTIVE |
| ARTICLE V | JUDICIARY |
| ARTICLE VI | SUFFRAGE AND ELECTIONS |
| ARTICLE VII | FINANCE AND TAXATION |
| ARTICLE VIII | LOCAL GOVERNMENT |
| ARTICLE IX | EDUCATION |
| ARTICLE X | MISCELLANEOUS |
| ARTICLE XI | AMENDMENTS |
| ARTICLE XII | SCHEDULE |

**Statistical Summary of Amendments to the State Constitution Since 1968**

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[1] *See* Art. XI, ss. 1-4 & 6, Fla. Const.
[2] *See* Art. XI, ss. 2, 5, and 6, Fla. Const.
[3] *See* Art. XI, s. 5(e), Fla. Const.
[4] *See* Art. XI, s. 7, Fla. Const.

Constitutional Revision Commission – 8 amendments adopted

1978 - proposed 8, none adopted
1998 - proposed 9, 8 adopted

Taxation and Budget Reform Commission – 2 amendments adopted:

1992 – proposed 3, 2 adopted

Citizen Initiatives – 21 amendments:

proposed 26, 21 adopted

Legislature - 71 amendments adopted:

proposed 87, 71 adopted, 16 rejected

TOTAL – 102 amendments to Florida's Constitution since 1968.

**History of Select Provisions of the State Constitution**

Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims, was proposed by citizen initiative and approved by the voters at the general election in 2004. This provision provides that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to at least 70% of the first $250,000 in all damages received by the claimant, and 90% of damages in excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

Section 9 of Article II, which pertains to English as the official language of Florida, was proposed by citizen initiative and approved by the voters at the general election in 1998.

Section 7 of Article IX, which creates a statewide governing board responsible for the operation of the state university system, was proposed by citizen initiative and approved by the voters at the general election in 2002.

Section 21 of Article X, which pertains to the confinement of pregnant pigs, was proposed by citizen initiative and approved by the voters at the general election in 2002. This provision prohibits the confinement of a pig during pregnancy in a cage, crate or other enclosure, or the tethering of a pregnant pig, on a farm so that the pig is prevented from turning around freely, except for veterinary purposes and during the prebirthing period.

Section 24 of Article X, which creates a state minimum wage, was proposed by citizen initiative and approved by the voters at the general election in 2004.

Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents, was proposed by citizen initiative and approved by the voters at the general election in 2004. This provision gives patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents.

Section 26 of Article X, which prohibits a medical doctor from having a medical license after repeated medical malpractice, was proposed by citizen initiative and approved by the voters at the general election in 2004.

**Effect of Joint Resolution**

The proposed joint resolution makes technical and other non-substantive changes to numerous sections of the Florida Constitution. These changes were identified by the Division of Statutory Revision. The changes include:

- grammatical, punctuation, and spelling corrections
- removal of obsolete language
- gender neutral revisions

Technical Changes

The removal of obsolete language includes past effective dates and implementation dates and transitional provisions. The removed transitional obsolete language is described as follows:

- Section 19(g), Art. III, State Const., pertains to the budget stabilization fund. The first two sentences of subsection (g), which provide for the initial funding of the fund, were not relevant past the 1998-1999 fiscal year. The 1998-1999 fiscal year was the year in which the fund had to be fully funded.

- Section 20(d)(6), Art. V, State Const., provided for the certification of the need for new judges and creation of new judgeships in 1972. This provision had no continuing significance past 1972.

- Section 20(d)(10), Art. V, State Const., states that the offices of county solicitor and prosecuting attorney are abolished and provides that the individuals filling those positions become assistant state attorneys. The transition described in subsection (d)(10) occurred on the effective date of Art. V, State Const., which was January 1, 1973.

- Section 20(e)(1), Art. V, State Const., provides that certain officeholders in office on January 1, 1973, shall remain in their offices for the remainder of their terms. The terms to the offices to which subsection (e)(1) applied have since expired.

- Section 20(g), Art. V, State Const., provides that certain provisions of the Judiciary Article of the Constitution of 1885 are preserved as statutes. The provisions to which subsection 20(g) applied were repealed by ch. 73-303, L.O.F.

- Section 20(h), Art. V, State Const., provides that county court and municipal court judges did not have to be compensated by state salaries until January 3, 1977. Subsection (h) had no continuing significance past January 3, 1977.

- Section 1(e), Art. VII, State Const., limits the growth of state revenues. One sentence of subsection (e) describes the limit on revenues for the 1995-1996 fiscal year. That sentence had no continuing significance after the 1995-1996 fiscal year.

- Section 6(e), Art. XI, State Const., provides that proposals by the Taxation and Budget Reform Commission are to be submitted to the custodian of state records at least one hundred eighty days prior to the general election in the second year following the year in which the commission is established. In 1998, the start date for the commission was moved from an even numbered year to an odd-numbered year, therefore, this provision needs to be amended accordingly.

- Section 3, Art. XII, State Const., provides that officeholders in office when the Constitution of 1968 became effective continue in their offices, unless their offices were abolished. Officers whose offices were abolished would be compensated by law. This section was only relevant immediately after the Constitution of 1968 was adopted.

- Section 16, Art. XII, State Const., provides that the executive branch of government must be organized into no more than 25 departments by July 1, 1969. The date referenced in section 16 had no continuing significance past July 1, 1969.

- Section 25, Art. XII, State Const., provides for the gradual implementation of state funding for the state courts system as required by s. 14, Art. V, State Const. Further, the section provides for full implementation by July 1, 2004. Section 14, Art. V, State Const., has been fully implemented, and the implementation date has expired. As such, s. 25, Art. XII, State Const., has no continuing significance.

Transfer to Statute

The proposed joint resolution transfers seven sections of the State Constitution to the Florida Statutes and provides that the provisions transferred to statute can only be amended or repealed by a two-thirds vote of both chambers of the Legislature during the first five years after transfer. The provisions transferred to statute are:

- Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims.
- Section 9 of Article II, which pertains to English as the official language of Florida.
- Section 7 of Article IX, which pertains to a system of governance for the state university system.
- Section 21 of Article X, which pertains to the confinement of pregnant pigs.
- Section 24 of Article X, which pertains to a state minimum wage.
- Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents.
- Section 26 of Article X, which pertains to a prohibition on having a medical license after repeated medical malpractice.

The proposed joint resolution directs the Division of Statutory Revision to codify the transferred provisions and authorizes the Division to make necessary nonsubstantive alterations to the provisions as needed to reflect their status as statutory law.

Federal Office Term Limits

The proposed joint resolution repeals language in section 4(b)(5) and (6), Art. VI, State Const., providing for term limits on federal officeholders that was found to be unconstitutional by the Florida Supreme Court in 1999. The U.S. Supreme Court, ruling in 1995 on an Arkansas state constitutional provision, determined that state-created term limits on federal officeholders are unconstitutional under the Qualifications Clause of the U.S. Constitution.[5] The Florida Supreme Court stated that:

> there is no question but that . . . section 4(b)(5) and 6 of article VI[, State Const.], placing limits on the terms of the U.S. Representatives and U.S. Senators, are unenforceable as violative of the United States [Constitution].[6]

Effective Date

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.[7]

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[5] *U.S. Term Limits, Inc., v. Thornton*, 514 U.S. 779 (1995).
[6] *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999).

C. SECTION DIRECTORY:

The joint resolution proposes technical and conforming changes to numerous articles of the Florida Constitution. The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

| **Non-Recurring** | **FY 2006-07** |
|---|---|
| Department Of State, Division of Elections | |
| Publication Costs | $50,000 (General Revenue) |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed joint resolution makes technical and other non-substantive changes to numerous sections of the Florida Constitution. It does not have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.[8] The Division of Elections with the Department of State estimates that the non-recurring cost of compliance would be approximately $50,000 in FY 2006-07.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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[7] Art. XI, s. 5(e), Fla. Const., provides: "If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision."

[8] *See* Art. XI, s. 5(c), Fla. Const.

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[9] Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[10] Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.[11]

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Thee proposed joint resolution was amended in the Judiciary Committee on March 8, 2006. The amendments transfer seven sections of the State Constitution to statute and provide that the provisions transferred to statute can only be amended or repealed by a two-thirds vote of both chambers of the Legislature during the first five years after transfer. The provisions transferred to statute are:

- Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims.
- Section 9 of Article II, which pertains to English as the official language of Florida.
- Section 7 of Article IX, which pertains to a system of governance for the state university system.
- Section 21 of Article X, which pertains to the confinement of pregnant pigs.
- Section 24 of Article X, which pertains to a state minimum wage.
- Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents.
- Section 26 of Article X, which pertains to a prohibition on having a medical license after repeated medical malpractice.

The proposed joint resolution was also amended to correct an inadvertent problem created when the start date for the Taxation and Budget Reform Commission was transferred in 1998 to begin in an odd numbered year.

This analysis is drawn to the proposed joint resolution as amended.

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[9] *See* Art. XI, s. 1, Fla. Const.
[10] *See* Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.
[11] *See* Art. XI, s. 5(c), Fla. Const.

1 House Joint Resolution
2 A joint resolution proposing the revision of the whole
3 State Constitution to delete obsolete provisions and to
4 correct errors in spelling, punctuation, and grammar,
5 inconsistencies in wording and style, and other technical
6 issues; to correct an erroneous filing date in Article XI,
7 section 6(e), which relates to the Taxation and Budget
8 Reform Commission; to repeal Article I, section 26, which
9 pertains to a claimant's right to compensation in medical
10 liability claims, and to provide for its codification as a
11 statute; to repeal Article II, section 9, which pertains
12 to English as the official language of Florida, and to
13 provide for its codification as a statute; to repeal
14 Article IX, section 7, which pertains to a system of
15 governance for the State University System of Florida, and
16 to provide for its codification as a statute; to repeal
17 Article X, section 21, which pertains to the confinement
18 of pregnant pigs, and to provide for its codification as a
19 statute; to repeal Article X, section 24, which pertains
20 to a state minimum wage in Florida, and to provide for its
21 codification as a statute; to repeal Article X, section
22 25, which pertains to a patient's right to know about
23 adverse medical incidents, and to provide for its
24 codification as a statute; to repeal Article X, section
25 26, which pertains to a prohibition on having a medical
26 license after repeated medical malpractice, and to provide
27 for its codification as a statute.
28

29 Be It Resolved by the Legislature of the State of Florida:
30
31 That the following revision to the State Constitution is
32 agreed to and shall be submitted to the electors of this state
33 for approval or rejection at the next general election or at an
34 earlier special election specifically authorized by law for that
35 purpose:
36
37 PREAMBLE
38
39 We, the people of the State of Florida, being grateful to
40 Almighty God for our constitutional liberty, in order to secure
41 its benefits, perfect our government, ensure ~~insure~~ domestic
42 tranquility, maintain public order, and guarantee equal civil
43 and political rights to all, do ordain and establish this
44 constitution.
45
46 ARTICLE I
47 DECLARATION OF RIGHTS
48
49 SECTION 1. Political power.--All political power is
50 inherent in the people. The enunciation herein of certain rights
51 shall not be construed to deny or impair others retained by the
52 people.
53 SECTION 2. Basic rights.--All natural persons, female and
54 male alike, are equal before the law and have inalienable
55 rights, among which are the right to enjoy and defend life and
56 liberty, to pursue happiness, to be rewarded for industry, and

57 to acquire, possess, and protect property; except that the
58 ownership, inheritance, disposition, and possession of real
59 property by aliens ineligible for citizenship may be regulated
60 or prohibited by law. No person shall be deprived of any right
61 because of race, religion, national origin, or physical
62 disability.
63 SECTION 3. Religious freedom.--There shall be no law
64 respecting the establishment of religion or prohibiting or
65 penalizing the free exercise thereof. Religious freedom shall
66 not justify practices inconsistent with public morals, peace, or
67 safety. No revenue of the state or any political subdivision or
68 agency thereof shall ever be taken from the public treasury
69 directly or indirectly in aid of any church, sect, or religious
70 denomination or in aid of any sectarian institution.
71 SECTION 4. Freedom of speech and press.--Every person may
72 speak, write, and publish sentiments on all subjects but shall
73 be responsible for the abuse of that right. No law shall be
74 passed to restrain or abridge the liberty of speech or of the
75 press. In all criminal prosecutions and civil actions for
76 defamation, the truth may be given in evidence. If the matter
77 charged as defamatory is true and was published with good
78 motives, the party shall be acquitted or exonerated.
79 SECTION 5. Right to assemble.--The people shall have the
80 right peaceably to assemble, to instruct their representatives,
81 and to petition for redress of grievances.
82 SECTION 6. Right to work.--The right of persons to work
83 shall not be denied or abridged on account of membership or
84 nonmembership ~~non-membership~~ in any labor union or labor

85 organization. The right of employees, by and through a labor
86 organization, to bargain collectively shall not be denied or
87 abridged. Public employees shall not have the right to strike.
88 SECTION 7. Military power.--The military power shall be
89 subordinate to the civil.
90 SECTION 8. Right to bear arms.--
91 (a) The right of the people to keep and bear arms in
92 defense of themselves and of the lawful authority of the state
93 shall not be infringed, except that the manner of bearing arms
94 may be regulated by law.
95 (b) There shall be a mandatory period of three days,
96 excluding weekends and legal holidays, between the purchase and
97 delivery at retail of any handgun. For the purposes of this
98 section, "purchase" means the transfer of money or other
99 valuable consideration to the retailer, and "handgun" means a
100 firearm capable of being carried and used by one hand, such as a
101 pistol or revolver. Holders of a concealed weapon permit as
102 prescribed in Florida law shall not be subject to the provisions
103 of this subsection ~~paragraph~~.
104 (c) The legislature shall enact legislation implementing
105 subsection (b) ~~of this section, effective no later than December~~
106 ~~31, 1991~~, which shall provide that anyone violating the
107 provisions of subsection (b) commits ~~shall be guilty of~~ a
108 felony.
109 (d) This restriction shall not apply to a trade in of
110 another handgun.
111 SECTION 9. Due process.--No person shall be deprived of
112 life, liberty, or property without due process of law, or be

113 twice put in jeopardy for the same offense, or be compelled in
114 any criminal matter to be a witness against oneself.
115 SECTION 10. Prohibited laws.--No bill of attainder, ex
116 post facto law, or law impairing the obligation of contracts
117 shall be passed.
118 SECTION 11. Imprisonment for debt.--No person shall be
119 imprisoned for debt, except in cases of fraud.
120 SECTION 12. Searches and seizures.--The right of the
121 people to be secure in their persons, houses, papers, and
122 effects against unreasonable searches and seizures, and against
123 the unreasonable interception of private communications by any
124 means, shall not be violated. No warrant shall be issued except
125 upon probable cause, supported by affidavit, particularly
126 describing the place or places to be searched, the person or
127 persons or~~,~~ thing or things to be seized, the communication to
128 be intercepted, and the nature of evidence to be obtained. This
129 right shall be construed in conformity with the Fourth ~~4th~~
130 Amendment to the United States Constitution, as interpreted by
131 the United States Supreme Court. Articles or information
132 obtained in violation of this right shall not be admissible in
133 evidence if such articles or information would be inadmissible
134 under decisions of the United States Supreme Court construing
135 the Fourth ~~4th~~ Amendment to the United States Constitution.
136 SECTION 13. Habeas corpus.--The writ of habeas corpus
137 shall be grantable of right, freely, and without cost. It shall
138 be returnable without delay, and shall never be suspended
139 unless, in case of rebellion or invasion, suspension is
140 essential to the public safety.

141 SECTION 14. Pretrial release and detention.--Unless
142 charged with a capital offense or an offense punishable by life
143 imprisonment and the proof of guilt is evident or the
144 presumption is great, every person charged with a crime or
145 violation of municipal or county ordinance shall be entitled to
146 pretrial release on reasonable conditions. If no conditions of
147 release can reasonably protect the community from risk of
148 physical harm to persons, ensure ~~assure~~ the presence of the
149 accused at trial, or ensure ~~assure~~ the integrity of the judicial
150 process, the accused may be detained.
151 SECTION 15. Prosecution for crime; offenses committed by
152 children.--
153 (a) No person shall be tried for capital crime without
154 presentment or indictment by a grand jury, or for other felony
155 without such presentment or indictment or an information under
156 oath filed by the prosecuting officer of the court, except
157 persons on active duty in the militia when tried by courts-
158 martial ~~courts martial~~.
159 (b) When authorized by law, a child as therein defined may
160 be charged with a violation of law as an act of delinquency
161 instead of crime and tried without a jury or other requirements
162 applicable to criminal cases. Any child so charged shall, upon
163 demand made as provided by law before a trial in a juvenile
164 proceeding, be tried in an appropriate court as an adult. A
165 child found delinquent shall be disciplined as provided by law.
166 SECTION 16. Rights of accused and of victims.--
167 (a) In all criminal prosecutions the accused shall, upon
168 demand, be informed of the nature and cause of the accusation~~,~~

169 and shall be furnished a copy of the charges. The accused~~, and~~
170 shall have the right to have compulsory process for witnesses;~~,~~
171 to confront at trial adverse witnesses;~~,~~ to be heard in person,
172 by counsel, or both;~~,~~ and to have a speedy and public trial by
173 impartial jury in the county where the crime was committed. If
174 the county is not known, the indictment or information may
175 charge venue in two or more counties conjunctively and proof
176 that the crime was committed in that area shall be sufficient;
177 but before pleading the accused may elect in which of those
178 counties the trial will take place. Venue for prosecution of
179 crimes committed beyond the boundaries of the state shall be
180 fixed by law.
181 (b) Victims of crime or their lawful representatives,
182 including the next of kin of homicide victims, are entitled to
183 the right to be informed, to be present, and to be heard when
184 relevant, at all crucial stages of criminal proceedings, to the
185 extent that these rights do not interfere with the
186 constitutional rights of the accused.
187 SECTION 17. Excessive punishments.--Excessive fines, cruel
188 and unusual punishment, attainder, forfeiture of estate,
189 indefinite imprisonment, and unreasonable detention of witnesses
190 are forbidden. The death penalty is an authorized punishment for
191 capital crimes designated by the legislature. The prohibition
192 against cruel or unusual punishment, and the prohibition against
193 cruel and unusual punishment, shall be construed in conformity
194 with decisions of the United States Supreme Court that ~~which~~
195 interpret the prohibition against cruel and unusual punishment
196 provided in the Eighth Amendment to the United States

197 Constitution. Any method of execution shall be allowed, unless
198 prohibited by the United States Constitution. Methods of
199 execution may be designated by the legislature, and a change in
200 any method of execution may be applied retroactively. A sentence
201 of death shall not be reduced on the basis that a method of
202 execution is invalid. In any case in which an execution method
203 is declared invalid, the death sentence shall remain in force
204 until the sentence can be lawfully executed by any valid method.
205 This section shall apply retroactively.
206 SECTION 18. Administrative penalties.--No administrative
207 agency, except the Department of Military Affairs in an
208 appropriately convened court-martial action as provided by law,
209 shall impose a sentence of imprisonment, nor shall it impose any
210 other penalty except as provided by law.
211 SECTION 19. Costs.--No person charged with crime shall be
212 compelled to pay costs before a judgment of conviction has
213 become final.
214 SECTION 20. Treason.--Treason against the state shall
215 consist only in levying war against it, adhering to its enemies,
216 or giving them aid and comfort, and no person shall be convicted
217 of treason except on the testimony of two witnesses to the same
218 overt act or on confession in open court.
219 SECTION 21. Access to courts.--The courts shall be open to
220 every person for redress of any injury, and justice shall be
221 administered without sale, denial, or delay.
222 SECTION 22. Trial by jury.--The right of trial by jury
223 shall be secure to all and remain inviolate. The qualifications
224 and the number of jurors, not fewer than six, shall be fixed by

225 law.
226 SECTION 23. Right of privacy.--Every natural person has
227 the right to be let alone and free from governmental intrusion
228 into the person's private life except as otherwise provided
229 herein. This section shall not be construed to limit the
230 public's right of access to public records and meetings as
231 provided by law.
232 SECTION 24. Access to public records and meetings.--
233 (a) Every person has the right to inspect or copy any
234 public record made or received in connection with the official
235 business of any public body, officer, or employee of the state,
236 or persons acting on their behalf, except with respect to
237 records exempted pursuant to this section or specifically made
238 confidential by this constitution. This section specifically
239 includes the legislative, executive, and judicial branches of
240 government and each agency or department created thereunder;
241 counties, municipalities, and districts; and each constitutional
242 officer, board, and commission, or entity created pursuant to
243 law or this constitution.
244 (b) All meetings of any collegial public body of the
245 executive branch of state government or of any collegial public
246 body of a county, municipality, school district, or special
247 district, at which official acts are to be taken or at which
248 public business of such body is to be transacted or discussed,
249 shall be open and noticed to the public and meetings of the
250 legislature shall be open and noticed as provided in Article
251 III, section 4(e), except with respect to meetings exempted
252 pursuant to this section or specifically closed by this

253 constitution.
254 (c) This section shall be self-executing. The legislature,
255 however, may provide by general law passed by a two-thirds vote
256 of each house for the exemption of records from the requirements
257 of subsection (a) and the exemption of meetings from the
258 requirements of subsection (b), provided that such law shall
259 state with specificity the public necessity justifying the
260 exemption and shall be no broader than necessary to accomplish
261 the stated purpose of the law. The legislature shall enact laws
262 governing the enforcement of this section, including the
263 maintenance, control, destruction, disposal, and disposition of
264 records made public by this section, except that each house of
265 the legislature may adopt rules governing the enforcement of
266 this section in relation to records of the legislative branch.
267 Laws enacted pursuant to this subsection shall contain only
268 exemptions from the requirements of subsection ~~subsections~~ (a)
269 or subsection (b) and provisions governing the enforcement of
270 this section, and shall relate to one subject.
271 (d) All laws that are in effect on July 1, 1993 that limit
272 public access to records or meetings shall remain in force, and
273 such laws apply to records of the legislative and judicial
274 branches, until they are repealed. Rules of court that are in
275 effect on the date of adoption of this section that limit access
276 to records shall remain in effect until they are repealed.
277 SECTION 25. Taxpayers' Bill of Rights.--By general law the
278 legislature shall prescribe and adopt a Taxpayers' Bill of
279 Rights that, in clear and concise language, sets forth
280 taxpayers' rights and responsibilities and government's

281 responsibilities to deal fairly with taxpayers under the laws of
282 this state. ~~This section shall be effective July 1, 1993.~~
283 ~~SECTION 26. Claimant's right to fair compensation.--~~
284 ~~(a) Article I, Section 26 is created to read "Claimant's~~
285 ~~right to fair compensation." In any medical liability claim~~
286 ~~involving a contingency fee, the claimant is entitled to receive~~
287 ~~no less than 70% of the first $250,000.00 in all damages~~
288 ~~received by the claimant, exclusive of reasonable and customary~~
289 ~~costs, whether received by judgment, settlement, or otherwise,~~
290 ~~and regardless of the number of defendants. The claimant is~~
291 ~~entitled to 90% of all damages in excess of $250,000.00,~~
292 ~~exclusive of reasonable and customary costs and regardless of~~
293 ~~the number of defendants. This provision is self-executing and~~
294 ~~does not require implementing legislation.~~
295 ~~(b) This Amendment shall take effect on the day following~~
296 ~~approval by the voters.~~
297
298 ARTICLE II
299 GENERAL PROVISIONS
300
301 SECTION 1. State boundaries.--
302 (a) The state boundaries are: Begin at the mouth of the
303 Perdido River, which for the purposes of this description is
304 defined as the point where latitude 30°16'53" north and
305 longitude 87°31'06" west intersect; thence to the point where
306 latitude 30°17'02" north and longitude 87°31'06" west intersect;
307 thence to the point where latitude 30°18'00" north and longitude
308 87°27'08" west intersect; thence to the point where the center

309 line of the Intracoastal Canal (as the same existed on June 12,
310 1953) and longitude 87°27'00" west intersect; the same being in
311 the middle of the Perdido River; thence up the middle of the
312 Perdido River to the point where it intersects the south
313 boundary of the State of Alabama, being also the point of
314 intersection of the middle of the Perdido River with latitude
315 31°00'00" north; thence east, along the south boundary line of
316 the State of Alabama, the same being latitude 31°00'00" north to
317 the middle of the Chattahoochee River; thence down the middle of
318 said river to its confluence with the Flint River; thence in a
319 straight line to the head of the St. Marys River; thence down
320 the middle of said river to the Atlantic Ocean; thence due east
321 to the edge of the Gulf Stream or a distance of three geographic
322 miles whichever is the greater distance; thence in a southerly
323 direction along the edge of the Gulf Stream or along a line
324 three geographic miles from the Atlantic coastline and three
325 leagues distant from the Gulf of Mexico coastline, whichever is
326 greater, to and through the Straits of Florida and westerly,
327 including the Florida reefs, to a point due south of and three
328 leagues from the southernmost point of the Marquesas Keys;
329 thence westerly along a straight line to a point due south of
330 and three leagues from Loggerhead Key, the westernmost of the
331 Dry Tortugas Islands; thence westerly, northerly and easterly
332 along the arc of a curve three leagues distant from Loggerhead
333 Key to a point due north of Loggerhead Key; thence northeast
334 along a straight line to a point three leagues from the
335 coastline of Florida; thence northerly and westerly three
336 leagues distant from the coastline to a point west of the mouth

337 of the Perdido River three leagues from the coastline as
338 measured on a line bearing south 0°01'00" west from the point of
339 beginning; thence northerly along said line to the point of
340 beginning. The State of Florida shall also include any
341 additional territory within the United States adjacent to the
342 Peninsula of Florida lying south of the St. Marys River, east of
343 the Perdido River, and south of the States of Alabama and
344 Georgia.
345 (b) The coastal boundaries may be extended by statute to
346 the limits permitted by the laws of the United States or
347 international law.
348 SECTION 2. Seat of government.--The seat of government
349 shall be the City of Tallahassee, in Leon County, where the
350 offices of the governor, lieutenant governor, cabinet members,
351 and the supreme court shall be maintained and the sessions of
352 the legislature shall be held; provided that, in time of
353 invasion or grave emergency, the governor by proclamation may
354 for the period of the emergency transfer the seat of government
355 to another place.
356 SECTION 3. Branches of government.--The powers of the
357 state government shall be divided into legislative, executive,
358 and judicial branches. No person belonging to one branch shall
359 exercise any powers appertaining to either of the other branches
360 unless expressly provided herein.
361 SECTION 4. State seal and flag.--The design of the great
362 seal and flag of the state shall be prescribed by law.
363 SECTION 5. Public officers.--
364 (a) No person holding any office of emolument under any

365 foreign government, or civil office of emolument under the
366 United States or any other state, shall hold any office of honor
367 or of emolument under the government of this state. No person
368 shall hold at the same time more than one office under the
369 government of the state and the counties and municipalities
370 therein, except that a notary public or military officer may
371 hold another office, and any officer may be a member of a
372 constitution revision commission, taxation and budget reform
373 commission, constitutional convention, or statutory body having
374 only advisory powers.
375 (b) Each state and county officer, before entering upon
376 the duties of the office, shall give bond as required by law,
377 and shall swear or affirm:
378 "I do solemnly swear (or affirm) that I will support,
379 protect, and defend the Constitution and Government of the
380 United States and of the State of Florida; that I am duly
381 qualified to hold office under the constitution of the state;
382 and that I will well and faithfully perform the duties of
383 (title of office) on which I am now about to enter. So help me
384 God.",
385
386 and thereafter shall devote personal attention to the duties of
387 the office, and continue in office until a successor qualifies.
388 (c) The powers, duties, compensation, and method of
389 payment of state and county officers shall be fixed by law.
390 SECTION 6. Enemy attack.--In periods of emergency
391 resulting from enemy attack, the legislature shall have power to
392 provide for prompt and temporary succession to the powers and

393 duties of all public offices the incumbents of which may become
394 unavailable to execute the functions of their offices~~,~~ and to
395 adopt such other measures as may be necessary and appropriate to
396 ensure ~~insure~~ the continuity of governmental operations during
397 the emergency. In exercising these powers, the legislature may
398 depart from other requirements of this constitution, but only to
399 the extent necessary to meet the emergency.
400 SECTION 7. Natural resources and scenic beauty.--
401 (a) It shall be the policy of the state to conserve and
402 protect its natural resources and scenic beauty. Adequate
403 provision shall be made by law for the abatement of air and
404 water pollution and of excessive and unnecessary noise and for
405 the conservation and protection of natural resources.
406 (b) Those in the Everglades Agricultural Area who cause
407 water pollution within the Everglades Protection Area or the
408 Everglades Agricultural Area shall be primarily responsible for
409 paying the costs of the abatement of that pollution. For the
410 purposes of this subsection, the terms "Everglades Protection
411 Area" and "Everglades Agricultural Area" shall have the meanings
412 as defined in statutes in effect on January 1, 1996.
413 SECTION 8. Ethics in government.--A public office is a
414 public trust. The people shall have the right to secure and
415 sustain that trust against abuse. To ensure ~~assure~~ this right:
416 (a) All elected constitutional officers and candidates for
417 such offices and, as may be determined by law, other public
418 officers, candidates, and employees shall file full and public
419 disclosure of their financial interests.
420 (b) All elected public officers and candidates for such

421 offices shall file full and public disclosure of their campaign
422 finances.
423 (c) Any public officer or employee who breaches the public
424 trust for private gain and any person or entity inducing such
425 breach shall be liable to the state for all financial benefits
426 obtained by such actions. The manner of recovery and additional
427 damages may be provided by law.
428 (d) Any public officer or employee who is convicted of a
429 felony involving a breach of public trust shall be subject to
430 forfeiture of rights and privileges under a public retirement
431 system or pension plan in such manner as may be provided by law.
432 (e) No member of the legislature or statewide elected
433 officer shall personally represent another person or entity for
434 compensation before the government body or agency of which the
435 individual was an officer or member for a period of two years
436 following vacation of office. No member of the legislature shall
437 personally represent another person or entity for compensation
438 during his or her term of office before any state agency other
439 than judicial tribunals. Similar restrictions on other public
440 officers and employees may be established by law.
441 (f) There shall be an independent commission to conduct
442 investigations and make public reports on all complaints
443 concerning breach of public trust by public officers or
444 employees not within the jurisdiction of the judicial
445 qualifications commission.
446 (g) A code of ethics for all state employees and
447 nonjudicial officers prohibiting conflict between public duty
448 and private interests shall be prescribed by law.

449 (h) This section shall not be construed to limit
450 disclosures and prohibitions that ~~which~~ may be established by
451 law to preserve the public trust and avoid conflicts between
452 public duties and private interests.
453 (i) Schedule--~~On the effective date of this amendment and~~
454 Until changed by law:
455 (1) Full and public disclosure of financial interests
456 shall mean filing with the custodian of state records by July 1
457 of each year a sworn statement showing net worth and identifying
458 each asset and liability in excess of one thousand dollars
459 ~~$1,000~~ and its value together with one of the following:
460 a. A copy of the person's most recent federal income tax
461 return; or
462 b. A sworn statement that ~~which~~ identifies each separate
463 source and amount of income that ~~which~~ exceeds one thousand
464 dollars ~~$1,000~~. The forms for such source disclosure and the
465 rules under which they are to be filed shall be prescribed by
466 the independent commission established in subsection (f), and
467 such rules shall include disclosure of secondary sources of
468 income.
469 (2) Persons holding statewide elective offices shall also
470 file disclosure of their financial interests pursuant to
471 paragraph ~~subsection~~ (i)(1).
472 (3) The independent commission provided for in subsection
473 (f) shall mean the Florida Commission on Ethics.
474 ~~SECTION 9. English is the official language of Florida.--~~
475 ~~(a) English is the official language of the State of~~
476 ~~Florida.~~

477 ~~(b) The legislature shall have the power to enforce this~~
478 ~~section by appropriate legislation.~~
479
480 ARTICLE III
481 LEGISLATURE
482
483 SECTION 1. Composition.--The legislative power of the
484 state shall be vested in a legislature of the State of Florida,
485 consisting of a senate composed of one senator elected from each
486 senatorial district and a house of representatives composed of
487 one member elected from each representative district.
488 SECTION 2. Members; officers.--Each house shall be the
489 sole judge of the qualifications, elections, and returns of its
490 members, and shall biennially choose its officers, including a
491 permanent presiding officer selected from its membership, who
492 shall be designated in the senate as President of the Senate,
493 and in the house as Speaker of the House of Representatives. The
494 senate shall designate a Secretary to serve at its pleasure, and
495 the house of representatives shall designate a Clerk to serve at
496 its pleasure. The legislature shall appoint an auditor to serve
497 at its pleasure who shall audit public records and perform
498 related duties as prescribed by law or concurrent resolution.
499 SECTION 3. Sessions of the legislature.--
500 (a) ORGANIZATION SESSIONS.--On the fourteenth day
501 following each general election the legislature shall convene
502 for the exclusive purpose of organization and selection of
503 officers.
504 (b) REGULAR SESSIONS.--A regular session of the

505 legislature shall convene on the first Tuesday after the first
506 Monday in March of each odd-numbered year, and on the first
507 Tuesday after the first Monday in March, or such other date as
508 may be fixed by law, of each even-numbered year.
509 (c) SPECIAL SESSIONS.--
510 (1) The governor, by proclamation stating the purpose, may
511 convene the legislature in special session during which only
512 such legislative business may be transacted as is within the
513 purview of the proclamation, or of a communication from the
514 governor, or is introduced by consent of two-thirds of the
515 membership of each house.
516 (2) A special session of the legislature may be convened
517 as provided by law.
518 (d) LENGTH OF SESSIONS.--A regular session of the
519 legislature shall not exceed sixty consecutive days, and a
520 special session shall not exceed twenty consecutive days, unless
521 extended beyond such limit by a three-fifths vote of each house.
522 During such an extension no new business may be taken up in
523 either house without the consent of two-thirds of its
524 membership.
525 (e) ADJOURNMENT.--Neither house shall adjourn for more
526 than seventy-two consecutive hours except pursuant to concurrent
527 resolution.
528 (f) ADJOURNMENT BY GOVERNOR.--If, during any regular or
529 special session, the two houses cannot agree upon a time for
530 adjournment, the governor may adjourn the session sine die or to
531 any date within the period authorized for such session; provided
532 that, at least twenty-four hours before adjourning the session,

533 and while neither house is in recess, each house shall be given
534 formal written notice of the governor's intention to do so, and
535 agreement reached within that period by both houses on a time
536 for adjournment shall prevail.
537 SECTION 4. Quorum and procedure.--
538 (a) A majority of the membership of each house shall
539 constitute a quorum, but a smaller number may adjourn from day
540 to day and compel the presence of absent members in such manner
541 and under such penalties as it may prescribe. Each house shall
542 determine its rules of procedure.
543 (b) Sessions of each house shall be public,~~;~~ except that
544 sessions of the senate when considering appointment to or
545 removal from public office may be closed.
546 (c) Each house shall keep and publish a journal of its
547 proceedings~~;~~ and, upon the request of five members present, the
548 vote of each member voting on any question shall be entered on
549 the journal. In any legislative committee or subcommittee, the
550 vote of each member voting on the final passage of any
551 legislation pending before the committee, and upon the request
552 of any two members of the committee or subcommittee, the vote of
553 each member on any other question, shall be recorded.
554 (d) Each house may punish a member for contempt or
555 disorderly conduct and, by a two-thirds vote of its membership,
556 may expel a member.
557 (e) The rules of procedure of each house shall provide
558 that all legislative committee and subcommittee meetings of each
559 house, and joint conference committee meetings, shall be open
560 and noticed to the public. The rules of procedure of each house

561 shall further provide that all prearranged gatherings, between
562 more than two members of the legislature, or between the
563 governor, the president of the senate, or the speaker of the
564 house of representatives, the purpose of which is to agree upon
565 formal legislative action that will be taken at a subsequent
566 time, or at which formal legislative action is taken, regarding
567 pending legislation or amendments, shall be reasonably open to
568 the public. All open meetings shall be subject to order and
569 decorum. This section shall be implemented and defined by the
570 rules of each house, and such rules shall control admission to
571 the floor of each legislative chamber and may, where reasonably
572 necessary for security purposes or to protect a witness
573 appearing before a committee, provide for the closure of
574 committee meetings. Each house shall be the sole judge for the
575 interpretation, implementation, and enforcement of this section.
576 SECTION 5. Investigations; witnesses.--Each house, when in
577 session, may compel attendance of witnesses and production of
578 documents and other evidence upon any matter under investigation
579 before it or any of its committees, and may punish by fine not
580 exceeding one thousand dollars or imprisonment not exceeding
581 ninety days, or both, any person not a member who has been
582 guilty of disorderly or contemptuous conduct in its presence or
583 has refused to obey its lawful summons or to answer lawful
584 questions. Such powers, except the power to punish, may be
585 conferred by law upon committees when the legislature is not in
586 session. Punishment of contempt of an interim legislative
587 committee shall be by judicial proceedings as prescribed by law.
588 SECTION 6. Laws.--Every law shall embrace but one subject

589 and matter properly connected therewith, and the subject shall
590 be briefly expressed in the title. No law shall be revised or
591 amended by reference to its title only. Laws to revise or amend
592 shall set out in full the revised or amended act, section,
593 subsection, or paragraph of a subsection. The enacting clause of
594 every law shall read: "Be It Enacted by the Legislature of the
595 State of Florida:_"
596 SECTION 7. Passage of bills.--Any bill may originate in
597 either house and after passage in one may be amended in the
598 other. It shall be read in each house on three separate days,
599 unless this rule is waived by two-thirds vote; provided the
600 publication of its title in the journal of a house shall satisfy
601 the requirement for the first reading in that house. On each
602 reading, it shall be read by title only, unless one-third of the
603 members present desire it read in full. On final passage, the
604 vote of each member voting shall be entered on the journal.
605 Passage of a bill shall require a majority vote in each house.
606 Each bill and joint resolution passed in both houses shall be
607 signed by the presiding officers of the respective houses and by
608 the secretary of the senate and the clerk of the house of
609 representatives during the session or as soon as practicable
610 after its adjournment sine die.
611 SECTION 8. Executive approval and veto.--
612 (a) Every bill passed by the legislature shall be
613 presented to the governor for approval and shall become a law if
614 the governor approves and signs it, or fails to veto it within
615 seven consecutive days after presentation. If during that period
616 or on the seventh day the legislature adjourns sine die or takes

617 a recess of more than thirty days, the governor shall have
618 fifteen consecutive days from the date of presentation to act on
619 the bill. In all cases except general appropriation bills, the
620 veto shall extend to the entire bill. The governor may veto any
621 specific appropriation in a general appropriation bill, but may
622 not veto any qualification or restriction without also vetoing
623 the appropriation to which it relates.
624 (b) When a bill or any specific appropriation of a general
625 appropriation bill has been vetoed, the governor shall transmit
626 signed objections thereto to the house in which the bill
627 originated if in session. If that house is not in session, the
628 governor shall file them with the custodian of state records,
629 who shall lay them before that house at its next regular or
630 special session, whichever occurs first, and they shall be
631 entered on its journal. If the originating house votes to
632 reenact ~~re-enact~~ a vetoed measure, whether in a regular or
633 special session, and the other house does not consider or fails
634 to reenact ~~re-enact~~ the vetoed measure, no further consideration
635 by either house at any subsequent session may be taken. If a
636 vetoed measure is presented at a special session and the
637 originating house does not consider it, the measure will be
638 available for consideration at any intervening special session
639 and until the end of the next regular session.
640 (c) If each house shall, by a two-thirds vote, reenact ~~re-~~
641 ~~enact~~ the bill or reinstate the vetoed specific appropriation of
642 a general appropriation bill, the vote of each member voting
643 shall be entered on the respective journals, and the bill shall
644 become law or the specific appropriation reinstated, the veto

645 notwithstanding.
646 SECTION 9. Effective date of laws.--Each law shall take
647 effect on the sixtieth day after adjournment sine die of the
648 session of the legislature in which enacted or as otherwise
649 provided therein. If the law is passed over the veto of the
650 governor, it shall take effect on the sixtieth day after
651 adjournment sine die of the session in which the veto is
652 overridden, on a later date fixed in the law, or on a date fixed
653 by resolution passed by both houses of the legislature.
654 SECTION 10. Special laws.--No special law shall be passed
655 unless notice of intention to seek enactment thereof has been
656 published in the manner provided by general law. Such notice
657 shall not be necessary when the law, except the provision for
658 referendum, is conditioned to become effective only upon
659 approval by vote of the electors of the area affected.
660 SECTION 11. Prohibited special laws.--
661 (a) There shall be no special law or general law of local
662 application pertaining to the following:
663 (1) Election, jurisdiction, or duties of officers, except
664 officers of municipalities, chartered counties, special
665 districts, or local governmental agencies.~~;~~
666 (2) Assessment or collection of taxes for state or county
667 purposes, including extension of time therefor, relief of tax
668 officers from due performance of their duties, and relief of
669 their sureties from liability.~~;~~
670 (3) Rules of evidence in any court.~~;~~
671 (4) Punishment for crime.~~;~~
672 (5) Petit juries, including compensation of jurors, except

673 establishment of jury commissions.~~;~~
674 (6) Change of civil or criminal venue.~~;~~
675 (7) Conditions precedent to bringing any civil or criminal
676 proceedings, or limitations of time therefor.~~;~~
677 (8) Refund of money legally paid or remission of fines,
678 penalties, or forfeitures.~~;~~
679 (9) Creation, enforcement, extension, or impairment of
680 liens based on private contracts, or fixing of interest rates on
681 private contracts.~~;~~
682 (10) Disposal of public property, including any interest
683 therein, for private purposes.~~;~~
684 (11) Vacation of roads.~~;~~
685 (12) Private incorporation or grant of privilege to a
686 private corporation.~~;~~
687 (13) Effectuation of invalid deeds, wills, or other
688 instruments~~,~~ or change in the law of descent.~~;~~
689 (14) Change of name of any person.~~;~~
690 (15) Divorce.~~;~~
691 (16) Legitimation or adoption of persons.~~;~~
692 (17) Relief of minors from legal disabilities.~~;~~
693 (18) Transfer of any property interest of persons under
694 legal disabilities or of estates of decedents.~~;~~
695 (19) Hunting or freshwater ~~fresh water~~ fishing.~~;~~
696 (20) Regulation of occupations which are regulated by a
697 state agency.~~; or~~
698 (21) Any subject when prohibited by general law passed by
699 a three-fifths vote of the membership of each house. Such law
700 may be amended or repealed by like vote.

701 (b) In the enactment of general laws on other subjects,
702 political subdivisions or other governmental entities may be
703 classified only on a basis reasonably related to the subject of
704 the law.
705 SECTION 12. Appropriation bills.--Laws making
706 appropriations for salaries of public officers and other current
707 expenses of the state shall contain provisions on no other
708 subject.
709 SECTION 13. Term of office.--No office shall be created
710 the term of which shall exceed four years except as provided
711 herein.
712 SECTION 14. Civil service system.--By law there shall be
713 created a civil service system for state employees, except those
714 expressly exempted, and there may be created civil service
715 systems and boards for county, district, or municipal employees
716 and for such offices thereof as are not elected or appointed by
717 the governor, and there may be authorized such boards as are
718 necessary to prescribe the qualifications, method of selection,
719 and tenure of such employees and officers.
720 SECTION 15. Terms and qualifications of legislators.--
721 (a) SENATORS.--Senators shall be elected for terms of four
722 years, those from odd-numbered districts in the years the
723 numbers of which are multiples of four and those from even-
724 numbered districts in even-numbered years the numbers of which
725 are not multiples of four; except, at the election next
726 following a reapportionment, some senators shall be elected for
727 terms of two years when necessary to maintain staggered terms.
728 (b) REPRESENTATIVES.--Members of the house of

729 representatives shall be elected for terms of two years in each
730 even-numbered year.
731 (c) QUALIFICATIONS.--Each legislator shall be at least
732 twenty-one years of age, shall be an elector and resident of the
733 district from which elected, and shall have resided in the state
734 for a period of two years prior to election.
735 (d) ASSUMING OFFICE; VACANCIES.--Members of the
736 legislature shall take office upon election. A vacancy ~~Vacancies~~
737 in a legislative office shall be filled only by election as
738 provided by law.
739 SECTION 16. Legislative apportionment.--
740 (a) SENATORIAL AND REPRESENTATIVE DISTRICTS.--The
741 legislature at its regular session in the second year following
742 each decennial census, by joint resolution, shall apportion the
743 state in accordance with the Constitution of the State of
744 Florida and of the United States into not fewer ~~less~~ than thirty
745 nor more than forty consecutively numbered senatorial districts
746 of either contiguous, overlapping, or identical territory, and
747 into not less than eighty nor more than one hundred twenty
748 consecutively numbered representative districts of either
749 contiguous, overlapping, or identical territory. Should that
750 session adjourn without adopting such joint resolution, the
751 governor by proclamation shall reconvene the legislature within
752 thirty days in special apportionment session which shall not
753 exceed thirty consecutive days, during which no other business
754 shall be transacted, and it shall be the mandatory duty of the
755 legislature to adopt a joint resolution of apportionment.
756 (b) FAILURE OF LEGISLATURE TO APPORTION; JUDICIAL

757 REAPPORTIONMENT.--In the event a special apportionment session
758 of the legislature finally adjourns without adopting a joint
759 resolution of apportionment, the attorney general shall, within
760 five days, petition the supreme court of the state to make such
761 apportionment. No later than the sixtieth day after the filing
762 of such petition, the supreme court shall file with the
763 custodian of state records an order making such apportionment.
764 (c) JUDICIAL REVIEW OF APPORTIONMENT.--Within fifteen days
765 after the passage of the joint resolution of apportionment, the
766 attorney general shall petition the supreme court of the state
767 for a declaratory judgment determining the validity of the
768 apportionment. The supreme court, in accordance with its rules,
769 shall permit adversary interests to present their views and,
770 within thirty days from the filing of the petition, shall enter
771 its judgment.
772 (d) EFFECT OF JUDGMENT IN APPORTIONMENT; EXTRAORDINARY
773 APPORTIONMENT SESSION.--A judgment of the supreme court of the
774 state determining the apportionment to be valid shall be binding
775 upon all the citizens of the state. Should the supreme court
776 determine that the apportionment made by the legislature is
777 invalid, the governor by proclamation shall reconvene the
778 legislature within five days thereafter in an extraordinary
779 apportionment session that ~~which~~ shall not exceed fifteen days,
780 during which the legislature shall adopt a joint resolution of
781 apportionment conforming to the judgment of the supreme court.
782 (e) EXTRAORDINARY APPORTIONMENT SESSION; REVIEW OF
783 APPORTIONMENT.--Within fifteen days after the adjournment of an
784 extraordinary apportionment session, the attorney general shall

785 file a petition in the supreme court of the state setting forth
786 the apportionment resolution adopted by the legislature, or, if
787 none has been adopted, reporting that fact to the court.
788 Consideration of the validity of a joint resolution of
789 apportionment shall be had as provided for in cases of such
790 joint resolution adopted at a regular or special apportionment
791 session.
792 (f) JUDICIAL REAPPORTIONMENT.--Should an extraordinary
793 apportionment session fail to adopt a resolution of
794 apportionment or should the supreme court determine that the
795 apportionment made is invalid, the court shall, not later than
796 sixty days after receiving the petition of the attorney general,
797 file with the custodian of state records an order making such
798 apportionment.
799 SECTION 17. Impeachment.--
800 (a) The governor, lieutenant governor, members of the
801 cabinet, justices of the supreme court, judges of district
802 courts of appeal, judges of circuit courts, and judges of county
803 courts shall be liable to impeachment for misdemeanor in office.
804 The house of representatives by two-thirds vote shall have the
805 power to impeach an officer. The speaker of the house of
806 representatives shall have power at any time to appoint a
807 committee to investigate charges against any officer subject to
808 impeachment.
809 (b) An officer impeached by the house of representatives
810 shall be disqualified from performing any official duties until
811 acquitted by the senate, and, unless impeached, the governor may
812 by appointment fill the office until completion of the trial.

813 (c) All impeachments by the house of representatives shall
814 be tried by the senate. The chief justice of the supreme court,
815 or another justice designated by the chief justice, shall
816 preside at the trial, except in a trial of the chief justice, in
817 which case the governor shall preside. The senate shall
818 determine the time for the trial of any impeachment and may sit
819 for the trial whether the house of representatives be in session
820 or not. The time fixed for trial shall not be more than six
821 months after the impeachment. During an impeachment trial
822 senators shall be upon their oath or affirmation. No officer
823 shall be convicted without the concurrence of two-thirds of the
824 members of the senate present. Judgment of conviction in cases
825 of impeachment shall remove the offender from office and, in the
826 discretion of the senate, may include disqualification to hold
827 any office of honor, trust, or profit. Conviction or acquittal
828 shall not affect the civil or criminal responsibility of the
829 officer.
830 ~~SECTION 18. Conflict of interest.--A code of ethics for~~
831 ~~all state employees and nonjudicial officers prohibiting~~
832 ~~conflict between public duty and private interests shall be~~
833 ~~prescribed by law.~~
834 SECTION 18 ~~19~~. State budgeting, planning, and
835 appropriations processes.--
836 (a) ANNUAL BUDGETING.--~~Effective July 1, 1994,~~ General law
837 shall prescribe the adoption of annual state budgetary and
838 planning processes and require that detail reflecting the
839 annualized costs of the state budget and reflecting the
840 nonrecurring costs of the budget requests shall accompany state

841 department and agency legislative budget requests, the
842 governor's recommended budget, and appropriation bills. For
843 purposes of this subsection, the terms "department" and "agency"
844 shall include the judicial branch.
845 (b) APPROPRIATION BILLS FORMAT.--Separate sections within
846 the general appropriation bill shall be used for each major
847 program area of the state budget; major program areas shall
848 include: education enhancement "lottery" trust fund items;
849 education (all other funds); human services; criminal justice
850 and corrections; natural resources, environment, growth
851 management, and transportation; general government; and judicial
852 branch. Each major program area shall include an itemization of
853 expenditures for: state operations; state capital outlay; aid to
854 local governments and nonprofit organizations operations; aid to
855 local governments and nonprofit organizations capital outlay;
856 federal funds and the associated state matching funds; spending
857 authorizations for operations; and spending authorizations for
858 capital outlay. Additionally, appropriation bills passed by the
859 legislature shall include an itemization of specific
860 appropriations that exceed one million dollars ~~($1,000,000.00)~~
861 in 1992 dollars. For purposes of this subsection, "specific
862 appropriation," "itemization," and "major program area" shall be
863 defined by law. This itemization threshold shall be adjusted by
864 general law every four years to reflect the rate of inflation or
865 deflation as indicated in the Consumer Price Index for All Urban
866 Consumers, U.S. City Average, All Items, or successor reports as
867 reported by the United States Department of Labor, Bureau of
868 Labor Statistics or its successor. Substantive bills containing

869 appropriations shall also be subject to the itemization
870 requirement mandated under this provision and shall be subject
871 to the governor's specific appropriation veto power described in
872 Article III, section 8. ~~This subsection shall be effective July~~
873 ~~1, 1994.~~
874 (c) APPROPRIATIONS REVIEW PROCESS.--~~Effective July 1,~~
875 ~~1993,~~ General law shall prescribe requirements for each
876 department and agency of state government to submit a planning
877 document and supporting budget request for review by the
878 appropriations committees of both houses of the legislature. The
879 review shall include a comparison of the major issues in the
880 planning document and budget requests to those major issues
881 included in the governor's recommended budget. For purposes of
882 this subsection, the terms "department" and "agency" shall
883 include the judicial branch.
884 (d) SEVENTY-TWO HOUR PUBLIC REVIEW PERIOD.--All general
885 appropriation bills shall be furnished to each member of the
886 legislature, each member of the cabinet, the governor, and the
887 chief justice of the supreme court at least seventy-two hours
888 before final passage by either house of the legislature of the
889 bill in the form that will be presented to the governor.
890 (e) FINAL BUDGET REPORT.--~~Effective November 4, 1992,~~ A
891 final budget report shall be prepared as prescribed by general
892 law. The final budget report shall be produced no later than the
893 ninetieth ~~90th~~ day after the beginning of the fiscal year, and
894 copies of the report shall be furnished to each member of the
895 legislature, the head of each department and agency of the
896 state, the auditor general, and the chief justice of the supreme

897 court.
898 (f) TRUST FUNDS.
899 (1) No trust fund of the State of Florida or other public
900 body may be created by law without a three-fifths ~~(3/5)~~vote of
901 the membership of each house of the legislature in a separate
902 bill for that purpose only.
903 (2) ~~State trust funds in existence before the effective~~
904 ~~date of this subsection shall terminate not more than four years~~
905 ~~after the effective date of this subsection.~~ State trust funds
906 created after November 4, 1992, ~~the effective date of this~~
907 ~~subsection~~ shall terminate not more than four years after the
908 effective date of the act authorizing the creation of the trust
909 fund. By law the legislature may set a shorter time period for
910 which any trust fund is authorized.
911 (3) Trust funds required by federal programs or mandates;
912 trust funds established for bond covenants, indentures, or
913 resolutions, whose revenues are legally pledged by the state or
914 public body to meet debt service or other financial requirements
915 of any debt obligations of the state or any public body; the
916 state transportation trust fund; the trust fund containing the
917 net annual proceeds from the Florida Education Lotteries; the
918 Florida retirement trust fund; trust funds for institutions
919 under the management of the Board of Regents, where such trust
920 funds are for auxiliary enterprises and contracts, grants, and
921 donations, as those terms are defined by general law; trust
922 funds that serve as clearing funds or accounts for the chief
923 financial officer or state agencies; trust funds that account
924 for assets held by the state in a trustee capacity as an agent

925 or fiduciary for individuals, private organizations, or other
926 governmental units; and other trust funds authorized by this
927 constitution, are not subject to the requirements set forth in
928 paragraph (2) ~~of this subsection~~.
929 (4) All cash balances and income of any trust funds
930 abolished under this subsection shall be deposited into the
931 general revenue fund.
932 ~~(5) The provisions of this subsection shall be effective~~
933 ~~November 4, 1992.~~
934 (g) BUDGET STABILIZATION FUND.--~~Beginning with the 1994-~~
935 ~~1995 fiscal year, at least 1% of an amount equal to the last~~
936 ~~completed fiscal year's net revenue collections for the general~~
937 ~~revenue fund shall be retained in a budget stabilization fund.~~
938 ~~The budget stabilization fund shall be increased to at least 2%~~
939 ~~of said amount for the 1995-1996 fiscal year, at least 3% of~~
940 ~~said amount for the 1996-1997 fiscal year, at least 4% of said~~
941 ~~amount for the 1997-1998 fiscal year, and at least 5% of said~~
942 ~~amount for the 1998-1999 fiscal year.~~ Subject to the provisions
943 of this subsection, the budget stabilization fund shall be
944 maintained at an amount equal to at least five percent ~~5%~~ of the
945 last completed fiscal year's net revenue collections for the
946 general revenue fund. The budget stabilization fund's principal
947 balance shall not exceed an amount equal to ten percent ~~10%~~ of
948 the last completed fiscal year's net revenue collections for the
949 general revenue fund. The legislature shall provide criteria for
950 withdrawing funds from the budget stabilization fund in a
951 separate bill for that purpose only and only for the purpose of
952 covering revenue shortfalls of the general revenue fund or for

953 the purpose of providing funding for an emergency, as defined by
954 general law. General law shall provide for the restoration of
955 this fund. The budget stabilization fund shall be comprised of
956 funds not otherwise obligated or committed for any purpose.
957 (h) STATE PLANNING DOCUMENT AND DEPARTMENT AND AGENCY
958 PLANNING DOCUMENT PROCESSES.--The governor shall recommend to
959 the legislature biennially any revisions to the state planning
960 document, as defined by law. General law shall require a
961 biennial review and revision of the state planning document,
962 shall require the governor to report to the legislature on the
963 progress in achieving the state planning document's goals, and
964 shall require all departments and agencies of state government
965 to develop planning documents consistent with the state planning
966 document. The state planning document and department and agency
967 planning documents shall remain subject to review and revision
968 by the legislature. The department and agency planning documents
969 shall include a prioritized listing of planned expenditures for
970 review and possible reduction in the event of revenue
971 shortfalls, as defined by general law. To ensure productivity
972 and efficiency in the executive, legislative, and judicial
973 branches, a quality management and accountability program shall
974 be implemented by general law. For the purposes of this
975 subsection, the terms "department" and "agency" shall include
976 the judicial branch. ~~This subsection shall be effective July 1,~~
977 ~~1993.~~
978
979 ARTICLE IV
980 EXECUTIVE

981

982 SECTION 1. Governor.--

983 (a) The supreme executive power shall be vested in a
984 governor, who shall be commander-in-chief of all military forces
985 of the state not in active service of the United States. The
986 governor shall take care that the laws be faithfully executed,
987 commission all officers of the state and counties, and transact
988 all necessary business with the officers of government. The
989 governor may require information in writing from all executive
990 or administrative state, county, or municipal officers upon any
991 subject relating to the duties of their respective offices. The
992 governor shall be the chief administrative officer of the state
993 responsible for the planning and budgeting for the state.

994 (b) The governor may initiate judicial proceedings in the
995 name of the state against any executive or administrative state,
996 county, or municipal officer to enforce compliance with any duty
997 or restrain any unauthorized act.

998 (c) The governor may request in writing the opinion of the
999 justices of the supreme court as to the interpretation of any
1000 portion of this constitution upon any question affecting the
1001 governor's executive powers and duties. The justices shall,
1002 subject to their rules of procedure, permit interested persons
1003 to be heard on the questions presented and shall render their
1004 written opinion not earlier than ten days from the filing and
1005 docketing of the request, unless in their judgment the delay
1006 would cause public injury.

1007 (d) The governor shall have power to call out the militia
1008 to preserve the public peace, execute the laws of the state,

1009 suppress insurrection, or repel invasion.
1010 (e) The governor shall by message at least once in each
1011 regular session inform the legislature concerning the condition
1012 of the state, propose such reorganization of the executive
1013 department as will promote efficiency and economy, and recommend
1014 measures in the public interest.
1015 (f) When not otherwise provided for in this constitution,
1016 the governor shall fill by appointment any vacancy in a state or
1017 county office for the remainder of the term of an appointive
1018 office, and for the remainder of the term of an elective office
1019 if less than twenty-eight months, otherwise until the first
1020 Tuesday after the first Monday following the next general
1021 election.
1022 SECTION 2. Lieutenant governor.--There shall be a
1023 lieutenant governor, who shall perform such duties pertaining to
1024 the office of governor as shall be assigned by the governor,
1025 except when otherwise provided by law, and such other duties as
1026 may be prescribed by law.
1027 SECTION 3. Succession to office of governor; acting
1028 governor.--
1029 (a) Upon vacancy in the office of governor, the lieutenant
1030 governor shall become governor. Further succession to the office
1031 of governor shall be prescribed by law. A successor shall serve
1032 for the remainder of the term.
1033 (b) Upon impeachment of the governor and until completion
1034 of trial thereof, or during the governor's physical or mental
1035 incapacity, the lieutenant governor shall act as governor.
1036 Further succession as acting governor shall be prescribed by

1037 law. Incapacity to serve as governor may be determined by the
1038 supreme court upon due notice after docketing of a written
1039 suggestion thereof by three cabinet members, and in such case
1040 restoration of capacity shall be similarly determined after
1041 docketing of written suggestion thereof by the governor, the
1042 legislature, or three cabinet members. Incapacity to serve as
1043 governor may also be established by certificate filed with the
1044 custodian of state records by the governor declaring incapacity
1045 for physical reasons to serve as governor, and in such case
1046 restoration of capacity shall be similarly established.
1047 SECTION 4. Cabinet.--
1048 (a) There shall be a cabinet composed of an attorney
1049 general, a chief financial officer, and a commissioner of
1050 agriculture. In addition to the powers and duties specified
1051 herein, they shall exercise such powers and perform such duties
1052 as may be prescribed by law. In the event of a tie vote of the
1053 governor and cabinet, the side on which the governor voted shall
1054 be deemed to prevail.
1055 (b) The attorney general shall be the chief state legal
1056 officer. There is created in the office of the attorney general
1057 the position of statewide prosecutor. The statewide prosecutor
1058 shall have concurrent jurisdiction with the state attorneys to
1059 prosecute violations of criminal laws occurring or having
1060 occurred, in two or more judicial circuits as part of a related
1061 transaction, or when any such offense is affecting or has
1062 affected two or more judicial circuits as provided by general
1063 law. The statewide prosecutor shall be appointed by the attorney
1064 general from not fewer ~~less~~ than three persons nominated by the

1065 judicial nominating commission for the supreme court, or as
1066 otherwise provided by general law.
1067 (c) The chief financial officer shall serve as the chief
1068 fiscal officer of the state, ~~and~~ shall settle and approve
1069 accounts against the state, and shall keep all state funds and
1070 securities.
1071 (d) The commissioner of agriculture shall have supervision
1072 of matters pertaining to agriculture except as otherwise
1073 provided by law.
1074 (e) The governor as chair, the chief financial officer,
1075 and the attorney general shall constitute the state board of
1076 administration, which shall succeed to all the power, control,
1077 and authority of the state board of administration established
1078 pursuant to Article IX, section 16 of the constitution of 1885,
1079 and which shall continue as a body at least for the life of
1080 Article XII, section 7(c) ~~9(c)~~.
1081 (f) The governor as chair, the chief financial officer,
1082 the attorney general, and the commissioner of agriculture shall
1083 constitute the trustees of the internal improvement trust fund
1084 and the land acquisition trust fund as provided by law.
1085 (g) The governor as chair, the chief financial officer,
1086 the attorney general, and the commissioner of agriculture shall
1087 constitute the agency head of the Department of Law Enforcement.
1088 SECTION 5. Election of governor, lieutenant governor, and
1089 cabinet members; qualifications; terms.--
1090 (a) At a statewide ~~state-wide~~ general election in each
1091 calendar year the number of which is even but not a multiple of
1092 four, the electors shall choose a governor and a lieutenant

1093 governor and members of the cabinet each for a term of four
1094 years beginning on the first Tuesday after the first Monday in
1095 January of the succeeding year. In primary elections, candidates
1096 for the office of governor may choose to run without a
1097 lieutenant governor candidate. In the general election, all
1098 candidates for the offices of governor and lieutenant governor
1099 shall form joint candidacies in a manner prescribed by law so
1100 that each voter shall cast a single vote for a candidate for
1101 governor and a candidate for lieutenant governor running
1102 together.
1103 (b) When elected, the governor, lieutenant governor, and
1104 each cabinet member must be an elector not less than thirty
1105 years of age who has resided in the state for the preceding
1106 seven years. The attorney general must have been a member of the
1107 bar of Florida for the preceding five years. No person who has,
1108 or but for resignation would have, served as governor or acting
1109 governor for more than six years in two consecutive terms shall
1110 be elected governor for the succeeding term.
1111 SECTION 6. Executive departments.--All functions of the
1112 executive branch of state government shall be allotted among not
1113 more than twenty-five departments, exclusive of those
1114 specifically provided for or authorized in this constitution.
1115 The administration of each department, unless otherwise provided
1116 in this constitution, shall be placed by law under the direct
1117 supervision of the governor, the lieutenant governor, the
1118 governor and cabinet, a cabinet member, or an officer or board
1119 appointed by and serving at the pleasure of the governor,
1120 except:

1121 (a) When provided by law, confirmation by the senate or
1122 the approval of three members of the cabinet shall be required
1123 for appointment to or removal from any designated statutory
1124 office.
1125 (b) Boards authorized to grant and revoke licenses to
1126 engage in regulated occupations shall be assigned to appropriate
1127 departments and their members appointed for fixed terms, subject
1128 to removal only for cause.
1129 SECTION 7. Suspensions; filling office during
1130 suspensions.--
1131 (a) By executive order stating the grounds and filed with
1132 the custodian of state records, the governor may suspend from
1133 office any state officer not subject to impeachment, any officer
1134 of the militia not in the active service of the United States,
1135 or any county officer, for malfeasance, misfeasance, neglect of
1136 duty, drunkenness, incompetence, permanent inability to perform
1137 official duties, or commission of a felony, and may fill the
1138 office by appointment for the period of suspension. The
1139 suspended officer may at any time before removal be reinstated
1140 by the governor.
1141 (b) The senate may, in proceedings prescribed by law,
1142 remove from office or reinstate the suspended official and for
1143 such purpose the senate may be convened in special session by
1144 its president or by a majority of its membership.
1145 (c) By order of the governor, any elected municipal
1146 officer indicted for a crime may be suspended from office until
1147 acquitted and the office filled by appointment for the period of
1148 suspension, not to extend beyond the term, unless these powers

1149 are vested elsewhere by law or the municipal charter.
1150 SECTION 8. Clemency.--
1151 (a) Except in cases of treason and in cases where
1152 impeachment results in conviction, the governor may, by
1153 executive order filed with the custodian of state records,
1154 suspend collection of fines and forfeitures, grant reprieves not
1155 exceeding sixty days and, with the approval of two members of
1156 the cabinet, grant full or conditional pardons, restore civil
1157 rights, commute punishment, and remit fines and forfeitures for
1158 offenses.
1159 (b) In cases of treason, the governor may grant reprieves
1160 until adjournment of the regular session of the legislature
1161 convening next after the conviction, at which session the
1162 legislature may grant a pardon or further reprieve; otherwise
1163 the sentence shall be executed.
1164 (c) There may be created by law a parole and probation
1165 commission with power to supervise persons on probation and to
1166 grant paroles or conditional releases to persons under sentences
1167 for crime. The qualifications, method of selection and terms,
1168 not to exceed six years, of members of the commission shall be
1169 prescribed by law.
1170 SECTION 9. Fish and wildlife conservation
1171 commission.--There shall be a fish and wildlife conservation
1172 commission, composed of seven members appointed by the governor,
1173 subject to confirmation by the senate for staggered terms of
1174 five years. The commission shall exercise the regulatory and
1175 executive powers of the state with respect to wild animal life
1176 and freshwater ~~fresh water~~ aquatic life, and shall also exercise

1177 regulatory and executive powers of the state with respect to
1178 marine life, except that all license fees for taking wild animal
1179 life, freshwater ~~fresh water~~ aquatic life, and marine life and
1180 penalties for violating regulations of the commission shall be
1181 prescribed by general law. The commission shall establish
1182 procedures to ensure adequate due process in the exercise of its
1183 regulatory and executive functions. The legislature may enact
1184 laws in aid of the commission, not inconsistent with this
1185 section, except that there shall be no special law or general
1186 law of local application pertaining to hunting or fishing. The
1187 commission's exercise of executive powers in the area of
1188 planning, budgeting, personnel management, and purchasing shall
1189 be as provided by law. Revenue derived from license fees for the
1190 taking of wild animal life and freshwater ~~fresh water~~ aquatic
1191 life shall be appropriated to the commission by the legislature
1192 for the purposes of management, protection, and conservation of
1193 wild animal life and freshwater ~~fresh water~~ aquatic life.
1194 Revenue derived from license fees relating to marine life shall
1195 be appropriated by the legislature for the purposes of
1196 management, protection, and conservation of marine life as
1197 provided by law. The commission shall not be a unit of any other
1198 state agency and shall have its own staff, which includes
1199 management, research, and enforcement. Unless provided by
1200 general law, the commission shall have no authority to regulate
1201 matters relating to air and water pollution.
1202 SECTION 10. Attorney General.--The attorney general shall,
1203 as directed by general law, request the opinion of the justices
1204 of the supreme court as to the validity of any initiative

1205 petition circulated pursuant to Article XI, section 3 ~~of Article~~
1206 ~~XI~~. The justices shall, subject to their rules of procedure,
1207 permit interested persons to be heard on the questions presented
1208 and shall render their written opinion no later than April 1 of
1209 the year in which the initiative is to be submitted to the
1210 voters pursuant to Article XI, section 5 ~~of Article XI~~.
1211 SECTION 11. Department of Veterans Affairs.--The
1212 legislature, by general law, may provide for the establishment
1213 of the Department of Veterans Affairs.
1214 SECTION 12. Department of Elderly Affairs.--The
1215 legislature may create a Department of Elderly Affairs and
1216 prescribe its duties. The provisions governing the
1217 administration of the department must comply with Article IV,
1218 section 6 ~~of Article IV of the State Constitution~~.
1219 SECTION 13. Revenue Shortfalls.--In the event of revenue
1220 shortfalls, as defined by general law, the governor and cabinet
1221 may establish all necessary reductions in the state budget in
1222 order to comply with the provisions of Article VII, section
1223 1(d). The governor and cabinet shall implement all necessary
1224 reductions for the executive budget, the chief justice of the
1225 supreme court shall implement all necessary reductions for the
1226 judicial budget, and the speaker of the house of representatives
1227 and the president of the senate shall implement all necessary
1228 reductions for the legislative budget. Budget reductions
1229 pursuant to this section shall be consistent with the provisions
1230 of Article III, section 18(h) ~~19(h)~~.
1231
1232 ARTICLE V

1233 JUDICIARY
1234
1235 SECTION 1. Courts.--The judicial power shall be vested in
1236 a supreme court, district courts of appeal, circuit courts, and
1237 county courts. No other courts may be established by the state,
1238 any political subdivision, or any municipality. The legislature
1239 shall, by general law, divide the state into appellate court
1240 districts and judicial circuits following county lines.
1241 Commissions established by law, or administrative officers or
1242 bodies, may be granted quasi-judicial power in matters connected
1243 with the functions of their offices. The legislature may
1244 establish, by general law, a civil traffic hearing officer
1245 system for the purpose of hearing civil traffic infractions. The
1246 legislature may, by general law, authorize a military court-
1247 martial to be conducted by military judges of the Florida
1248 National Guard, with direct appeal of a decision to the District
1249 Court of Appeal, First District.
1250 SECTION 2. Administration; practice and procedure.--
1251 (a) The supreme court shall adopt rules for the practice
1252 and procedure in all courts including the time for seeking
1253 appellate review, the administrative supervision of all courts,
1254 the transfer to the court having jurisdiction of any proceeding
1255 when the jurisdiction of another court has been improvidently
1256 invoked, and a requirement that no cause shall be dismissed
1257 because an improper remedy has been sought. The supreme court
1258 shall adopt rules to allow the court and the district courts of
1259 appeal to submit questions relating to military law to the
1260 federal Court of Appeals for the Armed Forces for an advisory

1261 opinion. Rules of court may be repealed by general law enacted
1262 by two-thirds vote of the membership of each house of the
1263 legislature.
1264 (b) The chief justice of the supreme court shall be chosen
1265 by a majority of the members of the court; shall be the chief
1266 administrative officer of the judicial system; and shall have
1267 the power to assign justices or judges, including consenting
1268 retired justices or judges, to temporary duty in any court for
1269 which the judge is qualified and to delegate to a chief judge of
1270 a judicial circuit the power to assign judges for duty in that
1271 circuit.
1272 (c) A chief judge for each district court of appeal shall
1273 be chosen by a majority of the judges thereof or, if there is no
1274 majority, by the chief justice. The chief judge shall be
1275 responsible for the administrative supervision of the court.
1276 (d) A chief judge in each circuit shall be chosen from
1277 among the circuit judges as provided by supreme court rule. The
1278 chief judge shall be responsible for the administrative
1279 supervision of the circuit courts and county courts in his <u>or</u>
1280 <u>her</u> circuit.
1281 SECTION 3. Supreme court.--
1282 (a) ORGANIZATION.--The supreme court shall consist of
1283 seven justices. Of the seven justices, each appellate district
1284 shall have at least one justice elected or appointed from the
1285 district to the supreme court who is a resident of the district
1286 at the time of the original appointment or election. Five
1287 justices shall constitute a quorum. The concurrence of four
1288 justices shall be necessary to a decision. When recusals for

1289 cause would prohibit the court from convening because of the
1290 requirements of this section, judges assigned to temporary duty
1291 may be substituted for justices.
1292 (b) JURISDICTION.--The supreme court:
1293 (1) Shall hear appeals from final judgments of trial
1294 courts imposing the death penalty and from decisions of district
1295 courts of appeal declaring invalid a state statute or a
1296 provision of the state constitution.
1297 (2) When provided by general law, shall hear appeals from
1298 final judgments entered in proceedings for the validation of
1299 bonds or certificates of indebtedness and shall review action of
1300 statewide agencies relating to rates or service of utilities
1301 providing electric, gas, or telephone service.
1302 (3) May review any decision of a district court of appeal
1303 that expressly declares valid a state statute, or that expressly
1304 construes a provision of the state or federal constitution, or
1305 that expressly affects a class of constitutional or state
1306 officers, or that expressly and directly conflicts with a
1307 decision of another district court of appeal or of the supreme
1308 court on the same question of law.
1309 (4) May review any decision of a district court of appeal
1310 that passes upon a question certified by it to be of great
1311 public importance, or that is certified by it to be in direct
1312 conflict with a decision of another district court of appeal.
1313 (5) May review any order or judgment of a trial court
1314 certified by the district court of appeal, in which an appeal is
1315 pending, to be of great public importance, or to have a great
1316 effect on the proper administration of justice throughout the

1317 state, and certified to require immediate resolution by the
1318 supreme court.
1319 (6) May review a question of law certified by the Supreme
1320 Court of the United States or a United States Court of Appeals
1321 which is determinative of the cause and for which there is no
1322 controlling precedent of the supreme court of Florida.
1323 (7) May issue writs of prohibition to courts and all writs
1324 necessary to the complete exercise of its jurisdiction.
1325 (8) May issue writs of mandamus and quo warranto to state
1326 officers and state agencies.
1327 (9) May, or any justice may, issue writs of habeas corpus
1328 returnable before the supreme court or any justice, a district
1329 court of appeal or any judge thereof, or any circuit judge.
1330 (10) Shall, when requested by the attorney general
1331 pursuant to the provisions of Article IV, section 10 ~~of Article~~
1332 ~~IV~~, render an advisory opinion of the justices, addressing
1333 issues as provided by general law.
1334 (c) CLERK AND MARSHAL.--The supreme court shall appoint a
1335 clerk and a marshal who shall hold office at ~~during~~ the pleasure
1336 of the court and perform such duties as the court directs. Their
1337 compensation shall be fixed by general law. The marshal shall
1338 have the power to execute the process of the court throughout
1339 the state, and in any county may deputize the sheriff or a
1340 deputy sheriff for such purpose.
1341 SECTION 4. District courts of appeal.--
1342 (a) ORGANIZATION.--There shall be a district court of
1343 appeal serving each appellate district. Each district court of
1344 appeal shall consist of at least three judges. Three judges

1345 shall consider each case and the concurrence of two shall be
1346 necessary to a decision.
1347 (b) JURISDICTION.--
1348 (1) District courts of appeal shall have jurisdiction to
1349 hear appeals~~,~~ that may be taken as a matter of right~~,~~ from final
1350 judgments or orders of trial courts, including those entered on
1351 review of administrative action, not directly appealable to the
1352 supreme court or a circuit court. They may review interlocutory
1353 orders in such cases to the extent provided by rules adopted by
1354 the supreme court.
1355 (2) District courts of appeal shall have the power of
1356 direct review of administrative action, as prescribed by general
1357 law.
1358 (3) A district court of appeal or any judge thereof may
1359 issue writs of habeas corpus returnable before the court or any
1360 judge thereof or before any circuit judge within the territorial
1361 jurisdiction of the court. A district court of appeal may issue
1362 writs of mandamus, certiorari, prohibition, quo warranto, and
1363 other writs necessary to the complete exercise of its
1364 jurisdiction. To the extent necessary to dispose of all issues
1365 in a cause properly before it, a district court of appeal may
1366 exercise any of the appellate jurisdiction of the circuit
1367 courts.
1368 (c) CLERKS AND MARSHALS.--Each district court of appeal
1369 shall appoint a clerk and a marshal who shall hold office during
1370 the pleasure of the court and perform such duties as the court
1371 directs. Their compensation shall be fixed by general law. The
1372 marshal shall have the power to execute the process of the court

1373 throughout the territorial jurisdiction of the court, and in any
1374 county may deputize the sheriff or a deputy sheriff for such
1375 purpose.
1376 SECTION 5. Circuit courts.--
1377 (a) ORGANIZATION.--There shall be a circuit court serving
1378 each judicial circuit.
1379 (b) JURISDICTION.--The circuit courts shall have original
1380 jurisdiction not vested in the county courts, and jurisdiction
1381 of appeals when provided by general law. They shall have the
1382 power to issue writs of mandamus, quo warranto, certiorari,
1383 prohibition, and habeas corpus, and all writs necessary or
1384 proper to the complete exercise of their jurisdiction.
1385 Jurisdiction of the circuit courts ~~court~~ shall be uniform
1386 throughout the state. They shall have the power of direct review
1387 of administrative action prescribed by general law.
1388 SECTION 6. County courts.--
1389 (a) ORGANIZATION.--There shall be a county court in each
1390 county. There shall be one or more judges for each county court
1391 as prescribed by general law.
1392 (b) JURISDICTION.--The county courts shall exercise the
1393 jurisdiction prescribed by general law. Such jurisdiction shall
1394 be uniform throughout the state.
1395 SECTION 7. Specialized divisions.--All courts except the
1396 supreme court may sit in divisions as may be established by
1397 general law. A circuit or county court may hold civil and
1398 criminal trials and hearings in any place within the territorial
1399 jurisdiction of the court as designated by the chief judge of
1400 the circuit.

1401 SECTION 8. Eligibility.--No person shall be eligible for
1402 office of justice or judge of any court unless the person is an
1403 elector of the state and resides in the territorial jurisdiction
1404 of the court. No justice or judge shall serve after attaining
1405 the age of seventy years except upon temporary assignment or to
1406 complete a term, one-half of which has been served. No person is
1407 eligible for the office of justice of the supreme court or judge
1408 of a district court of appeal unless the person is, and has been
1409 for the preceding ten years, a member of the bar of Florida. No
1410 person is eligible for the office of circuit judge unless the
1411 person is, and has been for the preceding five years, a member
1412 of the bar of Florida. Unless otherwise provided by general law,
1413 no person is eligible for the office of county court judge
1414 unless the person is, and has been for the preceding five years,
1415 a member of the bar of Florida. Unless otherwise provided by
1416 general law, a person shall be eligible for election or
1417 appointment to the office of county court judge in a county
1418 having a population of 40,000 or fewer ~~less~~ if the person is a
1419 member in good standing of the bar of Florida.
1420 SECTION 9. Determination of number of judges.--The supreme
1421 court shall establish by rule uniform criteria for the
1422 determination of the need for additional judges except supreme
1423 court justices, the necessity for decreasing the number of
1424 judges and for increasing, decreasing, or redefining appellate
1425 districts and judicial circuits. If the supreme court finds that
1426 a need exists for increasing or decreasing the number of judges
1427 or increasing, decreasing, or redefining appellate districts and
1428 judicial circuits, it shall, prior to the next regular session

1429 of the legislature, certify to the legislature its findings and
1430 recommendations concerning such need. Upon receipt of such
1431 certificate, the legislature, at the next regular session, shall
1432 consider the findings and recommendations and may reject the
1433 recommendations or by law implement the recommendations in whole
1434 or in part; provided the legislature may create more judicial
1435 offices than are recommended by the supreme court or may
1436 decrease the number of judicial offices by a greater number than
1437 recommended by the court only upon a finding of two-thirds of
1438 the membership of both houses of the legislature, that such a
1439 need exists. A decrease in the number of judges shall be
1440 effective only after the expiration of a term. If the supreme
1441 court fails to make findings as provided above when need exists,
1442 the legislature may by concurrent resolution request the court
1443 to certify its findings and recommendations and upon the failure
1444 of the court to certify its findings for nine consecutive
1445 months, the legislature may, upon a finding of two-thirds of the
1446 membership of both houses of the legislature that a need exists,
1447 increase or decrease the number of judges or increase, decrease,
1448 or redefine appellate districts and judicial circuits.
1449 SECTION 10. Retention; election and terms.--
1450 (a) Any justice or judge may qualify for retention by a
1451 vote of the electors in the general election next preceding the
1452 expiration of the justice's or judge's term in the manner
1453 prescribed by law. If a justice or judge is ineligible or fails
1454 to qualify for retention, a vacancy shall exist in that office
1455 upon the expiration of the term being served by the justice or
1456 judge. When a justice or judge so qualifies, the ballot shall

1457 read substantially as follows: "Shall Justice (or Judge) (name
1458 of justice or judge) of the (name of the court) be
1459 retained in office?" If a majority of the qualified electors
1460 voting within the territorial jurisdiction of the court vote to
1461 retain, the justice or judge shall be retained for a term of six
1462 years. The term of the justice or judge retained shall commence
1463 on the first Tuesday after the first Monday in January following
1464 the general election. If a majority of the qualified electors
1465 voting within the territorial jurisdiction of the court vote to
1466 not retain, a vacancy shall exist in that office upon the
1467 expiration of the term being served by the justice or judge.
1468 (b)(1) The election of circuit judges shall be preserved
1469 notwithstanding the provisions of subsection (a) unless a
1470 majority of those voting in the jurisdiction of that circuit
1471 approves a local option to select circuit judges by merit
1472 selection and retention rather than by election. The election of
1473 circuit judges shall be by a vote of the qualified electors
1474 within the territorial jurisdiction of the court.
1475 (2) The election of county court judges shall be preserved
1476 notwithstanding the provisions of subsection (a) unless a
1477 majority of those voting in the jurisdiction of that county
1478 approves a local option to select county judges by merit
1479 selection and retention rather than by election. The election of
1480 county court judges shall be by a vote of the qualified electors
1481 within the territorial jurisdiction of the court.
1482 (3)a. ~~A vote to exercise a local option to select circuit~~
1483 ~~court judges and county court judges by merit selection and~~
1484 ~~retention rather than by election shall be held in each circuit~~

1485 ~~and county at the general election in the year 2000.~~ If a vote
1486 to exercise the ~~this~~ local option to select circuit court judges
1487 and county court judges by merit selection and retention rather
1488 than by election fails in a vote of the electors, such option
1489 shall not again be put to a vote of the electors of that
1490 jurisdiction until the expiration of at least two years.
1491 b. ~~After the year 2000,~~ A circuit may initiate the local
1492 option for merit selection and retention or the election of
1493 circuit judges, whichever is applicable, by filing with the
1494 custodian of state records a petition signed by the number of
1495 electors equal to at least ten percent of the votes cast in the
1496 circuit in the last preceding election in which presidential
1497 electors were chosen.
1498 c. ~~After the year 2000,~~ A county may initiate the local
1499 option for merit selection and retention or the election of
1500 county court judges, whichever is applicable, by filing with the
1501 supervisor of elections a petition signed by the number of
1502 electors equal to at least ten percent of the votes cast in the
1503 county in the last preceding election in which presidential
1504 electors were chosen. The terms of circuit judges and judges of
1505 county courts shall be for six years.
1506 SECTION 11. Vacancies.--
1507 (a) Whenever a vacancy occurs in a judicial office to
1508 which election for retention applies, the governor shall fill
1509 the vacancy by appointing for a term ending on the first Tuesday
1510 after the first Monday in January of the year following the next
1511 general election occurring at least one year after the date of
1512 appointment, one of not fewer than three persons nor more than

1513 six persons nominated by the appropriate judicial nominating
1514 commission.
1515 (b) The governor shall fill each vacancy on a circuit
1516 court or on a county court, wherein the judges are elected by a
1517 majority vote of the electors, by appointing for a term ending
1518 on the first Tuesday after the first Monday in January of the
1519 year following the next primary and general election occurring
1520 at least one year after the date of appointment, one of not
1521 fewer than three persons nor more than six persons nominated by
1522 the appropriate judicial nominating commission. An election
1523 shall be held to fill that judicial office for the term of the
1524 office beginning at the end of the appointed term.
1525 (c) The nominations shall be made within thirty days from
1526 the occurrence of a vacancy unless the period is extended by the
1527 governor for a time not to exceed thirty days. The governor
1528 shall make the appointment within sixty days after the
1529 nominations have been certified to the governor.
1530 (d) There shall be a separate judicial nominating
1531 commission as provided by general law for the supreme court,
1532 each district court of appeal, and each judicial circuit for all
1533 trial courts within the circuit. Uniform rules of procedure
1534 shall be established by the judicial nominating commissions at
1535 each level of the court system. Such rules, or any part thereof,
1536 may be repealed by general law enacted by a majority vote of the
1537 membership of each house of the legislature, or by the supreme
1538 court, five justices concurring. Except for deliberations of the
1539 judicial nominating commissions, the proceedings of the
1540 commissions and their records shall be open to the public.

1541 SECTION 12. Discipline; removal and retirement.--
1542 (a) JUDICIAL QUALIFICATIONS COMMISSION.--A judicial
1543 qualifications commission is created.
1544 (1) There shall be a judicial qualifications commission
1545 vested with jurisdiction to investigate and recommend to the
1546 Supreme Court of Florida the removal from office of any justice
1547 or judge whose conduct, during term of office or otherwise
1548 occurring, ~~on or after November 1, 1966, (without regard to the~~
1549 ~~effective date of this section)~~ demonstrates a present unfitness
1550 to hold office, and to investigate and recommend the discipline
1551 of a justice or judge whose conduct, during term of office or
1552 otherwise occurring ~~on or after November 1, 1966 (without regard~~
1553 ~~to the effective date of this section)~~, warrants such
1554 discipline. For purposes of this section the term, "discipline"
1555 is defined as any or all of the following: reprimand, fine,
1556 suspension with or without pay, or lawyer discipline. The
1557 commission shall have jurisdiction over justices and judges
1558 regarding allegations that misconduct occurred before or during
1559 service as a justice or judge if a complaint is made no later
1560 than one year following service as a justice or judge. The
1561 commission shall have jurisdiction regarding allegations of
1562 incapacity during service as a justice or judge. The commission
1563 shall be composed of:
1564 a. Two judges of district courts of appeal selected by the
1565 judges of those courts, two circuit judges selected by the
1566 judges of the circuit courts and, two judges of county courts
1567 selected by the judges of those courts;
1568 b. Four electors who reside in the state, who are members

1569 of the bar of Florida, and who shall be chosen by the governing
1570 body of the bar of Florida; and
1571 c. Five electors who reside in the state, who have never
1572 held judicial office or been members of the bar of Florida, and
1573 who shall be appointed by the governor.
1574 (2) The members of the judicial qualifications commission
1575 shall serve staggered terms, not to exceed six years, as
1576 prescribed by general law. No member of the commission except a
1577 judge shall be eligible for state judicial office while acting
1578 as a member of the commission and for a period of two years
1579 thereafter. No member of the commission shall hold office in a
1580 political party or participate in any campaign for judicial
1581 office or hold public office; provided that a judge may campaign
1582 for judicial office and hold that office. The commission shall
1583 elect one of its members as its chair ~~chairperson~~.
1584 (3) Members of the judicial qualifications commission who
1585 are not subject to impeachment shall be subject to removal from
1586 the commission pursuant to the provisions of Article IV, section
1587 7~~, Florida Constitution~~.
1588 (4) The commission shall adopt rules regulating its
1589 proceedings, the filling of vacancies by the appointing
1590 authorities, the disqualification of members, the rotation of
1591 members between the panels, and the temporary replacement of
1592 disqualified or incapacitated members. The commission's rules,
1593 or any part thereof, may be repealed by general law enacted by a
1594 majority vote of the membership of each house of the
1595 legislature, or by the supreme court, five justices concurring.
1596 The commission shall have power to issue subpoenas. Until formal

1597 charges against a justice or judge are filed by the
1598 investigative panel with the clerk of the supreme court of
1599 Florida all proceedings by or before the commission shall be
1600 confidential; provided, however, upon a finding of probable
1601 cause and the filing by the investigative panel with said clerk
1602 of such formal charges against a justice or judge such charges
1603 and all further proceedings before the commission shall be
1604 public.
1605 (5) The commission shall have access to all information
1606 from all executive, legislative, and judicial agencies,
1607 including grand juries, subject to the rules of the commission.
1608 At any time, on request of the speaker of the house of
1609 representatives or the governor, the commission shall make
1610 available all information in the possession of the commission
1611 for use in consideration of impeachment or suspension,
1612 respectively.
1613 (b) PANELS.--The commission shall be divided into an
1614 investigative panel and a hearing panel as established by rule
1615 of the commission. The investigative panel is vested with the
1616 jurisdiction to receive or initiate complaints, conduct
1617 investigations, dismiss complaints, and upon a vote of a simple
1618 majority of the panel submit formal charges to the hearing
1619 panel. The hearing panel is vested with the authority to receive
1620 and hear formal charges from the investigative panel and upon a
1621 two-thirds vote of the panel recommend to the supreme court the
1622 removal of a justice or judge or the involuntary retirement of a
1623 justice or judge for any permanent disability that seriously
1624 interferes with the performance of judicial duties. Upon a

1625 simple majority vote of the membership of the hearing panel, the
1626 panel may recommend to the supreme court that the justice or
1627 judge be subject to appropriate discipline.
1628 (c) SUPREME COURT.--The supreme court shall receive
1629 recommendations from the judicial qualifications commission's
1630 hearing panel.
1631 (1) The supreme court may accept, reject, or modify in
1632 whole or in part the findings, conclusions, and recommendations
1633 of the commission and it may order that the justice or judge be
1634 subjected to appropriate discipline, or be removed from office
1635 with termination of compensation for willful or persistent
1636 failure to perform judicial duties or for other conduct
1637 unbecoming a member of the judiciary demonstrating a present
1638 unfitness to hold office, or be involuntarily retired for any
1639 permanent disability that seriously interferes with the
1640 performance of judicial duties. Mala fides ~~Malafides~~, scienter,
1641 or moral turpitude on the part of a justice or judge shall not
1642 be required for removal from office of a justice or judge whose
1643 conduct demonstrates a present unfitness to hold office. After
1644 the filing of a formal proceeding and upon request of the
1645 investigative panel, the supreme court may suspend the justice
1646 or judge from office, with or without compensation, pending
1647 final determination of the inquiry.
1648 (2) The supreme court may award costs to the prevailing
1649 party.
1650 (d) The power of removal conferred by this section shall
1651 be both alternative and cumulative to the power of impeachment.
1652 (e) Notwithstanding subsections (a)-(d) ~~any of the~~

1653 ~~foregoing provisions of this section~~, if the person who is the
1654 subject of proceedings by the judicial qualifications commission
1655 is a justice of the supreme court, ~~of Florida~~ all justices of
1656 the supreme ~~such~~ court are automatically ~~shall be~~ disqualified
1657 to sit as supreme court justices for any ~~of such court with~~
1658 ~~respect to all~~ proceedings ~~therein~~ concerning him or her. ~~such~~
1659 ~~person and~~ The supreme court for such purposes shall be composed
1660 of a panel consisting of the seven chief judges of the judicial
1661 circuits of this ~~the~~ state ~~of Florida~~ most senior in tenure of
1662 judicial office as circuit judge. For purposes of determining
1663 seniority of such circuit judges in the event there be judges of
1664 equal tenure in judicial office as circuit judge, the judge or
1665 judges from the lower numbered circuit or circuits shall be
1666 deemed senior. In the event any such chief circuit judge is
1667 under investigation by the judicial qualifications commission or
1668 is otherwise disqualified or unable to serve on the panel, the
1669 next most senior chief circuit judge or judges shall serve in
1670 place of such disqualified or disabled chief circuit judge.
1671 (f) SCHEDULE TO SECTION 12.--
1672 (1) Except to the extent inconsistent with the provisions
1673 of this section, all provisions of law and rules of court in
1674 force on the effective date of this article shall continue in
1675 effect until superseded in the manner authorized by this ~~the~~
1676 constitution.
1677 (2) After this section becomes effective and until adopted
1678 by rule of the commission consistent with it:
1679 a. The commission shall be divided, as determined by the
1680 chairperson, into one investigative panel and one hearing panel

1681 to meet the responsibilities set forth in this section.
1682 b. The investigative panel shall be composed of:
1683 1. Four judges,
1684 2. Two members of the bar of Florida, and
1685 3. Three non-lawyers.
1686 c. The hearing panel shall be composed of:
1687 1. Two judges,
1688 2. Two members of the bar of Florida, and
1689 3. Two non-lawyers.
1690 d. Membership on the panels may rotate in a manner
1691 determined by the rules of the commission provided that no
1692 member shall vote as a member of the investigative and hearing
1693 panel on the same proceeding.
1694 e. The commission shall hire separate staff for each
1695 panel.
1696 f. The members of the commission shall serve for staggered
1697 terms of six years.
1698 ~~g. The terms of office of the present members of the~~
1699 ~~judicial qualifications commission shall expire upon the~~
1700 ~~effective date of the amendments to this section approved by the~~
1701 ~~legislature during the regular session of the legislature in~~
1702 ~~1996 and new members shall be appointed to serve the following~~
1703 ~~staggered terms:~~
1704 ~~1. Group I.--The terms of five members, composed of two~~
1705 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
1706 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
1707 ~~V, one judge from the district courts of appeal and one circuit~~
1708 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~

1709 ~~on December 31, 1998.~~
1710 ~~2. Group II.--The terms of five members, composed of one~~
1711 ~~elector as set forth in s. 12(a)(1)c. of Article V, two members~~
1712 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
1713 ~~V, one circuit judge and one county judge as set forth in s.~~
1714 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~
1715 ~~3. Group III.--The terms of five members, composed of two~~
1716 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
1717 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~
1718 ~~from the district courts of appeal and one county judge as set~~
1719 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~
1720 ~~31, 2002.~~
1721 g.~~h.~~ An appointment to fill a vacancy of the commission
1722 shall be for the remainder of the term.
1723 h.~~i.~~ Selection of members by district courts of appeal
1724 judges, circuit judges, and county court judges, shall be by no
1725 less than a majority of the members voting at the respective
1726 courts' conferences. Selection of members by the board of
1727 governors of the bar of Florida shall be by no less than a
1728 majority of the board.
1729 i.~~j.~~ The commission shall be entitled to recover the costs
1730 of investigation and prosecution, in addition to any penalty
1731 levied by the supreme court.
1732 j.~~k.~~ The compensation of members and referees shall be the
1733 travel expenses or transportation and per diem allowance as
1734 provided by general law.
1735 SECTION 13. Prohibited activities.--All justices and
1736 judges shall devote full time to their judicial duties. They

1737 shall not engage in the practice of law or hold office in any
1738 political party.
1739 SECTION 14. Funding.--
1740 (a) All justices and judges shall be compensated only by
1741 state salaries fixed by general law. Funding for the state
1742 courts system, state attorneys' offices, public defenders'
1743 offices, and court-appointed counsel, except as otherwise
1744 provided in subsection (c), shall be provided from state
1745 revenues appropriated by general law.
1746 (b) All funding for the offices of the clerks of the
1747 circuit and county courts performing court-related functions,
1748 except as otherwise provided in this subsection and subsection
1749 (c), shall be provided by adequate and appropriate filing fees
1750 for judicial proceedings and service charges and costs for
1751 performing court-related functions as required by general law.
1752 Selected salaries, costs, and expenses of the state courts
1753 system may be funded from appropriate filing fees for judicial
1754 proceedings and service charges and costs for performing court-
1755 related functions, as provided by general law. Where the
1756 requirements of either the United States Constitution or this
1757 ~~the~~ constitution ~~of the State of Florida~~ preclude the imposition
1758 of filing fees for judicial proceedings and service charges and
1759 costs for performing court-related functions sufficient to fund
1760 the court-related functions of the offices of the clerks of the
1761 circuit and county courts, the state shall provide, as
1762 determined by the legislature, adequate and appropriate
1763 supplemental funding from state revenues appropriated by general
1764 law.

1765 (c) No county or municipality, except as provided in this
1766 subsection, shall be required to provide any funding for the
1767 state courts system, state attorneys' offices, public defenders'
1768 offices, court-appointed counsel, or the offices of the clerks
1769 of the circuit and county courts performing court-related
1770 functions. Counties shall be required to fund the cost of
1771 communications services, existing radio systems, existing multi-
1772 agency criminal justice information systems, and the cost of
1773 construction or lease, maintenance, utilities, and security of
1774 facilities for the trial courts, public defenders' offices,
1775 state attorneys' offices, and the offices of the clerks of the
1776 circuit and county courts performing court-related functions.
1777 Counties shall also pay reasonable and necessary salaries,
1778 costs, and expenses of the state courts system to meet local
1779 requirements as determined by general law.
1780 (d) The judiciary shall have no power to fix
1781 appropriations.
1782 SECTION 15. Attorneys; admission and discipline.--The
1783 supreme court shall have exclusive jurisdiction to regulate the
1784 admission of persons to the practice of law and the discipline
1785 of persons admitted.
1786 SECTION 16. Clerks of the circuit courts.--There shall be
1787 in each county a clerk of the circuit court who shall be
1788 selected pursuant to the provisions of Article VIII, section 1.
1789 Notwithstanding any other provision of this ~~the~~ constitution,
1790 the duties of the clerk of the circuit court may be divided by
1791 special or general law between two officers, one serving as
1792 clerk of court and one serving as ex officio clerk of the board

1793 of county commissioners, auditor, recorder, and custodian of all
1794 county funds. There may be a clerk of the county court if
1795 authorized by general or special law.
1796 SECTION 17. State attorneys.--In each judicial circuit, a
1797 state attorney shall be elected for a term of four years. Except
1798 as otherwise provided in this constitution, the state attorney
1799 shall be the prosecuting officer of all trial courts in that
1800 circuit and shall perform other duties prescribed by general
1801 law; ~~provided,~~ however, when authorized by general law, the
1802 violations of all municipal ordinances may be prosecuted by
1803 municipal prosecutors. A state attorney shall be an elector of
1804 the state and reside in the territorial jurisdiction of the
1805 circuit, ~~;~~ shall be and have been a member of the bar of Florida
1806 for the preceding five years, ~~;~~ shall devote full time to the
1807 duties of the office, ~~;~~ and shall not engage in the private
1808 practice of law. State attorneys shall appoint such assistant
1809 state attorneys as may be authorized by law.
1810 SECTION 18. Public defenders.--In each judicial circuit, a
1811 public defender shall be elected for a term of four years, who
1812 shall perform duties prescribed by general law. A public
1813 defender shall be an elector of the state and reside in the
1814 territorial jurisdiction of the circuit and shall be and have
1815 been a member of the bar of Florida for the preceding five
1816 years. Public defenders shall appoint such assistant public
1817 defenders as may be authorized by law.
1818 SECTION 19. Judicial officers as conservators of the
1819 peace.--All judicial officers in this state shall be
1820 conservators of the peace.

1821 SECTION 20. Schedule to Article V.--
1822 (a) This article shall replace all of Article V of the
1823 constitution of 1885, as amended, which shall then stand
1824 repealed.
1825 (b) Except to the extent inconsistent with the provisions
1826 of this article, all provisions of law and rules of court in
1827 force on the effective date of this article shall continue in
1828 effect until superseded in the manner authorized by this ~~the~~
1829 constitution.
1830 (c) After this article becomes effective, and until
1831 changed by general law consistent with sections 1 through 19 of
1832 this article:
1833 (1) The supreme court shall have the jurisdiction
1834 immediately theretofore exercised by it, and it shall determine
1835 all proceedings pending before it on the effective date of this
1836 article.
1837 (2) The appellate districts shall be those in existence on
1838 the date of adoption of this article. There shall be a district
1839 court of appeal in each district. The district courts of appeal
1840 shall have the jurisdiction immediately theretofore exercised by
1841 the district courts of appeal and shall determine all
1842 proceedings pending before them on the effective date of this
1843 article.
1844 (3) Circuit courts shall have jurisdiction of appeals from
1845 county courts and municipal courts, except those appeals which
1846 may be taken directly to the supreme court; and they shall have
1847 exclusive original jurisdiction in all actions at law not
1848 cognizable by the county courts; of proceedings relating to the

1849 settlement of the estate of decedents and minors, the granting
1850 of letters testamentary, guardianship, involuntary
1851 hospitalization, the determination of incompetency, and other
1852 jurisdiction usually pertaining to courts of probate; in all
1853 cases in equity including all cases relating to juveniles; of
1854 all felonies and of all misdemeanors arising out of the same
1855 circumstances as a felony which is also charged; in all cases
1856 involving legality of any tax assessment or toll; in the action
1857 of ejectment; and in all actions involving the titles or
1858 boundaries or right of possession of real property. The circuit
1859 court may issue injunctions. There shall be judicial circuits
1860 which shall be the judicial circuits in existence on the date of
1861 adoption of this article. The chief judge of a circuit may
1862 authorize a county court judge to order emergency
1863 hospitalizations pursuant to Chapter 71-131, Laws of Florida, in
1864 the absence from the county of the circuit judge and the county
1865 court judge shall have the power to issue all temporary orders
1866 and temporary injunctions necessary or proper to the complete
1867 exercise of such jurisdiction.
1868 (4) County courts shall have original jurisdiction in all
1869 criminal misdemeanor cases not cognizable by the circuit courts,
1870 of all violations of municipal and county ordinances, and of all
1871 actions at law in which the matter in controversy does not
1872 exceed the sum of two thousand five hundred dollars ~~($2,500.00)~~
1873 exclusive of interest and costs, except those within the
1874 exclusive jurisdiction of the circuit courts. Judges of county
1875 courts shall be committing magistrates. The county courts shall
1876 have jurisdiction now exercised by the county judge's courts

1877 other than that vested in the circuit court by paragraph
1878 ~~subsection (c)~~ (3) ~~hereof~~, the jurisdiction now exercised by the
1879 county courts, the claims court, the small claims courts, the
1880 small claims magistrates courts, magistrates courts, justice of
1881 the peace courts, municipal courts and courts of chartered
1882 counties, including but not limited to the counties referred to
1883 in Article VIII, sections 9, 10, 11 and 24 of the constitution
1884 of 1885.
1885 (5) Each judicial nominating commission shall be composed
1886 of the following:
1887 a. Three members appointed by the Board of Governors of
1888 The Florida Bar from among The Florida Bar members who are
1889 actively engaged in the practice of law with offices within the
1890 territorial jurisdiction of the affected court, district or
1891 circuit;
1892 b. Three electors who reside in the territorial
1893 jurisdiction of the court or circuit appointed by the governor;
1894 and
1895 c. Three electors who reside in the territorial
1896 jurisdiction of the court or circuit and who are not members of
1897 the bar of Florida, selected and appointed by a majority vote of
1898 the other six members of the commission.
1899 (6) No justice or judge shall be a member of a judicial
1900 nominating commission. A member of a judicial nominating
1901 commission may hold public office other than judicial office. No
1902 member shall be eligible for appointment to state judicial
1903 office so long as that person is a member of a judicial
1904 nominating commission and for a period of two years thereafter.

1905 All acts of a judicial nominating commission shall be made with
1906 a concurrence of a majority of its members.
1907 (7) The members of a judicial nominating commission shall
1908 serve for a term of four years. ~~except the terms of the initial~~
1909 ~~members of the judicial nominating commissions shall expire as~~
1910 ~~follows:~~
1911 ~~a. The terms of one member of category a. b. and c. in~~
1912 ~~subsection (c)(5) hereof shall expire on July 1, 1974;~~
1913 ~~b. The terms of one member of category a. b. and c. in~~
1914 ~~subsection (c)(5) hereof shall expire on July 1, 1975;~~
1915 ~~c. The terms of one member of category a. b. and c. in~~
1916 ~~subsection (c)(5) hereof shall expire on July 1, 1976;~~
1917 (8) All fines and forfeitures arising from offenses tried
1918 in the county court shall be collected, and accounted for by
1919 clerk of the court, and deposited in a special trust account.
1920 All fines and forfeitures received from violations of ordinances
1921 or misdemeanors committed within a county or municipal
1922 ordinances committed within a municipality within the
1923 territorial jurisdiction of the county court shall be paid
1924 monthly to the county or municipality respectively. If any costs
1925 are assessed and collected in connection with offenses tried in
1926 county court, all court costs shall be paid into the general
1927 revenue fund of the state of Florida and such other funds as
1928 prescribed by general law.
1929 (9) Any municipality or county may apply to the chief
1930 judge of the circuit in which that municipality or county is
1931 situated for the county court to sit in a location suitable to
1932 the municipality or county and convenient in time and place to

1933 its citizens and police officers and upon such application said
1934 chief judge shall direct the court to sit in the location unless
1935 the chief judge shall determine the request is not justified. If
1936 the chief judge does not authorize the county court to sit in
1937 the location requested, the county or municipality may apply to
1938 the supreme court for an order directing the county court to sit
1939 in the location. Any municipality or county which so applies
1940 shall be required to provide the appropriate physical facilities
1941 in which the county court may hold court.
1942 (10) All courts except the supreme court may sit in
1943 divisions as may be established by local rule approved by the
1944 supreme court.
1945 (11) A county court judge in any county having a
1946 population of 40,000 or fewer ~~less~~ according to the last
1947 decennial census, shall not be required to be a member of the
1948 bar of Florida.
1949 (12) Municipal prosecutors may prosecute violations of
1950 municipal ordinances.
1951 (13) "Justice" shall mean a justice elected or appointed
1952 to the supreme court and shall not include any judge assigned
1953 from any court.
1954 (d) When this article becomes effective:
1955 (1) All courts not herein authorized, except as provided
1956 by paragraph ~~subsection (d)~~(4) ~~of this section~~ shall cease to
1957 exist and jurisdiction to conclude all pending cases and enforce
1958 all prior orders and judgments shall vest in the court that
1959 would have jurisdiction of the cause if thereafter instituted.
1960 All records of and property held by courts abolished hereby

1961 shall be transferred to the proper office of the appropriate
1962 court under this article.
1963 (2) Judges of the following courts, if their terms do not
1964 expire in 1973 and if they are eligible under paragraph
1965 ~~subsection (d)~~ (8) ~~hereof~~, shall become additional judges of the
1966 circuit court for each of the counties of their respective
1967 circuits, and shall serve as such circuit judges for the
1968 remainder of the terms to which they were elected and shall be
1969 eligible for election as circuit judges thereafter. These courts
1970 are: civil court of record of Dade county, all criminal courts
1971 of record, the felony courts of record of Alachua, Leon, and
1972 Volusia Counties, the courts of record of Broward, Brevard,
1973 Escambia, Hillsborough, Lee, Manatee, and Sarasota Counties, the
1974 civil and criminal court of record of Pinellas County, and
1975 county judge's courts and separate juvenile courts in counties
1976 having a population in excess of 100,000 according to the 1970
1977 federal census. On the effective date of this article, there
1978 shall be an additional number of positions of circuit judges
1979 equal to the number of existing circuit judges and the number of
1980 judges of the above named courts whose term expires in 1973.
1981 Elections to such offices shall take place at the same time and
1982 manner as elections to other state judicial offices in 1972 and
1983 the terms of such offices shall be for a term of six years.
1984 Unless changed pursuant to section nine of this article, the
1985 number of circuit judges presently existing and created by this
1986 subsection shall not be changed.
1987 (3) In all counties having a population of fewer ~~less~~ than
1988 100,000 according to the 1970 federal census and having more

1989 than one county judge on the date of the adoption of this
1990 article, there shall be the same number of judges of the county
1991 court as there are county judges existing on that date unless
1992 changed pursuant to section 9 of this article.
1993 (4) Municipal courts shall continue with their same
1994 jurisdiction until amended or terminated in a manner prescribed
1995 by special or general law or ordinances, or until January 3,
1996 1977, whichever occurs first. On that date all municipal courts
1997 not previously abolished shall cease to exist. Judges of
1998 municipal courts shall remain in office and be subject to
1999 reappointment or reelection in the manner prescribed by law
2000 until said courts are terminated pursuant to the provisions of
2001 this subsection. Upon municipal courts being terminated or
2002 abolished in accordance with the provisions of this subsection,
2003 the judges thereof who are not members of the bar of Florida,
2004 shall be eligible to seek election as judges of county courts of
2005 their respective counties.
2006 (5) Judges, holding elective office in all other courts
2007 abolished by this article, whose terms do not expire in 1973
2008 including judges established pursuant to Article VIII, sections
2009 9 and 11 of the constitution of 1885 shall serve as judges of
2010 the county court for the remainder of the term to which they
2011 were elected. Unless created pursuant to section 9, of this
2012 Article V such judicial office shall not continue to exist
2013 thereafter.
2014 ~~(6) By March 21, 1972, the supreme court shall certify the~~
2015 ~~need for additional circuit and county judges. The legislature~~
2016 ~~in the 1972 regular session may by general law create additional~~

2017 ~~offices of judge, the terms of which shall begin on the~~
2018 ~~effective date of this article. Elections to such offices shall~~
2019 ~~take place at the same time and manner as election to other~~
2020 ~~state judicial offices in 1972.~~
2021 (6) ~~(7)~~ County judges of existing county judge's courts and
2022 justices of the peace and magistrates' court who are not members
2023 of bar of Florida shall be eligible to seek election as county
2024 court judges of their respective counties.
2025 (7) ~~(8)~~ No judge of a court abolished by this article shall
2026 become or be eligible to become a judge of the circuit court
2027 unless the judge has been a member of bar of Florida for the
2028 preceding five years.
2029 (8) ~~(9)~~ The office of judges of all other courts abolished
2030 by this article shall be abolished as of the effective date of
2031 this article.
2032 ~~(10) The offices of county solicitor and prosecuting~~
2033 ~~attorney shall stand abolished, and all county solicitors and~~
2034 ~~prosecuting attorneys holding such offices upon the effective~~
2035 ~~date of this article shall become and serve as assistant state~~
2036 ~~attorneys for the circuits in which their counties are situate~~
2037 ~~for the remainder of their terms, with compensation not less~~
2038 ~~than that received immediately before the effective date of this~~
2039 ~~article.~~
2040 (e) LIMITED OPERATION OF SOME PROVISIONS.--
2041 ~~(1) All justices of the supreme court, judges of the~~
2042 ~~district courts of appeal and circuit judges in office upon the~~
2043 ~~effective date of this article shall retain their offices for~~
2044 ~~the remainder of their respective terms. All members of the~~

2045 judicial qualifications commission in office upon the effective
2046 date of this article shall retain their offices for the
2047 remainder of their respective terms. Each state attorney in
2048 office on the effective date of this article shall retain the
2049 office for the remainder of the term.
2050 (2) No justice or judge holding office immediately after
2051 this article becomes effective who held judicial office on July
2052 1, 1957, shall be subject to retirement from judicial office
2053 because of age pursuant to section 8 of this article.
2054 (f) Until otherwise provided by law, the nonjudicial
2055 duties required of county judges shall be performed by the
2056 judges of the county court.
2057 (g) All provisions of Article V of the Constitution of
2058 1885, as amended, not embraced herein which are not inconsistent
2059 with this revision shall become statutes subject to modification
2060 or repeal as are other statutes.
2061 (h) The requirements of section 14 relative to all county
2062 court judges or any judge of a municipal court who continues to
2063 hold office pursuant to subsection (d)(4) hereof being
2064 compensated by state salaries shall not apply prior to January
2065 3, 1977, unless otherwise provided by general law.
2066 (g) (i) DELETION OF OBSOLETE SCHEDULE ITEMS.--The
2067 legislature shall have power, by concurrent resolution, to
2068 delete from this article any subsection of this section 20
2069 including this subsection, when all events to which the
2070 subsection to be deleted is or could become applicable have
2071 occurred. A legislative determination of fact made as a basis
2072 for application of this subsection shall be subject to judicial

2073 review.
2074 ~~(j) EFFECTIVE DATE.--Unless otherwise provided herein,~~
2075 ~~this article shall become effective at 11:59 o'clock P.M.,~~
2076 ~~Eastern Standard Time, January 1, 1973.~~
2077
2078 ARTICLE VI
2079 SUFFRAGE AND ELECTIONS
2080
2081 SECTION 1. Regulation of elections.--All elections by the
2082 people shall be by direct and secret vote. General elections
2083 shall be determined by a plurality of votes cast. Registration
2084 and elections shall, and political party functions may, be
2085 regulated by law; however, the requirements for a candidate with
2086 no party affiliation or for a candidate of a minor party for
2087 placement of the candidate's name on the ballot shall be no
2088 greater than the requirements for a candidate of the party
2089 having the largest number of registered voters.
2090 SECTION 2. Electors.--Every citizen of the United States
2091 who is at least eighteen years of age and who is a permanent
2092 resident of the state, if registered as provided by law, shall
2093 be an elector of the county where registered.
2094 SECTION 3. Oath.--Each eligible citizen upon registering
2095 shall subscribe the following: "I do solemnly swear (or affirm)
2096 that I will protect and defend the Constitution of the United
2097 States and the Constitution of the State of Florida, and that I
2098 am qualified to register as an elector under the Constitution
2099 and laws of the State of Florida."
2100 SECTION 4. Disqualifications.--

2101 (a) No person convicted of a felony, or adjudicated in
2102 this or any other state to be mentally incompetent, shall be
2103 qualified to vote or hold office until restoration of civil
2104 rights or removal of disability.
2105 (b) No person may appear on the ballot for re-election to
2106 any of the following offices:
2107 (1) Florida representative,
2108 (2) Florida senator,
2109 (3) Florida Lieutenant governor, or
2110 (4) Any office of the Florida cabinet~~,~~
2111 ~~(5) U.S. Representative from Florida, or~~
2112 ~~(6) U.S. Senator from Florida~~
2113
2114 if, by the end of the current term of office, the person will
2115 have served (or, but for resignation, would have served) in that
2116 office for eight consecutive years.
2117 SECTION 5. Primary, general, and special elections.--
2118 (a) A general election shall be held in each county on the
2119 first Tuesday after the first Monday in November of each even-
2120 numbered year to choose a successor to each elective state and
2121 county officer whose term will expire before the next general
2122 election and, except as provided herein, to fill each vacancy in
2123 elective office for the unexpired portion of the term. A general
2124 election may be suspended or delayed due to a state of emergency
2125 or impending emergency pursuant to general law. Special
2126 elections and referenda shall be held as provided by law.
2127 (b) If all candidates for an office have the same party
2128 affiliation and the winner will have no opposition in the

2129 general election, all qualified electors, regardless of party
2130 affiliation, may vote in the primary elections for that office.
2131 SECTION 6. Municipal and district elections.--Registration
2132 and elections in municipalities shall, and in other governmental
2133 entities created by statute may, be provided by law.
2134 SECTION 7. Campaign spending limits and funding of
2135 campaigns for elective statewide ~~state-wide~~ office.--It is the
2136 policy of this state to provide for state-wide elections in
2137 which all qualified candidates may compete effectively. A method
2138 of public financing for campaigns for state-wide office shall be
2139 established by law. Spending limits shall be established for
2140 such campaigns for candidates who use public funds in their
2141 campaigns. The legislature shall provide funding for this
2142 provision. General law implementing this paragraph shall be at
2143 least as protective of effective competition by a candidate who
2144 uses public funds as the general law in effect on January 1,
2145 1998.
2146
2147 ARTICLE VII
2148 FINANCE AND TAXATION
2149
2150 SECTION 1. Taxation; appropriations; state expenses; state
2151 revenue limitation.--
2152 (a) No tax shall be levied except in pursuance of law. No
2153 state ad valorem taxes shall be levied upon real estate or
2154 tangible personal property. All other forms of taxation shall be
2155 preempted to the state except as provided by general law.
2156 (b) Motor vehicles, boats, airplanes, trailers, trailer

2157 coaches, and mobile homes, as defined by law, shall be subject
2158 to a license tax for their operation in the amounts and for the
2159 purposes prescribed by law, but shall not be subject to ad
2160 valorem taxes.
2161 (c) No money shall be drawn from the treasury except in
2162 pursuance of appropriation made by law.
2163 (d) Provision shall be made by law for raising sufficient
2164 revenue to defray the expenses of the state for each fiscal
2165 period.
2166 (e) Except as provided herein, state revenues collected
2167 for any fiscal year shall be limited to state revenues allowed
2168 under this subsection for the prior fiscal year plus an
2169 adjustment for growth. As used in this subsection, "growth"
2170 means an amount equal to the average annual rate of growth in
2171 Florida personal income over the most recent twenty quarters
2172 times the state revenues allowed under this subsection for the
2173 prior fiscal year. ~~For the 1995-1996 fiscal year, the state~~
2174 ~~revenues allowed under this subsection for the prior fiscal year~~
2175 ~~shall equal the state revenues collected for the 1994-1995~~
2176 ~~fiscal year.~~ Florida personal income shall be determined by the
2177 legislature, from information available from the United States
2178 Department of Commerce or its successor on the first day of
2179 February prior to the beginning of the fiscal year. State
2180 revenues collected for any fiscal year in excess of this
2181 limitation shall be transferred to the budget stabilization fund
2182 until the fund reaches the maximum balance specified in Article
2183 III, section 18(g) ~~19(g) of Article III~~, and thereafter shall be
2184 refunded to taxpayers as provided by general law. State revenues

2185 allowed under this subsection for any fiscal year may be
2186 increased by a two-thirds vote of the membership of each house
2187 of the legislature in a separate bill that contains no other
2188 subject and that sets forth the dollar amount by which the state
2189 revenues allowed will be increased. The vote may not be taken
2190 less than seventy-two hours after the third reading of the bill.
2191 For purposes of this subsection, "state revenues" means taxes,
2192 fees, licenses, and charges for services imposed by the
2193 legislature on individuals, businesses, or agencies outside
2194 state government. However, "state revenues" does not include:
2195 revenues that are necessary to meet the requirements set forth
2196 in documents authorizing the issuance of bonds by the state;
2197 revenues that are used to provide matching funds for the federal
2198 Medicaid program with the exception of the revenues used to
2199 support the Public Medical Assistance Trust Fund or its
2200 successor program and with the exception of state matching funds
2201 used to fund elective expansions made after July 1, 1994;
2202 proceeds from the state lottery returned as prizes; receipts of
2203 the Florida Hurricane Catastrophe Fund; balances carried forward
2204 from prior fiscal years; taxes, licenses, fees, and charges for
2205 services imposed by local, regional, or school district
2206 governing bodies; or revenue from taxes, licenses, fees, and
2207 charges for services required to be imposed by any amendment or
2208 revision to this constitution after July 1, 1994. An adjustment
2209 to the revenue limitation shall be made by general law to
2210 reflect the fiscal impact of transfers of responsibility for the
2211 funding of governmental functions between the state and other
2212 levels of government. The legislature shall, by general law,

2213 prescribe procedures necessary to administer this subsection.
2214 SECTION 2. Taxes; rate.--All ad valorem taxation shall be
2215 at a uniform rate within each taxing unit, except the taxes on
2216 intangible personal property may be at different rates but shall
2217 never exceed two mills on the dollar of assessed value;
2218 provided, as to any obligations secured by mortgage, deed of
2219 trust, or other lien on real estate wherever located, an
2220 intangible tax of not more than two mills on the dollar may be
2221 levied by law to be in lieu of all other intangible assessments
2222 on such obligations.
2223 SECTION 3. Taxes; exemptions.--
2224 (a) All property owned by a municipality and used
2225 exclusively by it for municipal or public purposes shall be
2226 exempt from taxation. A municipality, owning property outside
2227 the municipality, may be required by general law to make payment
2228 to the taxing unit in which the property is located. Such
2229 portions of property as are used predominantly for educational,
2230 literary, scientific, religious, or charitable purposes may be
2231 exempted by general law from taxation.
2232 (b) There shall be exempt from taxation, cumulatively, to
2233 every head of a family residing in this state, household goods
2234 and personal effects to the value fixed by general law, not less
2235 than one thousand dollars, and to every widow or widower or
2236 person who is blind or totally and permanently disabled,
2237 property to the value fixed by general law not less than five
2238 hundred dollars.
2239 (c) Any county or municipality may, for the purpose of its
2240 respective tax levy and subject to the provisions of this

2241 subsection and general law, grant community and economic
2242 development ad valorem tax exemptions to new businesses and
2243 expansions of existing businesses, as defined by general law.
2244 Such an exemption may be granted only by ordinance of the county
2245 or municipality, and only after the electors of the county or
2246 municipality voting on such question in a referendum authorize
2247 the county or municipality to adopt such ordinances. An
2248 exemption so granted shall apply to improvements to real
2249 property made by or for the use of a new business and
2250 improvements to real property related to the expansion of an
2251 existing business and shall also apply to tangible personal
2252 property of such new business and tangible personal property
2253 related to the expansion of an existing business. The amount or
2254 limits of the amount of such exemption shall be specified by
2255 general law. The period of time for which such exemption may be
2256 granted to a new business or expansion of an existing business
2257 shall be determined by general law. The authority to grant such
2258 exemption shall expire ten years from the date of approval by
2259 the electors of the county or municipality, and may be renewable
2260 by referendum as provided by general law.
2261 (d) By general law and subject to conditions specified
2262 therein, there may be granted an ad valorem tax exemption to a
2263 renewable energy source device and to real property on which
2264 such device is installed and operated, to the value fixed by
2265 general law not to exceed the original cost of the device, and
2266 for the period of time fixed by general law not to exceed ten
2267 years.
2268 (e) Any county or municipality may, for the purpose of its

2269 respective tax levy and subject to the provisions of this
2270 subsection and general law, grant historic preservation ad
2271 valorem tax exemptions to owners of historic properties. This
2272 exemption may be granted only by ordinance of the county or
2273 municipality. The amount or limits of the amount of this
2274 exemption and the requirements for eligible properties must be
2275 specified by general law. The period of time for which this
2276 exemption may be granted to a property owner shall be determined
2277 by general law.
2278 SECTION 4. Taxation; assessments.--~~By~~ General law
2279 ~~regulations~~ shall prescribe regulations that ~~be prescribed which~~
2280 ~~shall~~ secure a just valuation of all property for ad valorem
2281 taxation, provided:
2282 (a) Agricultural land, land producing high water recharge
2283 to Florida's aquifers, or land used exclusively for
2284 noncommercial recreational purposes may be classified by general
2285 law and assessed solely on the basis of character or use.
2286 (b) Pursuant to general law, tangible personal property
2287 held for sale as stock in trade and livestock may be valued for
2288 taxation at a specified percentage of its value, may be
2289 classified for tax purposes, or may be exempted from taxation.
2290 (c) All persons entitled to a homestead exemption under
2291 section 6 ~~of this Article~~ shall have their homestead assessed at
2292 just value as of January 1, 1994 ~~of the year following the~~
2293 ~~effective date of this amendment~~. This assessment shall change
2294 only as provided herein.
2295 (1) Assessments subject to this provision shall be changed
2296 annually on January 1st of each year; but those changes in

2297 assessments shall not exceed the lower of the following:
2298 a. Three percent ~~(3%)~~ of the assessment for the prior
2299 year.
2300 b. The percent change in the Consumer Price Index for all
2301 urban consumers, U.S. City Average, all items 1967=100, or
2302 successor reports for the preceding calendar year as initially
2303 reported by the United States Department of Labor, Bureau of
2304 Labor Statistics.
2305 (2) No assessment shall exceed just value.
2306 (3) After any change of ownership, as provided by general
2307 law, homestead property shall be assessed at just value as of
2308 January 1 of the following year. Thereafter, the homestead shall
2309 be assessed as provided herein.
2310 (4) New homestead property shall be assessed at just value
2311 as of January 1st of the year following the establishment of the
2312 homestead. That assessment shall only change as provided herein.
2313 (5) Changes, additions, reductions, or improvements to
2314 homestead property shall be assessed as provided for by general
2315 law; provided, however, after the adjustment for any change,
2316 addition, reduction, or improvement, the property shall be
2317 assessed as provided herein.
2318 (6) In the event of a termination of homestead status, the
2319 property shall be assessed as provided by general law.
2320 (7) The provisions of this amendment are severable. If any
2321 of the provisions of this amendment shall be held
2322 unconstitutional by any court of competent jurisdiction, the
2323 decision of such court shall not affect or impair any remaining
2324 provisions of this amendment.

2325 (d) The legislature may, by general law, for assessment
2326 purposes and subject to the provisions of this subsection, allow
2327 counties and municipalities to authorize by ordinance that
2328 historic property may be assessed solely on the basis of
2329 character or use. Such character or use assessment shall apply
2330 only to the jurisdiction adopting the ordinance. The
2331 requirements for eligible properties must be specified by
2332 general law.
2333 (e) A county may, in the manner prescribed by general law,
2334 provide for a reduction in the assessed value of homestead
2335 property to the extent of any increase in the assessed value of
2336 that property which results from the construction or
2337 reconstruction of the property for the purpose of providing
2338 living quarters for one or more natural or adoptive grandparents
2339 or parents of the owner of the property or of the owner's spouse
2340 if at least one of the grandparents or parents for whom the
2341 living quarters are provided is 62 years of age or older. Such a
2342 reduction may not exceed the lesser of the following:
2343 (1) The increase in assessed value resulting from
2344 construction or reconstruction of the property.
2345 (2) Twenty percent of the total assessed value of the
2346 property as improved.
2347 SECTION 5. Estate, inheritance, and income taxes.--
2348 (a) NATURAL PERSONS.--No tax upon estates or inheritances
2349 or upon the income of natural persons who are residents or
2350 citizens of the state shall be levied by the state, or under its
2351 authority, in excess of the aggregate of amounts that ~~which~~ may
2352 be allowed to be credited upon or deducted from any similar tax

2353 levied by the United States or any state.
2354 (b) OTHERS.--No tax upon the income of residents and
2355 citizens other than natural persons shall be levied by the
2356 state, or under its authority, in excess of five percent ~~5%~~ of
2357 net income, as defined by law, or at such greater rate as is
2358 authorized by a three-fifths(3/5)vote of the membership of each
2359 house of the legislature or as will provide for the state the
2360 maximum amount which may be allowed to be credited against
2361 income taxes levied by the United States and other states. There
2362 shall be exempt from taxation not less than five thousand
2363 dollars ~~($5,000)~~ of the excess of net income subject to tax over
2364 the maximum amount allowed to be credited against income taxes
2365 levied by the United States and other states.
2366 ~~(c) EFFECTIVE DATE. This section shall become effective~~
2367 ~~immediately upon approval by the electors of Florida.~~
2368 SECTION 6. Homestead exemptions.--
2369 (a) Every person who has the legal or equitable title to
2370 real estate and maintains thereon the permanent residence of the
2371 owner, or another legally or naturally dependent upon the owner,
2372 shall be exempt from taxation thereon, except assessments for
2373 special benefits, up to the assessed valuation of five thousand
2374 dollars, upon establishment of right thereto in the manner
2375 prescribed by law. The real estate may be held by legal or
2376 equitable title, by the entireties, jointly, in common, as a
2377 condominium, or indirectly by stock ownership or membership
2378 representing the owner's or member's proprietary interest in a
2379 corporation owning a fee or a leasehold initially in excess of
2380 ninety-eight years.

2381 (b) Not more than one exemption shall be allowed any
2382 individual or family unit or with respect to any residential
2383 unit. No exemption shall exceed the value of the real estate
2384 assessable to the owner or, in case of ownership through stock
2385 or membership in a corporation, the value of the proportion
2386 which the interest in the corporation bears to the assessed
2387 value of the property.
2388 (c) By general law and subject to conditions specified
2389 therein, the exemption shall be increased to a total of twenty-
2390 five thousand dollars of the assessed value of the real estate
2391 for each school district levy. By general law and subject to
2392 conditions specified therein, the exemption for all other levies
2393 may be increased up to an amount not exceeding ten thousand
2394 dollars of the assessed value of the real estate if the owner
2395 has attained age sixty-five or is totally and permanently
2396 disabled and if the owner is not entitled to the exemption
2397 provided in subsection (d).
2398 (d) By general law and subject to conditions specified
2399 therein, the exemption shall be increased to a total of the
2400 following amounts of assessed value of real estate for each levy
2401 other than those of school districts: fifteen thousand dollars
2402 with respect to 1980 assessments; twenty thousand dollars with
2403 respect to 1981 assessments; twenty-five thousand dollars with
2404 respect to assessments for 1982 and each year thereafter.
2405 However, such increase shall not apply with respect to any
2406 assessment roll until such roll is first determined to be in
2407 compliance with the provisions of section 4 by a state agency
2408 designated by general law. This subsection shall stand repealed

2409 on the effective date of any amendment to section 4 which
2410 provides for the assessment of homestead property at a specified
2411 percentage of its just value.
2412 (e) By general law and subject to conditions specified
2413 therein, the legislature may provide to renters, who are
2414 permanent residents, ad valorem tax relief on all ad valorem tax
2415 levies. Such ad valorem tax relief shall be in the form and
2416 amount established by general law.
2417 (f) The legislature may, by general law, allow counties or
2418 municipalities, for the purpose of their respective tax levies
2419 and subject to the provisions of general law, to grant an
2420 additional homestead tax exemption not exceeding twenty-five
2421 thousand dollars to any person who has the legal or equitable
2422 title to real estate and maintains thereon the permanent
2423 residence of the owner and who has attained age sixty-five and
2424 whose household income, as defined by general law, does not
2425 exceed twenty thousand dollars. The general law must allow
2426 counties and municipalities to grant this additional exemption,
2427 within the limits prescribed in this subsection, by ordinance
2428 adopted in the manner prescribed by general law, and must
2429 provide for the periodic adjustment of the income limitation
2430 prescribed in this subsection for changes in the cost of living.
2431 SECTION 7. Allocation of pari-mutuel taxes.--Taxes upon
2432 the operation of pari-mutuel pools may be preempted to the state
2433 or allocated in whole or in part to the counties. When allocated
2434 to the counties, the distribution shall be in equal amounts to
2435 the several counties.
2436 SECTION 8. Aid to local governments.--State funds may be

2437 appropriated to the several counties, school districts,
2438 municipalities, or special districts upon such conditions as may
2439 be provided by general law. These conditions may include the use
2440 of relative ad valorem assessment levels determined by a state
2441 agency designated by general law.
2442 SECTION 9. Local taxes.--
2443 (a) Counties, school districts, and municipalities shall,
2444 and special districts may, be authorized by law to levy ad
2445 valorem taxes and may be authorized by general law to levy other
2446 taxes, for their respective purposes, except ad valorem taxes on
2447 intangible personal property and taxes prohibited by this
2448 constitution.
2449 (b) Ad valorem taxes, exclusive of taxes levied for the
2450 payment of bonds and taxes levied for periods not longer than
2451 two years when authorized by vote of the electors who are the
2452 owners of freeholds therein not wholly exempt from taxation,
2453 shall not be levied in excess of the following millages upon the
2454 assessed value of real estate and tangible personal property:
2455 for all county purposes, ten mills; for all municipal purposes,
2456 ten mills; for all school purposes, ten mills; for water
2457 management purposes for the northwest portion of the state lying
2458 west of the line between ranges two and three east, 0.05 mill;
2459 for water management purposes for the remaining portions of the
2460 state, 1.0 mill; and for all other special districts a millage
2461 authorized by law approved by vote of the electors who are
2462 owners of freeholds therein not wholly exempt from taxation. A
2463 county furnishing municipal services may, to the extent
2464 authorized by law, levy additional taxes within the limits fixed

2465 for municipal purposes.
2466 SECTION 10. Pledging credit.--Neither the state nor any
2467 county, school district, municipality, special district, or
2468 agency of any of them~~,~~ shall become a joint owner with, or
2469 stockholder of, or give, lend, or use its taxing power or credit
2470 to aid any corporation, association, partnership, or person; but
2471 this shall not prohibit laws authorizing:
2472 (a) The investment of public trust funds;
2473 (b) The investment of other public funds in obligations
2474 of, or insured by, the United States or any of its
2475 instrumentalities;
2476 (c) The issuance and sale by any county, municipality,
2477 special district, or other local governmental body of (1)
2478 revenue bonds to finance or refinance the cost of capital
2479 projects for airports or port facilities, or (2) revenue bonds
2480 to finance or refinance the cost of capital projects for
2481 industrial or manufacturing plants to the extent that the
2482 interest thereon is exempt from income taxes under the then
2483 existing laws of the United States, when, in either case, the
2484 revenue bonds are payable solely from revenue derived from the
2485 sale, operation, or leasing of the projects. If any project so
2486 financed, or any part thereof, is occupied or operated by any
2487 private corporation, association, partnership, or person
2488 pursuant to contract or lease with the issuing body, the
2489 property interest created by such contract or lease shall be
2490 subject to taxation to the same extent as other privately owned
2491 property.
2492 (d) A municipality, county, special district, or agency of

2493 any of them, being a joint owner of, giving, or lending or using
2494 its taxing power or credit for the joint ownership,
2495 construction, and operation of electrical energy generating or
2496 transmission facilities with any corporation, association,
2497 partnership, or person.
2498 SECTION 11. State bonds; revenue bonds.--
2499 (a) State bonds pledging the full faith and credit of the
2500 state may be issued only to finance or refinance the cost of
2501 state fixed capital outlay projects authorized by law, and
2502 purposes incidental thereto, upon approval by a vote of the
2503 electors; provided state bonds issued pursuant to this
2504 subsection may be refunded without a vote of the electors at a
2505 lower net average interest cost rate. The total outstanding
2506 principal of state bonds issued pursuant to this subsection
2507 shall never exceed fifty percent of the total tax revenues of
2508 the state for the two preceding fiscal years, excluding any tax
2509 revenues held in trust under the provisions of this
2510 constitution.
2511 (b) Moneys sufficient to pay debt service on state bonds
2512 as the same becomes due shall be appropriated by law.
2513 (c) Any state bonds pledging the full faith and credit of
2514 the state issued under this section or any other section of this
2515 constitution may be combined for the purposes of sale.
2516 (d) Revenue bonds may be issued by the state or its
2517 agencies without a vote of the electors to finance or refinance
2518 the cost of state fixed capital outlay projects authorized by
2519 law, and purposes incidental thereto, and shall be payable
2520 solely from funds derived directly from sources other than state

2521 tax revenues.
2522 (e) Bonds pledging all or part of a dedicated state tax
2523 revenue may be issued by the state in the manner provided by
2524 general law to finance or refinance the acquisition and
2525 improvement of land, water areas, and related property interests
2526 and resources for the purposes of conservation, outdoor
2527 recreation, water resource development, restoration of natural
2528 systems, and historic preservation.
2529 (f) Each project, building, or facility to be financed or
2530 refinanced with revenue bonds issued under this section shall
2531 first be approved by the legislature by an act relating to
2532 appropriations or by general law.
2533 SECTION 12. Local bonds.--Counties, school districts,
2534 municipalities, special districts, and local governmental bodies
2535 with taxing powers may issue bonds, certificates of
2536 indebtedness, or any form of tax anticipation certificates,
2537 payable from ad valorem taxation and maturing more than twelve
2538 months after issuance only:
2539 (a) To finance or refinance capital projects authorized by
2540 law and only when approved by vote of the electors who are
2541 owners of freeholds therein not wholly exempt from taxation; or
2542 (b) To refund outstanding bonds and interest and
2543 redemption premium thereon at a lower net average interest cost
2544 rate.
2545 SECTION 13. Relief from illegal taxes.--Until payment of
2546 all taxes which have been legally assessed upon the property of
2547 the same owner, no court shall grant relief from the payment of
2548 any tax that may be illegal or illegally assessed.

2549 SECTION 14. Bonds for pollution control and abatement and
2550 other water facilities.--
2551 (a) When authorized by law, state bonds pledging the full
2552 faith and credit of the state may be issued without an election
2553 to finance the construction of air and water pollution control
2554 and abatement and solid waste disposal facilities and other
2555 water facilities authorized by general law (herein referred to
2556 as "facilities") to be operated by any municipality, county,
2557 district or authority, or any agency thereof (herein referred to
2558 as "local governmental agencies"), or by any agency of the State
2559 of Florida. Such bonds shall be secured by a pledge of and shall
2560 be payable primarily from all or any part of revenues to be
2561 derived from operation of such facilities, special assessments,
2562 rentals to be received under lease-purchase agreements herein
2563 provided for, any other revenues that may be legally available
2564 for such purpose, including revenues from other facilities, or
2565 any combination thereof (herein collectively referred to as
2566 "pledged revenues"), and shall be additionally secured by the
2567 full faith and credit of the State of Florida.
2568 (b) No such bonds shall be issued unless a state fiscal
2569 agency, created by law, has made a determination that in no
2570 state fiscal year will the debt service requirements of the
2571 bonds proposed to be issued and all other bonds secured by the
2572 pledged revenues exceed seventy-five percent ~~per cent~~ of the
2573 pledged revenues.
2574 (c) The state may lease any of such facilities to any
2575 local governmental agency, under lease-purchase agreements for
2576 such periods and under such other terms and conditions as may be

2577 mutually agreed upon. The local governmental agencies may pledge
2578 the revenues derived from such leased facilities or any other
2579 available funds for the payment of rentals thereunder; and, in
2580 addition, the full faith and credit and taxing power of such
2581 local governmental agencies may be pledged for the payment of
2582 such rentals without any election of freeholder electors or
2583 qualified electors.
2584 (d) The state may also issue such bonds for the purpose of
2585 loaning money to local governmental agencies, for the
2586 construction of such facilities to be owned or operated by any
2587 of such local governmental agencies. Such loans shall bear
2588 interest at not more than one-half of one percent ~~per cent~~ per
2589 annum greater than the last preceding issue of state bonds
2590 pursuant to this section, shall be secured by the pledged
2591 revenues, and may be additionally secured by the full faith and
2592 credit of the local governmental agencies.
2593 (e) The total outstanding principal of state bonds issued
2594 pursuant to this section ~~14~~ shall never exceed fifty percent ~~per~~
2595 ~~cent~~ of the total tax revenues of the state for the two
2596 preceding fiscal years.
2597 SECTION 15. Revenue bonds for scholarship loans.--
2598 (a) When authorized by law, revenue bonds may be issued to
2599 establish a fund to make loans to students determined eligible
2600 as prescribed by law and who have been admitted to attend any
2601 public or private institutions of higher learning, junior
2602 colleges, health related training institutions, or vocational
2603 training centers, which are recognized or accredited under terms
2604 and conditions prescribed by law. Revenue bonds issued pursuant

2605 to this section shall be secured by a pledge of and shall be
2606 payable primarily from payments of interest, principal, and
2607 handling charges to such fund from the recipients of the loans
2608 and, if authorized by law, may be additionally secured by
2609 student fees and by any other moneys in such fund. There shall
2610 be established from the proceeds of each issue of revenue bonds
2611 a reserve account in an amount equal to and sufficient to pay
2612 the greatest amount of principal, interest, and handling charges
2613 to become due on such issue in any ensuing state fiscal year.
2614 (b) Interest moneys in the fund established pursuant to
2615 this section, not required in any fiscal year for payment of
2616 debt service on then outstanding revenue bonds or for
2617 maintenance of the reserve account, may be used for educational
2618 loans to students determined to be eligible therefor in the
2619 manner provided by law, or for such other related purposes as
2620 may be provided by law.
2621 SECTION 16. Bonds for housing and related facilities.--
2622 (a) When authorized by law, revenue bonds may be issued
2623 without an election to finance or refinance housing and related
2624 facilities in Florida, herein referred to as "facilities."
2625 (b) The bonds shall be secured by a pledge of and shall be
2626 payable primarily from all or any part of revenues to be derived
2627 from the financing, operation, or sale of such facilities,
2628 mortgage or loan payments, and any other revenues or assets that
2629 may be legally available for such purposes derived from sources
2630 other than ad valorem taxation, including revenues from other
2631 facilities, or any combination thereof, herein collectively
2632 referred to as "pledged revenues," provided that in no event

2633 shall the full faith and credit of the state be pledged to
2634 secure such revenue bonds.
2635 (c) No bonds shall be issued unless a state fiscal agency,
2636 created by law, has made a determination that in no state fiscal
2637 year will the debt service requirements of the bonds proposed to
2638 be issued and all other bonds secured by the same pledged
2639 revenues exceed the pledged revenues available for payment of
2640 such debt service requirements, as defined by law.
2641 SECTION 17. Bonds for acquiring transportation right-of-
2642 way or for constructing bridges.--
2643 (a) When authorized by law, state bonds pledging the full
2644 faith and credit of the state may be issued, without a vote of
2645 the electors, to finance or refinance the cost of acquiring real
2646 property or the rights to real property for state roads as
2647 defined by law~~,~~ or to finance or refinance the cost of state
2648 bridge construction~~,~~ and purposes incidental to such property
2649 acquisition or state bridge construction.
2650 (b) Bonds issued under this section shall be secured by a
2651 pledge of and shall be payable primarily from motor fuel or
2652 special fuel taxes, except those defined in Article XII, section
2653 7(c) ~~9(c) of Article XII~~, as provided by law, and shall
2654 additionally be secured by the full faith and credit of the
2655 state.
2656 (c) No bonds shall be issued under this section unless a
2657 state fiscal agency, created by law, has made a determination
2658 that in no state fiscal year will the debt service requirements
2659 of the bonds proposed to be issued and all other bonds secured
2660 by the same pledged revenues exceed ninety percent of the

2661 pledged revenues available for payment of such debt service
2662 requirements, as defined by law. For the purposes of this
2663 subsection, the term "pledged revenues" means all revenues
2664 pledged to the payment of debt service, excluding any pledge of
2665 the full faith and credit of the state.
2666 SECTION 18. Laws requiring counties or municipalities to
2667 spend funds or limiting their ability to raise revenue or
2668 receive state tax revenue.--
2669 (a) No county or municipality shall be bound by any
2670 general law requiring such county or municipality to spend funds
2671 or to take an action requiring the expenditure of funds unless
2672 the legislature has determined that such law fulfills an
2673 important state interest and unless: funds have been
2674 appropriated that have been estimated at the time of enactment
2675 to be sufficient to fund such expenditure; the legislature
2676 authorizes or has authorized a county or municipality to enact a
2677 funding source not available for such county or municipality on
2678 February 1, 1989, that can be used to generate the amount of
2679 funds estimated to be sufficient to fund such expenditure by a
2680 simple majority vote of the governing body of such county or
2681 municipality; the law requiring such expenditure is approved by
2682 two-thirds of the membership in each house of the legislature;
2683 the expenditure is required to comply with a law that applies to
2684 all persons similarly situated, including the state and local
2685 governments; or the law is either required to comply with a
2686 federal requirement or required for eligibility for a federal
2687 entitlement, which federal requirement specifically contemplates
2688 actions by counties or municipalities for compliance.

2689 (b) Except upon approval of each house of the legislature
2690 by two-thirds of the membership, the legislature may not enact,
2691 amend, or repeal any general law if the anticipated effect of
2692 doing so would be to reduce the authority that municipalities or
2693 counties have to raise revenues in the aggregate, as such
2694 authority exists on February 1, 1989.
2695 (c) Except upon approval of each house of the legislature
2696 by two-thirds of the membership, the legislature may not enact,
2697 amend, or repeal any general law if the anticipated effect of
2698 doing so would be to reduce the percentage of a state tax shared
2699 with counties and municipalities as an aggregate on February 1,
2700 1989. The provisions of this subsection shall not apply to
2701 enhancements enacted after February 1, 1989, to state tax
2702 sources, or during a fiscal emergency declared in a written
2703 joint proclamation issued by the president of the senate and the
2704 speaker of the house of representatives, or where the
2705 legislature provides additional state-shared revenues that ~~which~~
2706 are anticipated to be sufficient to replace the anticipated
2707 aggregate loss of state-shared revenues resulting from the
2708 reduction of the percentage of the state tax shared with
2709 counties and municipalities, which source of replacement
2710 revenues shall be subject to the same requirements for repeal or
2711 modification as provided herein for a state-shared tax source
2712 existing on February 1, 1989.
2713 (d) Laws adopted to require funding of pension benefits
2714 existing on November 6, 1990; ~~the effective date of this~~
2715 ~~section,~~ criminal laws; ~~,~~ election laws; ~~,~~ the general
2716 appropriations act; ~~,~~ special appropriations acts; ~~,~~ laws

2717 reauthorizing but not expanding then-existing statutory
2718 authority;~~,~~ laws having insignificant fiscal impact;~~,~~ and laws
2719 creating, modifying, or repealing noncriminal infractions~~,~~ are
2720 exempt from the requirements of this section.
2721 (e) The legislature may enact laws to assist in the
2722 implementation and enforcement of this section.
2723
2724 ARTICLE VIII
2725 LOCAL GOVERNMENT
2726
2727 SECTION 1. Counties.--
2728 (a) POLITICAL SUBDIVISIONS.--The state shall be divided by
2729 law into political subdivisions called counties. Counties may be
2730 created, abolished, or changed by law, with provision for
2731 payment or apportionment of the public debt.
2732 (b) COUNTY FUNDS.--The care, custody, and method of
2733 disbursing county funds shall be provided by general law.
2734 (c) GOVERNMENT.--Pursuant to general or special law, a
2735 county government may be established by charter that ~~which~~ shall
2736 be adopted, amended, or repealed only upon vote of the electors
2737 of the county in a special election called for that purpose.
2738 (d) COUNTY OFFICERS.--There shall be elected by the
2739 electors of each county, for terms of four years, a sheriff, a
2740 tax collector, a property appraiser, a supervisor of elections,
2741 and a clerk of the circuit court; except, when provided by
2742 county charter or special law approved by vote of the electors
2743 of the county, any county officer may be chosen in another
2744 manner therein specified, or any county office may be abolished

2745 when all the duties of the office prescribed by general law are
2746 transferred to another office. When not otherwise provided by
2747 county charter or special law approved by vote of the electors,
2748 the clerk of the circuit court shall be ex officio clerk of the
2749 board of county commissioners, auditor, recorder, and custodian
2750 of all county funds.
2751 (e) COMMISSIONERS.--Except when otherwise provided by
2752 county charter, the governing body of each county shall be a
2753 board of county commissioners composed of five or seven members
2754 serving staggered terms of four years. After each decennial
2755 census, the board of county commissioners shall divide the
2756 county into districts of contiguous territory as nearly equal in
2757 population as practicable. One commissioner residing in each
2758 district shall be elected as provided by law.
2759 (f) NON-CHARTER GOVERNMENT.--Counties not operating under
2760 county charters shall have such power of self-government as is
2761 provided by general or special law. The board of county
2762 commissioners of a county not operating under a charter may
2763 enact, in a manner prescribed by general law, county ordinances
2764 not inconsistent with general or special law, but an ordinance
2765 in conflict with a municipal ordinance shall not be effective
2766 within the municipality to the extent of such conflict.
2767 (g) CHARTER GOVERNMENT.--Counties operating under county
2768 charters shall have all powers of local self-government not
2769 inconsistent with general law, or with special law approved by
2770 vote of the electors. The governing body of a county operating
2771 under a charter may enact county ordinances not inconsistent
2772 with general law. The charter shall provide which shall prevail

2773 in the event of conflict between county and municipal
2774 ordinances.
2775 (h) TAXES; LIMITATION.--Property situate within
2776 municipalities shall not be subject to taxation for services
2777 rendered by the county exclusively for the benefit of the
2778 property or residents in unincorporated areas.
2779 (i) COUNTY ORDINANCES.--Each county ordinance shall be
2780 filed with the custodian of state records and shall become
2781 effective at such time thereafter as is provided by general law.
2782 (j) VIOLATION OF ORDINANCES.--Persons violating county
2783 ordinances shall be prosecuted and punished as provided by law.
2784 (k) COUNTY SEAT.--In every county there shall be a county
2785 seat at which shall be located the principal offices and
2786 permanent records of all county officers. The county seat may
2787 not be moved except as provided by general law. Branch offices
2788 for the conduct of county business may be established elsewhere
2789 in the county by resolution of the governing body of the county
2790 in the manner prescribed by law. No instrument shall be deemed
2791 recorded until filed at the county seat, or a branch office
2792 designated by the governing body of the county for the recording
2793 of instruments, according to law.
2794 SECTION 2. Municipalities.--
2795 (a) ESTABLISHMENT.--Municipalities may be established or
2796 abolished and their charters amended pursuant to general or
2797 special law. When any municipality is abolished, provision shall
2798 be made for the protection of its creditors.
2799 (b) POWERS.--Municipalities shall have governmental,
2800 corporate, and proprietary powers to enable them to conduct

2801 municipal government, perform municipal functions and render
2802 municipal services, and may exercise any power for municipal
2803 purposes except as otherwise provided by law. Each municipal
2804 legislative body shall be elective.
2805 (c) ANNEXATION.--Municipal annexation of unincorporated
2806 territory, merger of municipalities, and exercise of extra-
2807 territorial powers by municipalities shall be as provided by
2808 general or special law.
2809 SECTION 3. Consolidation.--The government of a county and
2810 the government of one or more municipalities located therein may
2811 be consolidated into a single government, which may exercise any
2812 and all powers of the county and the several municipalities. The
2813 consolidation plan may be proposed only by special law, which
2814 shall become effective if approved by vote of the electors of
2815 the county, or of the county and municipalities affected, as may
2816 be provided in the plan. Consolidation shall not extend the
2817 territorial scope of taxation for the payment of pre-existing
2818 debt except to areas whose residents receive a benefit from the
2819 facility or service for which the indebtedness was incurred.
2820 SECTION 4. Transfer of powers.--By law or by resolution of
2821 the governing bodies of each of the governments affected, any
2822 function or power of a county, municipality, or special district
2823 may be transferred to or contracted to be performed by another
2824 county, municipality, or special district, after approval by
2825 vote of the electors of the transferor and approval by vote of
2826 the electors of the transferee, or as otherwise provided by law.
2827 SECTION 5. Local option.--
2828 (a) Local option on the legality or prohibition of the

2829 sale of intoxicating liquors, wines, or beers shall be preserved
2830 to each county. The status of a county with respect thereto
2831 shall be changed only by vote of the electors in a special
2832 election called upon the petition of twenty-five percent ~~per~~
2833 ~~cent~~ of the electors of the county, and not sooner than two
2834 years after an earlier election on the same question. Where
2835 legal, the sale of intoxicating liquors, wines, and beers shall
2836 be regulated by law.
2837 (b) Each county shall have the authority to require a
2838 criminal history records check and a 3-to-5-day ~~3 to 5 day~~
2839 waiting period, excluding weekends and legal holidays, in
2840 connection with the sale of any firearm occurring within such
2841 county. For purposes of this subsection, the term "sale" means
2842 the transfer of money or other valuable consideration for any
2843 firearm when any part of the transaction is conducted on
2844 property to which the public has the right of access. Holders of
2845 a concealed weapons permit as prescribed by general law shall
2846 not be subject to the provisions of this subsection when
2847 purchasing a firearm.
2848 SECTION 6. Schedule to Article VIII.--
2849 (a) APPLICABILITY TO FORMER ARTICLE.--This article shall
2850 replace all of Article VIII of the constitution of 1885, as
2851 amended, except those sections expressly retained and made a
2852 part of this article by reference.
2853 (b) COUNTIES; COUNTY SEATS; MUNICIPALITIES;
2854 DISTRICTS.--The status of the following items as they exist on
2855 the date this article becomes effective is recognized and shall
2856 be continued until changed in accordance with law: the counties

2857 of the state; their status with respect to the legality of the
2858 sale of intoxicating liquors, wines, and beers; the method of
2859 selection of county officers; the performance of municipal
2860 functions by county officers; the county seats; and the
2861 municipalities and special districts of the state, their powers,
2862 jurisdiction, and government.
2863 ~~(c) OFFICERS TO CONTINUE IN OFFICE. Every person holding~~
2864 ~~office when this article becomes effective shall continue in~~
2865 ~~office for the remainder of the term if that office is not~~
2866 ~~abolished. If the office is abolished the incumbent shall be~~
2867 ~~paid adequate compensation, to be fixed by law, for the loss of~~
2868 ~~emoluments for the remainder of the term.~~
2869 (c) ~~(d)~~ ORDINANCES.--Local laws relating only to
2870 unincorporated areas of a county on the effective date of this
2871 article may be amended or repealed by county ordinance.
2872 (d) ~~(e)~~ CONSOLIDATION AND HOME RULE.--Article VIII,
2873 sections 9, 10, 11, and 24, of the constitution of 1885, as
2874 amended, shall remain in full force and effect as to each county
2875 affected, as if this article had not been adopted, until that
2876 county shall expressly adopt a charter or home rule plan
2877 pursuant to this article. All provisions of the Metropolitan
2878 Dade County Home Rule Charter, heretofore or hereafter adopted
2879 by the electors of Dade County pursuant to Article VIII, section
2880 11, of the constitution of 1885, as amended, shall be valid, and
2881 any amendments to such charter shall be valid; provided that the
2882 said provisions of such charter and the said amendments thereto
2883 are authorized under said Article VIII, section 11, of the
2884 constitution of 1885, as amended.

2885 (e) ~~(f)~~ DADE COUNTY; POWERS CONFERRED UPON
2886 MUNICIPALITIES.--To the extent not inconsistent with the powers
2887 of existing municipalities or general law, the Metropolitan
2888 Government of Dade County may exercise all the powers conferred
2889 now or hereafter by general law upon municipalities.
2890 (f) ~~(g)~~ DELETION OF OBSOLETE SCHEDULE ITEMS.--The
2891 legislature shall have power, by joint resolution, to delete
2892 from this article any subsection of this section ~~6~~, including
2893 this subsection, when all events to which the subsection to be
2894 deleted is or could become applicable have occurred. A
2895 legislative determination of fact made as a basis for
2896 application of this subsection shall be subject to judicial
2897 review.
2898
2899 ARTICLE IX
2900 EDUCATION
2901
2902 SECTION 1. Public education.--
2903 (a) The education of children is a fundamental value of
2904 the people of this ~~the~~ state ~~of Florida~~. It is, therefore, a
2905 paramount duty of the state to make adequate provision for the
2906 education of all children residing within its borders. Adequate
2907 provision shall be made by law for a uniform, efficient, safe,
2908 secure, and high quality system of free public schools that
2909 allows students to obtain a high quality education and for the
2910 establishment, maintenance, and operation of institutions of
2911 higher learning and other public education programs that the
2912 needs of the people may require. To assure that children

2913 attending public schools obtain a high quality education, the
2914 legislature shall make adequate provision to ensure that, by the
2915 beginning of the 2010 school year, there are a sufficient number
2916 of classrooms so that:
2917 (1) The maximum number of students who are assigned to
2918 each teacher who is teaching in public school classrooms for
2919 prekindergarten through grade 3 does not exceed 18 students;
2920 (2) The maximum number of students who are assigned to
2921 each teacher who is teaching in public school classrooms for
2922 grades 4 through 8 does not exceed 22 students; and
2923 (3) The maximum number of students who are assigned to
2924 each teacher who is teaching in public school classrooms for
2925 grades 9 through 12 does not exceed 25 students.
2926
2927 The class size requirements of this subsection do not apply to
2928 extracurricular classes. Payment of the costs associated with
2929 reducing class size to meet these requirements is the
2930 responsibility of the state and not of local school ~~schools~~
2931 districts. ~~Beginning with the 2003-2004 fiscal year,~~ The
2932 legislature shall provide sufficient funds to reduce the average
2933 number of students in each classroom by at least two students
2934 per year until the maximum number of students per classroom does
2935 not exceed the requirements of this subsection.
2936 (b) Every four-year-old ~~four-year old~~ child in Florida
2937 shall be provided by the State a high-quality ~~high quality~~ pre-
2938 kindergarten learning opportunity in the form of an early
2939 childhood development and education program that ~~which~~ shall be
2940 voluntary, high quality, free, and delivered according to

2941 professionally accepted standards. An early childhood
2942 development and education program means an organized program
2943 designed to address and enhance each child's ability to make
2944 age-appropriate ~~age appropriate~~ progress in an appropriate range
2945 of settings in the development of language and cognitive
2946 capabilities and emotional, social, regulatory, and moral
2947 capacities through education in basic skills and such other
2948 skills as the legislature may determine to be appropriate.
2949 (c) The early childhood education and development programs
2950 provided by reason of subsection ~~subparagraph~~ (b) shall be
2951 implemented ~~no later than the beginning of the 2005 school year~~
2952 through funds generated in addition to those used for existing
2953 education, health, and development programs. Existing education,
2954 health, and development programs are those funded by the state
2955 as of January 1, 2002, that provided for child or adult
2956 education, health care, or development.
2957 SECTION 2. State board of education.--The state board of
2958 education shall be a body corporate and have such supervision of
2959 the system of free public education as is provided by law. The
2960 state board of education shall consist of seven members
2961 appointed by the governor to staggered 4-year terms, subject to
2962 confirmation by the senate. The state board of education shall
2963 appoint the commissioner of education.
2964 SECTION 3. Terms of appointive board members.--Members of
2965 any appointive board dealing with education may serve terms in
2966 excess of four years as provided by law.
2967 SECTION 4. School districts; school boards.--
2968 (a) Each county shall constitute a school district,~~;~~

2969 provided that~~,~~ two or more contiguous counties, upon vote of the
2970 electors of each county pursuant to law, may be combined into
2971 one school district. In each school district, there shall be a
2972 school board composed of five or more members chosen by vote of
2973 the electors in a nonpartisan election for appropriately
2974 staggered terms of four years, as provided by law.
2975 (b) The school board shall operate, control, and supervise
2976 all free public schools within the school district and determine
2977 the rate of school district taxes within the limits prescribed
2978 herein. Two or more school districts may operate and finance
2979 joint educational programs.
2980 SECTION 5. Superintendent of schools.--In each school
2981 district, there shall be a superintendent of schools who shall
2982 be elected at the general election in each year the number of
2983 which is a multiple of four for a term of four years; or, when
2984 provided by resolution of the district school board, or by
2985 special law, approved by vote of the electors, the district
2986 school superintendent in any school district shall be employed
2987 by the district school board as provided by general law. The
2988 resolution or special law may be rescinded or repealed by either
2989 procedure after four years.
2990 SECTION 6. State school fund.--The income derived from the
2991 state school fund shall, and the principal of the fund may, be
2992 appropriated, but only to the support and maintenance of free
2993 public schools.
2994 ~~SECTION 7. State University System.--~~
2995 ~~(a) PURPOSES. In order to achieve excellence through~~
2996 ~~teaching students, advancing research and providing public~~

2997 ~~service for the benefit of Florida's citizens, their communities~~
2998 ~~and economies, the people hereby establish a system of~~
2999 ~~governance for the state university system of Florida.~~
3000 ~~(b) STATE UNIVERSITY SYSTEM. There shall be a single~~
3001 ~~state university system comprised of all public universities. A~~
3002 ~~board of trustees shall administer each public university and a~~
3003 ~~board of governors shall govern the state university system.~~
3004 ~~(c) LOCAL BOARDS OF TRUSTEES. Each local constituent~~
3005 ~~university shall be administered by a board of trustees~~
3006 ~~consisting of thirteen members dedicated to the purposes of the~~
3007 ~~state university system. The board of governors shall establish~~
3008 ~~the powers and duties of the boards of trustees. Each board of~~
3009 ~~trustees shall consist of six citizen members appointed by the~~
3010 ~~governor and five citizen members appointed by the board of~~
3011 ~~governors. The appointed members shall be confirmed by the~~
3012 ~~senate and serve staggered terms of five years as provided by~~
3013 ~~law. The chair of the faculty senate, or the equivalent, and the~~
3014 ~~president of the student body of the university shall also be~~
3015 ~~members.~~
3016 ~~(d) STATEWIDE BOARD OF GOVERNORS. The board of governors~~
3017 ~~shall be a body corporate consisting of seventeen members. The~~
3018 ~~board shall operate, regulate, control, and be fully responsible~~
3019 ~~for the management of the whole university system. These~~
3020 ~~responsibilities shall include, but not be limited to, defining~~
3021 ~~the distinctive mission of each constituent university and its~~
3022 ~~articulation with free public schools and community colleges,~~
3023 ~~ensuring the well-planned coordination and operation of the~~
3024 ~~system, and avoiding wasteful duplication of facilities or~~

3025 ~~programs. The board's management shall be subject to the powers~~
3026 ~~of the legislature to appropriate for the expenditure of funds,~~
3027 ~~and the board shall account for such expenditures as provided by~~
3028 ~~law. The governor shall appoint to the board fourteen citizens~~
3029 ~~dedicated to the purposes of the state university system. The~~
3030 ~~appointed members shall be confirmed by the senate and serve~~
3031 ~~staggered terms of seven years as provided by law. The~~
3032 ~~commissioner of education, the chair of the advisory council of~~
3033 ~~faculty senates, or the equivalent, and the president of the~~
3034 ~~Florida student association, or the equivalent, shall also be~~
3035 ~~members of the board.~~
3036
3037 ARTICLE X
3038 MISCELLANEOUS
3039
3040 SECTION 1. Amendments to United States Constitution.--The
3041 legislature shall not take action on any proposed amendment to
3042 the Constitution of the United States unless a majority of the
3043 members thereof have been elected after the proposed amendment
3044 has been submitted for ratification.
3045 SECTION 2. Militia.--
3046 (a) The militia shall be composed of all <u>able-bodied</u>
3047 ~~ablebodied~~ inhabitants of the state who are or have declared
3048 their intention to become citizens of the United States<u>,</u>~~,~~ and no
3049 person because of religious creed or opinion shall be exempted
3050 from military duty except upon conditions provided by law.
3051 (b) The organizing, equipping, housing, maintaining, and
3052 disciplining of the militia, and the safekeeping of public arms

3053 may be provided for by law.
3054 (c) The governor shall appoint all commissioned officers
3055 of the militia, including an adjutant general who shall be chief
3056 of staff. The appointment of all general officers shall be
3057 subject to confirmation by the senate.
3058 (d) The qualifications of personnel and officers of the
3059 federally recognized national guard, including the adjutant
3060 general, and the grounds and proceedings for their discipline
3061 and removal shall conform to the appropriate United States Army
3062 or Air Force regulations and usages.
3063 SECTION 3. Vacancy in office.--Vacancy in office shall
3064 occur upon the creation of an office, upon the death, removal
3065 from office, or resignation of the incumbent or the incumbent's
3066 succession to another office, unexplained absence for sixty
3067 consecutive days, or failure to maintain the residence required
3068 when elected or appointed, and upon failure of one elected or
3069 appointed to office to qualify within thirty days from the
3070 commencement of the term.
3071 SECTION 4. Homestead; exemptions.--
3072 (a) There shall be exempt from forced sale under process
3073 of any court, and no judgment, decree, or execution shall be a
3074 lien thereon, except for the payment of taxes and assessments
3075 thereon, obligations contracted for the purchase, improvement,
3076 or repair thereof, or obligations contracted for house, field,
3077 or other labor performed on the realty, the following property
3078 owned by a natural person:
3079 (1) A homestead, if located outside a municipality, to the
3080 extent of one hundred sixty acres of contiguous land and

3081 improvements thereon, which shall not be reduced without the
3082 owner's consent by reason of subsequent inclusion in a
3083 municipality; or if located within a municipality, to the extent
3084 of one-half acre of contiguous land, upon which the exemption
3085 shall be limited to the residence of the owner or the owner's
3086 family;
3087 (2) Personal property to the value of one thousand
3088 dollars.
3089 (b) These exemptions shall inure to the surviving spouse
3090 or heirs of the owner.
3091 (c) The homestead shall not be subject to devise if the
3092 owner is survived by spouse or minor child, except the homestead
3093 may be devised to the owner's spouse if there be no minor child.
3094 The owner of homestead real estate, joined by the spouse if
3095 married, may alienate the homestead by mortgage, sale, or gift
3096 and, if married, may by deed transfer the title to an estate by
3097 the entirety with the spouse. If the owner or spouse is
3098 incompetent, the method of alienation or encumbrance shall be as
3099 provided by law.
3100 SECTION 5. Coverture and property.--There shall be no
3101 distinction between married women and married men in the
3102 holding, control, disposition, or encumbering of their property,
3103 both real and personal; except that dower or curtesy may be
3104 established and regulated by law.
3105 SECTION 6. Eminent domain.--
3106 (a) No private property shall be taken except for a public
3107 purpose and with full compensation therefor paid to each owner
3108 or secured by deposit in the registry of the court and available

3109 to the owner.
3110 (b) Provision may be made by law for the taking of
3111 easements, by like proceedings, for the drainage of the land of
3112 one person over or through the land of another.
3113 SECTION 7. Lotteries.--Lotteries, other than the types of
3114 pari-mutuel pools authorized by law as of January 7, 1969 ~~the~~
3115 ~~effective date of this constitution~~, are hereby prohibited in
3116 this state.
3117 SECTION 8. Census.--
3118 (a) Each decennial census of the state taken by the United
3119 States shall be an official census of the state.
3120 (b) Each decennial census, for the purpose of
3121 classifications based upon population, shall become effective on
3122 the thirtieth day after the final adjournment of the regular
3123 session of the legislature convened next after certification of
3124 the census.
3125 SECTION 9. Repeal of criminal statutes.--Repeal or
3126 amendment of a criminal statute shall not affect prosecution or
3127 punishment for any crime previously committed.
3128 SECTION 10. Felony; definition.--The term "felony," as
3129 used herein and in the laws of this state, shall mean any
3130 criminal offense that is punishable under the laws of this
3131 state, or that would be punishable if committed in this state,
3132 by death or by imprisonment in the state penitentiary.
3133 SECTION 11. Sovereignty lands.--The title to lands under
3134 navigable waters, within the boundaries of the state, which have
3135 not been alienated, including beaches below mean high water
3136 lines, is held by the state, by virtue of its sovereignty, in

3137 trust for all the people. Sale of such lands may be authorized
3138 by law, but only when in the public interest. Private use of
3139 portions of such lands may be authorized by law, but only when
3140 not contrary to the public interest.
3141 SECTION 12. Rules of construction.--Unless qualified in
3142 the text, the following rules of construction shall apply to
3143 this constitution.
3144 (a) "Herein" refers to the entire constitution.
3145 (b) The singular includes the plural.
3146 (c) The masculine includes the feminine.
3147 (d) "Vote of the electors" means the vote of the majority
3148 of those voting on the matter in an election, general or
3149 special, in which those participating are limited to the
3150 electors of the governmental unit referred to in the text.
3151 (e) Vote or other action of a legislative house or other
3152 governmental body means the vote or action of a majority or
3153 other specified percentage of those members voting on the
3154 matter. "Of the membership" means "of all members thereof."
3155 (f) The terms "judicial office," "justices," and "judges"
3156 shall not include judges of courts established solely for the
3157 trial of violations of ordinances.
3158 (g) "Special law" means a special or local law.
3159 (h) Titles and subtitles shall not be used in
3160 construction.
3161 SECTION 13. Suits against the state.--Provision may be
3162 made by general law for bringing suit against the state as to
3163 all liabilities now existing or hereafter originating.
3164 SECTION 14. State retirement systems benefit changes.--A

3165 governmental unit responsible for any retirement or pension
3166 system supported in whole or in part by public funds shall not,
3167 after January 1, 1977, provide any increase in the benefits to
3168 the members or beneficiaries of such system unless such unit has
3169 made or concurrently makes provision for the funding of the
3170 increase in benefits on a sound actuarial basis.
3171 SECTION 15. State operated lotteries.--
3172 (a) Lotteries may be operated by the state.
3173 (b) ~~If any subsection or subsections of the amendment to~~
3174 ~~the Florida Constitution are held unconstitutional for~~
3175 ~~containing more than one subject, this amendment shall be~~
3176 ~~limited to subsection (a) above.~~
3177 ~~(c) This amendment shall be implemented as follows:~~
3178 ~~(1) Schedule. On the effective date of this amendment,~~ The
3179 lotteries shall be known as the Florida Education Lotteries. Net
3180 proceeds derived from the lotteries shall be deposited to a
3181 state trust fund, to be designated The State Education Lotteries
3182 Trust Fund, to be appropriated by the legislature. The schedule
3183 may be amended by general law.
3184 SECTION 16. Limiting marine net fishing.--
3185 (a) The marine resources of the State of Florida belong to
3186 all of the people of the state and should be conserved and
3187 managed for the benefit of the state, its people, and future
3188 generations. To this end, the people hereby enact limitations on
3189 marine net fishing in Florida waters to protect saltwater
3190 finfish, shellfish, and other marine animals from unnecessary
3191 killing, overfishing, and waste.
3192 (b) For the purpose of catching or taking any saltwater

3193 finfish, shellfish, or other marine animals in Florida waters:
3194 (1) No gill nets or other entangling nets shall be used in
3195 any Florida waters; and
3196 (2) In addition to the prohibition set forth in paragraph
3197 (1), no other type of net containing more than 500 square feet
3198 of mesh area shall be used in nearshore and inshore Florida
3199 waters. Additionally, no more than two such nets, which shall
3200 not be connected, shall be used from any vessel, and no person
3201 not on a vessel shall use more than one such net in nearshore
3202 and inshore Florida waters.
3203 (c) For purposes of this section, the term:
3204 (1) "Gill net" means one or more walls of netting which
3205 captures saltwater finfish by ensnaring or entangling them in
3206 the meshes of the net by the gills, and "entangling net" means a
3207 drift net, trammell net, stab net, or any other net which
3208 captures saltwater finfish, shellfish, or other marine animals
3209 by causing all or part of heads, fins, legs, or other body parts
3210 to become entangled or ensnared in the meshes of the net, but a
3211 hand-thrown ~~hand-thrown~~ cast net is not a gill net or an
3212 entangling net;
3213 (2) "Mesh area" of a net means the total area of netting
3214 with the meshes open to comprise the maximum square footage. The
3215 square footage shall be calculated using standard mathematical
3216 formulas for geometric shapes. Seines and other rectangular nets
3217 shall be calculated using the maximum length and maximum width
3218 of the netting. Trawls and other bag type nets shall be
3219 calculated as a cone using the maximum circumference of the net
3220 mouth to derive the radius, and the maximum length from the net

3221 mouth to the tail end of the net to derive the slant height.
3222 Calculations for any other nets or combination type nets shall
3223 be based on the shapes of the individual components;
3224 (3) "Coastline" means the territorial sea base line for
3225 the State of Florida established pursuant to the laws of the
3226 United States of America;
3227 (4) "Florida waters" means the waters of the Atlantic
3228 Ocean, the Gulf of Mexico, the Straits of Florida, and any other
3229 bodies of water under the jurisdiction of the State of Florida,
3230 whether coastal, intracoastal, or inland, and any part thereof;
3231 and
3232 (5) "Nearshore and inshore Florida waters" means all
3233 Florida waters inside a line three miles seaward of the
3234 coastline along the Gulf of Mexico and inside a line one mile
3235 seaward of the coastline along the Atlantic Ocean.
3236 (d) This section shall not apply to the use of nets for
3237 scientific research or governmental purposes.
3238 (e) Persons violating this section shall be prosecuted and
3239 punished pursuant to the penalties provided in s. ~~section~~
3240 370.021(2)(a),(b),(c)6. and 7., and (e), Florida Statutes
3241 (1991), unless and until the legislature enacts more stringent
3242 penalties for violations hereof. ~~On and after the effective date~~
3243 ~~of this section,~~ Law enforcement officers in the state are
3244 authorized to enforce the provisions of this section in the same
3245 manner and authority as if a violation of this section
3246 constituted a violation of chapter 370, Florida Statutes (1991).
3247 (f) It is the intent of this section that implementing
3248 legislation is not required for enforcing any violations hereof,

3249 but nothing in this section prohibits the establishment by law
3250 or pursuant to law of more restrictions on the use of nets for
3251 the purpose of catching or taking any saltwater finfish,
3252 shellfish, or other marine animals.
3253 (g) If any portion of this section is held invalid for any
3254 reason, the remaining portion of this section, to the fullest
3255 extent possible, shall be severed from the void portion and
3256 given the fullest possible force and application.
3257 ~~(h) This section shall take effect on the July 1 next~~
3258 ~~occurring after approval hereof by vote of the electors~~.
3259 SECTION 17. Everglades Trust Fund.--
3260 (a) There is hereby established the Everglades Trust Fund,
3261 which shall not be subject to termination pursuant to Article
3262 III, section 18(f) ~~19(f)~~. The purpose of the Everglades Trust
3263 Fund is to make funds available to assist in conservation and
3264 protection of natural resources and abatement of water pollution
3265 in the Everglades Protection Area and the Everglades
3266 Agricultural Area. The trust fund shall be administered by the
3267 South Florida Water Management District, or its successor
3268 agency, consistent with statutory law.
3269 (b) The Everglades Trust Fund may receive funds from any
3270 source, including gifts from individuals, corporations, or other
3271 entities; funds from general revenue as determined by the
3272 legislature; and any other funds so designated by the
3273 legislature, by the United States Congress, or by any other
3274 governmental entity.
3275 (c) Funds deposited to the Everglades Trust Fund shall be
3276 expended for purposes of conservation and protection of natural

3277 resources and abatement of water pollution in the Everglades
3278 Protection Area and Everglades Agricultural Area.
3279 (d) For purposes of this section ~~subsection~~, the terms
3280 "Everglades Protection Area," "Everglades Agricultural Area,"
3281 and "South Florida Water Management District" shall have the
3282 meanings as defined in statutes in effect on January 1, 1996.
3283 SECTION 18. Disposition of conservation lands.--The fee
3284 interest in real property held by an entity of the state and
3285 designated for natural resources conservation purposes as
3286 provided by general law shall be managed for the benefit of the
3287 citizens of this state and may be disposed of only if the
3288 members of the governing board of the entity holding title
3289 determine the property is no longer needed for conservation
3290 purposes and only upon a vote of two-thirds of the governing
3291 board.
3292 ~~SECTION 19. High speed ground transportation system.--To~~
3293 ~~reduce traffic congestion and provide alternatives to the~~
3294 ~~traveling public, it is hereby declared to be in the public~~
3295 ~~interest that a high-speed ground transportation system~~
3296 ~~consisting of a monorail, fixed guideway or magnetic levitation~~
3297 ~~system, capable of speeds in excess of 120 miles per hour, be~~
3298 ~~developed and operated in the State of Florida to provide high~~
3299 ~~speed ground transportation by innovative, efficient and~~
3300 ~~effective technologies consisting of dedicated rails or~~
3301 ~~guideways separated from motor vehicular traffic that will link~~
3302 ~~the five largest urban areas of the State as determined by the~~
3303 ~~Legislature and provide for access to existing air and ground~~
3304 ~~transportation facilities and services. The Legislature, the~~

3305 ~~Cabinet and the Governor are hereby directed to proceed with the~~
3306 ~~development of such a system by the State and/or by a private~~
3307 ~~entity pursuant to state approval and authorization, including~~
3308 ~~the acquisition of right-of-way, the financing of design and~~
3309 ~~construction of the system, and the operation of the system, as~~
3310 ~~provided by specific appropriation and by law, with construction~~
3311 ~~to begin on or before November 1, 2003.~~
3312 SECTION 19 ~~20~~. Workplaces without tobacco smoke.--
3313 (a) PROHIBITION.--As a Florida health initiative to
3314 protect people from the health hazards of second-hand tobacco
3315 smoke, tobacco smoking is prohibited in enclosed indoor
3316 workplaces.
3317 (b) EXCEPTIONS.--As further explained in the definitions
3318 below, tobacco smoking may be permitted in private residences
3319 whenever they are not being used commercially to provide child
3320 care, adult care, or health care, or any combination thereof;
3321 and further may be permitted in retail tobacco shops, designated
3322 smoking guest rooms at hotels and other public lodging
3323 establishments; and stand-alone bars. However, nothing in this
3324 section or in its implementing legislation or regulations shall
3325 prohibit the owner, lessee, or other person in control of the
3326 use of an enclosed indoor workplace from further prohibiting or
3327 limiting smoking therein.
3328 (c) DEFINITIONS.--For purposes of this section, the
3329 following words and terms shall have the stated meanings:
3330 (1) "Smoking" means inhaling, exhaling, burning, carrying,
3331 or possessing any lighted tobacco product, including cigarettes,
3332 cigars, pipe tobacco, and any other lighted tobacco product.

3333 (2) "Second-hand smoke," also known as environmental
3334 tobacco smoke ~~(ETS)~~, means smoke emitted from lighted,
3335 smoldering, or burning tobacco when the smoker is not inhaling;
3336 smoke emitted at the mouthpiece during puff drawing; and smoke
3337 exhaled by the smoker.
3338 (3) "Work" means any person's providing any employment or
3339 employment-type service for or at the request of another
3340 individual or individuals or any public or private entity,
3341 whether for compensation or not, whether full or part-time,
3342 whether legally or not. "Work" includes, without limitation, any
3343 such service performed by an employee, independent contractor,
3344 agent, partner, proprietor, manager, officer, director,
3345 apprentice, trainee, associate, servant, volunteer, and the
3346 like.
3347 (4) "Enclosed indoor workplace" means any place where one
3348 or more persons engages in work, and which place is
3349 predominantly or totally bounded on all sides and above by
3350 physical barriers, regardless of whether such barriers consist
3351 of or include uncovered openings, screened or otherwise
3352 partially covered openings; or open or closed windows,
3353 jalousies, doors, or the like. This section applies to all such
3354 enclosed indoor workplaces without regard to whether work is
3355 occurring at any given time.
3356 (5) "Commercial" use of a private residence means any time
3357 during which the owner, lessee, or other person occupying or
3358 controlling the use of the private residence is furnishing in
3359 the private residence, or causing or allowing to be furnished in
3360 the private residence, child care, adult care, or health care,

3361 or any combination thereof, and receiving or expecting to
3362 receive compensation therefor.
3363 (6) "Retail tobacco shop" means any enclosed indoor
3364 workplace dedicated to or predominantly for the retail sale of
3365 tobacco, tobacco products, and accessories for such products, in
3366 which the sale of other products or services is merely
3367 incidental.
3368 (7) "Designated smoking guest rooms at public lodging
3369 establishments" means the sleeping rooms and directly associated
3370 private areas, such as bathrooms, living rooms, and kitchen
3371 areas, if any, rented to guests for their exclusive transient
3372 occupancy in public lodging establishments including hotels,
3373 motels, resort condominiums, transient apartments, transient
3374 lodging establishments, rooming houses, boarding houses, resort
3375 dwellings, bed and breakfast inns, and the like; and designated
3376 by the person or persons having management authority over such
3377 public lodging establishment as rooms in which smoking may be
3378 permitted.
3379 (8) "Stand-alone bar" means any place of business devoted
3380 during any time of operation predominantly or totally to serving
3381 alcoholic beverages, intoxicating beverages, or intoxicating
3382 liquors, or any combination thereof, for consumption on the
3383 licensed premises; in which the serving of food, if any, is
3384 merely incidental to the consumption of any such beverage; and
3385 that is not located within, and does not share any common
3386 entryway or common indoor area with, any other enclosed indoor
3387 workplace including any business for which the sale of food or
3388 any other product or service is more than an incidental source

3389 of gross revenue.
3390 (d) LEGISLATION.--~~In the next regular legislative session~~
3391 ~~occurring after voter approval of this amendment,~~ The ~~Florida~~
3392 legislature shall adopt legislation to implement this amendment
3393 in a manner consistent with its broad purpose and stated terms~~,~~
3394 ~~and having an effective date no later than July 1 of the year~~
3395 ~~following voter approval~~. Such legislation shall include,
3396 without limitation, civil penalties for violations of this
3397 section; provisions for administrative enforcement; and the
3398 requirement and authorization of agency rules for implementation
3399 and enforcement. Nothing herein shall preclude the legislature
3400 from enacting any law constituting or allowing a more
3401 restrictive regulation of tobacco smoking than is provided in
3402 this section.
3403 ~~SECTION 21. Limiting cruel and inhumane confinement of~~
3404 ~~pigs during pregnancy.--Inhumane treatment of animals is a~~
3405 ~~concern of Florida citizens. To prevent cruelty to certain~~
3406 ~~animals and as recommended by The Humane Society of the United~~
3407 ~~States, the people of the State of Florida hereby limit the~~
3408 ~~cruel and inhumane confinement of pigs during pregnancy as~~
3409 ~~provided herein.~~
3410 ~~(a) It shall be unlawful for any person to confine a pig~~
3411 ~~during pregnancy in an enclosure, or to tether a pig during~~
3412 ~~pregnancy, on a farm in such a way that she is prevented from~~
3413 ~~turning around freely.~~
3414 ~~(b) This section shall not apply:~~
3415 ~~(1) When a pig is undergoing an examination, test,~~
3416 ~~treatment or operation carried out for veterinary purposes,~~

3417 ~~provided the period during which the animal is confined or~~
3418 ~~tethered is not longer than reasonably necessary.~~
3419 ~~(2) During the prebirthing period.~~
3420 ~~(c) For purposes of this section:~~
3421 ~~(1) "Enclosure" means any cage, crate or other enclosure~~
3422 ~~in which a pig is kept for all or the majority of any day,~~
3423 ~~including what is commonly described as the "gestation crate."~~
3424 ~~(2) "Farm" means the land, buildings, support facilities,~~
3425 ~~and other appurtenances used in the production of animals for~~
3426 ~~food or fiber.~~
3427 ~~(3) "Person" means any natural person, corporation and/or~~
3428 ~~business entity.~~
3429 ~~(4) "Pig" means any animal of the porcine species.~~
3430 ~~(5) "Turning around freely" means turning around without~~
3431 ~~having to touch any side of the pig's enclosure.~~
3432 ~~(6) "Prebirthing period" means the seven day period prior~~
3433 ~~to a pig's expected date of giving birth.~~
3434 ~~(d) A person who violates this section shall be guilty of~~
3435 ~~a misdemeanor of the first degree, punishable as provided in s.~~
3436 ~~775.082(4)(a), Florida Statutes (1999), as amended, or by a fine~~
3437 ~~of not more than $5000, or by both imprisonment and a fine,~~
3438 ~~unless and until the legislature enacts more stringent penalties~~
3439 ~~for violations hereof. On and after the effective date of this~~
3440 ~~section, law enforcement officers in the state are authorized to~~
3441 ~~enforce the provisions of this section in the same manner and~~
3442 ~~authority as if a violation of this section constituted a~~
3443 ~~violation of Section 828.13, Florida Statutes (1999). The~~
3444 ~~confinement or tethering of each pig shall constitute a separate~~

3445 ~~offense. The knowledge or acts of agents and employees of a~~
3446 ~~person in regard to a pig owned, farmed or in the custody of a~~
3447 ~~person, shall be held to be the knowledge or act of such person.~~
3448 ~~(e) It is the intent of this section that implementing~~
3449 ~~legislation is not required for enforcing any violations hereof.~~
3450 ~~(f) If any portion of this section is held invalid for any~~
3451 ~~reason, the remaining portion of this section, to the fullest~~
3452 ~~extent possible, shall be severed from the void portion and~~
3453 ~~given the fullest possible force and application.~~
3454 ~~(g) This section shall take effect six years after~~
3455 ~~approval by the electors.~~
3456 SECTION 20 ~~22~~. Parental notice of termination of a minor's
3457 pregnancy.--The legislature shall not limit or deny the privacy
3458 right guaranteed to a minor under the United States Constitution
3459 as interpreted by the United States Supreme Court.
3460 Notwithstanding a minor's right of privacy provided in Article
3461 I, section 23 ~~of Article I~~, the legislature is authorized to
3462 require by general law for notification to a parent or guardian
3463 of a minor before the termination of the minor's pregnancy. The
3464 legislature shall provide exceptions to such requirement for
3465 notification and shall create a process for judicial waiver of
3466 the notification.
3467 SECTION 21 ~~23~~. Slot machines.--
3468 (a) ~~After voter approval of this constitutional amendment,~~
3469 The governing bodies of Miami-Dade and Broward Counties each may
3470 hold a countywide ~~county-wide~~ referendum in their respective
3471 counties on whether to authorize slot machines within existing,
3472 licensed pari-mutuel ~~parimutuel~~ facilities (thoroughbred and

3473 harness racing, greyhound racing, and jai-alai) that have
3474 conducted live racing or games in that county during ~~each of~~ the
3475 ~~last two~~ calendar years 2002 and 2003 ~~before the effective date~~
3476 ~~of this amendment~~. If the voters of such county approve the
3477 referendum question by majority vote, slot machines shall be
3478 authorized in such parimutuel facilities. If the voters of such
3479 county by majority vote disapprove the referendum question, slot
3480 machines shall not be so authorized, and the question shall not
3481 be presented in another referendum in that county for at least
3482 two years.
3483 (b) ~~In the next regular Legislative session occurring~~
3484 ~~after voter approval of this constitutional amendment,~~ The
3485 legislature shall adopt legislation implementing this section
3486 ~~and having an effective date no later than July 1 of the year~~
3487 ~~following voter approval of this amendment~~. Such legislation
3488 shall authorize agency rules for implementation, and may include
3489 provisions for the licensure and regulation of slot machines.
3490 The legislature may tax slot machine revenues, and any such
3491 taxes must supplement public education funding statewide.
3492 (c) If any part of this section is held invalid for any
3493 reason, the remaining portion or portions shall be severed from
3494 the invalid portion and given the fullest possible force and
3495 effect.
3496 ~~(d) This amendment shall become effective when approved by~~
3497 ~~vote of the electors of the state.~~
3498 ~~SECTION 24. Florida minimum wage.--~~
3499 ~~(a) PUBLIC POLICY. All working Floridians are entitled to~~
3500 ~~be paid a minimum wage that is sufficient to provide a decent~~

3501 ~~and healthy life for them and their families, that protects~~
3502 ~~their employers from unfair low-wage competition, and that does~~
3503 ~~not force them to rely on taxpayer-funded public services in~~
3504 ~~order to avoid economic hardship.~~
3505 ~~(b) DEFINITIONS. As used in this amendment, the terms~~
3506 ~~"Employer," "Employee" and "Wage" shall have the meanings~~
3507 ~~established under the federal Fair Labor Standards Act (FLSA)~~
3508 ~~and its implementing regulations.~~
3509 ~~(c) MINIMUM WAGE. Employers shall pay Employees Wages no~~
3510 ~~less than the Minimum Wage for all hours worked in Florida. Six~~
3511 ~~months after enactment, the Minimum Wage shall be established at~~
3512 ~~an hourly rate of $6.15. On September 30th of that year and on~~
3513 ~~each following September 30th, the state Agency for Workforce~~
3514 ~~Innovation shall calculate an adjusted Minimum Wage rate by~~
3515 ~~increasing the current Minimum Wage rate by the rate of~~
3516 ~~inflation during the twelve months prior to each September 1st~~
3517 ~~using the consumer price index for urban wage earners and~~
3518 ~~clerical workers, CPI-W, or a successor index as calculated by~~
3519 ~~the United States Department of Labor. Each adjusted Minimum~~
3520 ~~Wage rate calculated shall be published and take effect on the~~
3521 ~~following January 1st. For tipped Employees meeting eligibility~~
3522 ~~requirements for the tip credit under the FLSA, Employers may~~
3523 ~~credit towards satisfaction of the Minimum Wage tips up to the~~
3524 ~~amount of the allowable FLSA tip credit in 2003.~~
3525 ~~(d) RETALIATION PROHIBITED. It shall be unlawful for an~~
3526 ~~Employer or any other party to discriminate in any manner or~~
3527 ~~take adverse action against any person in retaliation for~~
3528 ~~exercising rights protected under this amendment. Rights~~

3529 ~~protected under this amendment include, but are not limited to,~~
3530 ~~the right to file a complaint or inform any person about any~~
3531 ~~party's alleged noncompliance with this amendment, and the right~~
3532 ~~to inform any person of his or her potential rights under this~~
3533 ~~amendment and to assist him or her in asserting such rights.~~
3534 ~~(e) ENFORCEMENT.--Persons aggrieved by a violation of this~~
3535 ~~amendment may bring a civil action in a court of competent~~
3536 ~~jurisdiction against an Employer or person violating this~~
3537 ~~amendment and, upon prevailing, shall recover the full amount of~~
3538 ~~any back wages unlawfully withheld plus the same amount as~~
3539 ~~liquidated damages, and shall be awarded reasonable attorney's~~
3540 ~~fees and costs. In addition, they shall be entitled to such~~
3541 ~~legal or equitable relief as may be appropriate to remedy the~~
3542 ~~violation including, without limitation, reinstatement in~~
3543 ~~employment and/or injunctive relief. Any Employer or other~~
3544 ~~person found liable for willfully violating this amendment shall~~
3545 ~~also be subject to a fine payable to the state in the amount of~~
3546 ~~$1000.00 for each violation. The state attorney general or other~~
3547 ~~official designated by the state legislature may also bring a~~
3548 ~~civil action to enforce this amendment. Actions to enforce this~~
3549 ~~amendment shall be subject to a statute of limitations of four~~
3550 ~~years or, in the case of willful violations, five years. Such~~
3551 ~~actions may be brought as a class action pursuant to Rule 1.220~~
3552 ~~of the Florida Rules of Civil Procedure.~~
3553 ~~(f) ADDITIONAL LEGISLATION, IMPLEMENTATION AND~~
3554 ~~CONSTRUCTION.--Implementing legislation is not required in order~~
3555 ~~to enforce this amendment. The state legislature may by statute~~
3556 ~~establish additional remedies or fines for violations of this~~

3557 ~~amendment, raise the applicable Minimum Wage rate, reduce the~~
3558 ~~tip credit, or extend coverage of the Minimum Wage to employers~~
3559 ~~or employees not covered by this amendment. The state~~
3560 ~~legislature may by statute or the state Agency for Workforce~~
3561 ~~Innovation may by regulation adopt any measures appropriate for~~
3562 ~~the implementation of this amendment. This amendment provides~~
3563 ~~for payment of a minimum wage and shall not be construed to~~
3564 ~~preempt or otherwise limit the authority of the state~~
3565 ~~legislature or any other public body to adopt or enforce any~~
3566 ~~other law, regulation, requirement, policy or standard that~~
3567 ~~provides for payment of higher or supplemental wages or~~
3568 ~~benefits, or that extends such protections to employers or~~
3569 ~~employees not covered by this amendment. It is intended that~~
3570 ~~case law, administrative interpretations, and other guiding~~
3571 ~~standards developed under the federal FLSA shall guide the~~
3572 ~~construction of this amendment and any implementing statutes or~~
3573 ~~regulations.~~
3574 ~~(g) SEVERABILITY. If any part of this amendment, or the~~
3575 ~~application of this amendment to any person or circumstance, is~~
3576 ~~held invalid, the remainder of this amendment, including the~~
3577 ~~application of such part to other persons or circumstances,~~
3578 ~~shall not be affected by such a holding and shall continue in~~
3579 ~~full force and effect. To this end, the parts of this amendment~~
3580 ~~are severable.~~
3581 ~~SECTION 25. Patients' right to know about adverse medical~~
3582 ~~incidents.--~~
3583 ~~(a) In addition to any other similar rights provided~~
3584 ~~herein or by general law, patients have a right to have access~~

3585 ~~to any records made or received in the course of business by a~~
3586 ~~health care facility or provider relating to any adverse medical~~
3587 ~~incident.~~
3588 ~~(b) In providing such access, the identity of patients~~
3589 ~~involved in the incidents shall not be disclosed, and any~~
3590 ~~privacy restrictions imposed by federal law shall be maintained.~~
3591 ~~(c) For purposes of this section, the following terms have~~
3592 ~~the following meanings:~~
3593 ~~(1) The phrases "health care facility" and "health care~~
3594 ~~provider" have the meaning given in general law related to a~~
3595 ~~patient's rights and responsibilities.~~
3596 ~~(2) The term "patient" means an individual who has sought,~~
3597 ~~is seeking, is undergoing, or has undergone care or treatment in~~
3598 ~~a health care facility or by a health care provider.~~
3599 ~~(3) The phrase "adverse medical incident" means medical~~
3600 ~~negligence, intentional misconduct, and any other act, neglect,~~
3601 ~~or default of a health care facility or health care provider~~
3602 ~~that caused or could have caused injury to or death of a~~
3603 ~~patient, including, but not limited to, those incidents that are~~
3604 ~~required by state or federal law to be reported to any~~
3605 ~~governmental agency or body, and incidents that are reported to~~
3606 ~~or reviewed by any health care facility peer review, risk~~
3607 ~~management, quality assurance, credentials, or similar~~
3608 ~~committee, or any representative of any such committees.~~
3609 ~~(4) The phrase "have access to any records" means, in~~
3610 ~~addition to any other procedure for producing such records~~
3611 ~~provided by general law, making the records available for~~
3612 ~~inspection and copying upon formal or informal request by the~~

3613 ~~patient or a representative of the patient, provided that~~
3614 ~~current records which have been made publicly available by~~
3615 ~~publication or on the Internet may be "provided" by reference to~~
3616 ~~the location at which the records are publicly available.~~
3617 ~~SECTION 26. Prohibition of medical license after repeated~~
3618 ~~medical malpractice.--~~
3619 ~~(a) No person who has been found to have committed three~~
3620 ~~or more incidents of medical malpractice shall be licensed or~~
3621 ~~continue to be licensed by the State of Florida to provide~~
3622 ~~health care services as a medical doctor.~~
3623 ~~(b) For purposes of this section, the following terms have~~
3624 ~~the following meanings:~~
3625 ~~(1) The phrase "medical malpractice" means both the~~
3626 ~~failure to practice medicine in Florida with that level of care,~~
3627 ~~skill, and treatment recognized in general law related to health~~
3628 ~~care providers' licensure, and any similar wrongful act,~~
3629 ~~neglect, or default in other states or countries which, if~~
3630 ~~committed in Florida, would have been considered medical~~
3631 ~~malpractice.~~
3632 ~~(2) The phrase "found to have committed" means that the~~
3633 ~~malpractice has been found in a final judgment of a court of~~
3634 ~~law, final administrative agency decision, or decision of~~
3635 ~~binding arbitration.~~
3636
3637 ARTICLE XI
3638 AMENDMENTS
3639
3640 SECTION 1. Proposal by legislature.--Amendment of a

3641 section or revision of one or more articles, or the whole, of
3642 this constitution may be proposed by joint resolution agreed to
3643 by three-fifths of the membership of each house of the
3644 legislature. The full text of the joint resolution and the vote
3645 of each member voting shall be entered on the journal of each
3646 house.
3647 SECTION 2. Revision commission.--
3648 (a) Within thirty days before the convening of the 2017
3649 regular session of the legislature, and each twentieth year
3650 thereafter, there shall be established a constitution revision
3651 commission composed of the following thirty-seven members:
3652 (1) The attorney general of the state;
3653 (2) Fifteen members selected by the governor;
3654 (3) Nine members selected by the speaker of the house of
3655 representatives and nine members selected by the president of
3656 the senate; and
3657 (4) Three members selected by the Chief Justice of the
3658 Supreme Court of Florida with the advice of the justices.
3659 (b) The governor shall designate one member of the
3660 commission as its chair. Vacancies in the membership of the
3661 commission shall be filled in the same manner as the original
3662 appointments.
3663 (c) Each constitution revision commission shall convene at
3664 the call of its chair, adopt its rules of procedure, examine the
3665 constitution of the state, hold public hearings, and, not later
3666 than one hundred eighty days prior to the next general election,
3667 file with the custodian of state records its proposal, if any,
3668 of a revision of this constitution or any part of it.

3669 SECTION 3. Initiative.--The power to propose the revision
3670 or amendment of any portion or portions of this constitution by
3671 initiative is reserved to the people, provided that, any such
3672 revision or amendment, except for those limiting the power of
3673 government to raise revenue, shall embrace but one subject and
3674 matter directly connected therewith. It may be invoked by filing
3675 with the custodian of state records a petition containing a copy
3676 of the proposed revision or amendment, signed by a number of
3677 electors in each of one half of the congressional districts of
3678 the state, and of the state as a whole, equal to eight percent
3679 of the votes cast in each of such districts respectively and in
3680 the state as a whole in the last preceding election in which
3681 presidential electors were chosen.
3682 SECTION 4. Constitutional convention.--
3683 (a) The power to call a convention to consider a revision
3684 of the entire constitution is reserved to the people. It may be
3685 invoked by filing with the custodian of state records a
3686 petition, containing a declaration that a constitutional
3687 convention is desired, signed by a number of electors in each of
3688 one half of the congressional districts of the state, and of the
3689 state as a whole, equal to fifteen percent ~~per cent~~ of the votes
3690 cast in each such district respectively and in the state as a
3691 whole in the last preceding election of presidential electors.
3692 (b) At the next general election held more than ninety
3693 days after the filing of such petition, there shall be submitted
3694 to the electors of the state the question: "Shall a
3695 constitutional convention be held?" If a majority voting on the
3696 question votes in the affirmative, at the next succeeding

3697 general election there shall be elected from each representative
3698 district a member of a constitutional convention. On the twenty-
3699 first day following that election, the convention shall sit at
3700 the capital, elect officers, adopt rules of procedure, judge the
3701 election of its membership, and fix a time and place for its
3702 future meetings. Not later than ninety days before the next
3703 succeeding general election, the convention shall cause to be
3704 filed with the custodian of state records any revision of this
3705 constitution proposed by it.
3706 SECTION 5. Amendment or revision election.--
3707 (a) A proposed amendment to or revision of this
3708 constitution, or any part of it, shall be submitted to the
3709 electors at the next general election held more than ninety days
3710 after the joint resolution or report of revision commission,
3711 constitutional convention, or taxation and budget reform
3712 commission proposing it is filed with the custodian of state
3713 records, unless, pursuant to law enacted by the affirmative vote
3714 of three-fourths of the membership of each house of the
3715 legislature and limited to a single amendment or revision, it is
3716 submitted at an earlier special election held more than ninety
3717 days after such filing.
3718 (b) A proposed amendment or revision of this constitution,
3719 or any part of it, by initiative shall be submitted to the
3720 electors at the general election provided the initiative
3721 petition is filed with the custodian of state records no later
3722 than February 1 of the year in which the general election is
3723 held.
3724 (c) The legislature shall provide by general law, prior to

3725 the holding of an election pursuant to this section, for the
3726 provision of a statement to the public regarding the probable
3727 financial impact of any amendment proposed by initiative
3728 pursuant to section 3.
3729 (d) Once in the tenth week, and once in the sixth week
3730 immediately preceding the week in which the election is held,
3731 the proposed amendment or revision, with notice of the date of
3732 election at which it will be submitted to the electors, shall be
3733 published in one newspaper of general circulation in each county
3734 in which a newspaper is published.
3735 (e) If the proposed amendment or revision is approved by
3736 vote of the electors, it shall be effective as an amendment to
3737 or revision of the constitution of the state on the first
3738 Tuesday after the first Monday in January following the
3739 election, or on such other date as may be specified in the
3740 amendment or revision.
3741 SECTION 6. Taxation and budget reform commission.--
3742 (a) Beginning in 2007 and each twentieth year thereafter,
3743 there shall be established a taxation and budget reform
3744 commission composed of the following members:
3745 (1) Eleven members selected by the governor, none of whom
3746 shall be a member of the legislature at the time of appointment.
3747 (2) Seven members selected by the speaker of the house of
3748 representatives and seven members selected by the president of
3749 the senate, none of whom shall be a member of the legislature at
3750 the time of appointment.
3751 (3) Four nonvoting ~~non-voting~~ ex officio members, all of
3752 whom shall be members of the legislature at the time of

3753 appointment. Two of these members, one of whom shall be a member
3754 of the minority party in the house of representatives, shall be
3755 selected by the speaker of the house of representatives, and two
3756 of these members, one of whom shall be a member of the minority
3757 party in the senate, shall be selected by the president of the
3758 senate.
3759 (b) Vacancies in the membership of the commission shall be
3760 filled in the same manner as the original appointments.
3761 (c) At its initial meeting, the members of the commission
3762 shall elect a member who is not a member of the legislature to
3763 serve as chair and the commission shall adopt its rules of
3764 procedure. Thereafter, the commission shall convene at the call
3765 of the chair. An affirmative vote of two thirds of the full
3766 commission shall be necessary for any revision of this
3767 constitution or any part of it to be proposed by the commission.
3768 (d) The commission shall examine the state budgetary
3769 process, the revenue needs and expenditure processes of the
3770 state, the appropriateness of the tax structure of the state,
3771 and governmental productivity and efficiency; review policy as
3772 it relates to the ability of state and local government to tax
3773 and adequately fund governmental operations and capital
3774 facilities required to meet the state's needs during the next
3775 twenty year period; determine methods favored by the citizens of
3776 the state to fund the needs of the state, including alternative
3777 methods for raising sufficient revenues for the needs of the
3778 state; determine measures that could be instituted to
3779 effectively gather funds from existing tax sources; examine
3780 constitutional limitations on taxation and expenditures at the

3781 state and local level; and review the state's comprehensive
3782 planning, budgeting, and needs assessment processes to determine
3783 whether the resulting information adequately supports a
3784 strategic decisionmaking process.
3785 (e) The commission shall hold public hearings as it deems
3786 necessary to carry out its responsibilities under this section.
3787 The commission shall issue a report of the results of the review
3788 carried out, and propose to the legislature any recommended
3789 statutory changes related to the taxation or budgetary laws of
3790 the state. Not later than one hundred eighty days prior to the
3791 next general election ~~in the second year following the year in~~
3792 ~~which the commission is established~~, the commission shall file
3793 with the custodian of state records its proposal, if any, of a
3794 revision of this constitution or any part of it dealing with
3795 taxation or the state budgetary process.
3796 SECTION 7. Tax or fee limitation.--Notwithstanding Article
3797 X, section 12(d) ~~of this constitution~~, no new state tax or fee
3798 shall be imposed on or after November 8, 1994, by any amendment
3799 to this constitution unless the proposed amendment is approved
3800 by not fewer than two-thirds of the voters voting in the
3801 election in which such proposed amendment is considered. For
3802 purposes of this section, the phrase "new state tax or fee"
3803 shall mean any tax or fee that ~~which~~ would produce revenue
3804 subject to lump sum or other appropriation by the legislature,
3805 either for the state general revenue fund or any trust fund,
3806 which tax or fee is not in effect on November 7, 1994, including
3807 without limitation such taxes and fees as are the subject of
3808 proposed constitutional amendments appearing on the ballot on

3809 November 8, 1994. This section shall apply to proposed
3810 constitutional amendments relating to state taxes or fees that
3811 ~~which~~ appear on the November 8, 1994, ballot, or later ballots,
3812 and any such proposed amendment that ~~which~~ fails to gain the
3813 two-thirds vote required hereby shall be null, void, and without
3814 effect.
3815
3816 ARTICLE XII
3817 SCHEDULE
3818
3819 SECTION 1. Constitution of 1885 superseded.--Articles I
3820 through IV, VII, and IX through XX of the Constitution of
3821 Florida adopted in 1885, as amended from time to time, are
3822 superseded by this revision except those sections expressly
3823 retained and made a part of this revision by reference.
3824 SECTION 2. Property taxes; millages.--Tax millages
3825 authorized in counties, municipalities, and special districts,
3826 on the date this revision becomes effective, may be continued
3827 until reduced by law.
3828 ~~SECTION 3. Officers to continue in office.--Every person~~
3829 ~~holding office when this revision becomes effective shall~~
3830 ~~continue in office for the remainder of the term if that office~~
3831 ~~is not abolished. If the office is abolished the incumbent shall~~
3832 ~~be paid adequate compensation, to be fixed by law, for the loss~~
3833 ~~of emoluments for the remainder of the term.~~
3834 ~~SECTION 4. State commissioner of education.--The state~~
3835 ~~superintendent of public instruction in office on the effective~~
3836 ~~date of this revision shall become and, for the remainder of the~~

3837 ~~term being served, shall be the commissioner of education.~~
3838 SECTION 3 ~~5~~. Superintendent of schools.--
3839 ~~(a) On the effective date of this revision the county~~
3840 ~~superintendent of public instruction of each county shall become~~
3841 ~~and, for the remainder of the term being served, shall be the~~
3842 ~~superintendent of schools of that district.~~
3843 ~~(b)~~ The method of selection of the county superintendent
3844 of public instruction of each county, as provided by or under
3845 the constitution of 1885, as amended, shall apply to the
3846 selection of the district superintendent of schools until
3847 changed as herein provided.
3848 SECTION 4 ~~6~~. Laws preserved.--
3849 (a) All laws in effect upon the adoption of this revision,
3850 to the extent not inconsistent with it, shall remain in force
3851 until they expire by their terms or are repealed.
3852 (b) All statutes that ~~which~~, under the constitution of
3853 1885, as amended, apply to the state superintendent of public
3854 instruction and those that ~~which~~ apply to the county
3855 superintendent of public instruction shall under this revision
3856 apply, respectively, to the state commissioner of education and
3857 the district superintendent of schools.
3858 SECTION 5 ~~7~~. Rights reserved.--
3859 (a) All actions, rights of action, claims, contracts, and
3860 obligations of individuals, corporations, and public bodies or
3861 agencies existing on the date this revision becomes effective
3862 shall continue to be valid as if this revision had not been
3863 adopted. All taxes, penalties, fines and forfeitures owing to
3864 the state under the constitution of 1885, as amended, shall

3865 inure to the state under this revision, and all sentences as
3866 punishment for crime shall be executed according to their terms.
3867 (b) This revision shall not be retroactive so as to create
3868 any right or liability that ~~which~~ did not exist under the
3869 constitution of 1885, as amended, based upon matters occurring
3870 prior to the adoption of this revision.
3871 SECTION 6 ~~8~~. Public debts recognized.--All bonds, revenue
3872 certificates, revenue bonds, and tax anticipation certificates
3873 issued pursuant to the constitution of 1885, as amended by the
3874 state, any agency, political subdivision, or public corporation
3875 of the state shall remain in full force and effect and shall be
3876 secured by the same sources of revenue as before the adoption of
3877 this revision, and, to the extent necessary to effectuate this
3878 section, the applicable provisions of the constitution of 1885,
3879 as amended, are retained as a part of this revision until
3880 payment in full of these public securities.
3881 SECTION 7 ~~9~~. Bonds.--
3882 (a) ADDITIONAL SECURITIES.--
3883 (1) Article IX, section 17, of the constitution of 1885,
3884 as amended, as it existed immediately before this Constitution,
3885 as revised in 1968, became effective, is adopted by this
3886 reference as a part of this revision as completely as though
3887 incorporated herein verbatim, except revenue bonds, revenue
3888 certificates, or other evidences of indebtedness hereafter
3889 issued thereunder may be issued by the agency of the state so
3890 authorized by law.
3891 (2)a. That portion of Article XII, section 7(a), ~~9,~~
3892 ~~Subsection (a)~~ of this Constitution, as amended, which by

3893 reference adopted Article XII, section 19, of the constitution
3894 of 1885, as amended, as the same existed immediately before the
3895 effective date of this amendment is adopted by this reference as
3896 part of this revision as completely as though incorporated
3897 herein verbatim, for the purpose of providing that after the
3898 effective date of this amendment all of the proceeds of the
3899 revenues derived from the gross receipts taxes, as therein
3900 defined, collected in each year shall be applied as provided
3901 therein to the extent necessary to comply with all obligations
3902 to or for the benefit of holders of bonds or certificates issued
3903 before the effective date of this amendment or any refundings
3904 thereof that ~~which~~ are secured by such gross receipts taxes. No
3905 bonds or other obligations may be issued pursuant to the
3906 provisions of Article XII, section 19, of the constitution of
3907 1885, as amended, but this provision shall not be construed to
3908 prevent the refunding of any such outstanding bonds or
3909 obligations pursuant to the provisions of this paragraph
3910 ~~subsection (a)(2)~~.
3911 b. Subject to the requirements of subparagraph a. ~~the~~
3912 ~~first paragraph of this subsection (a)(2)~~, beginning July 1,
3913 1975, all of the proceeds of the revenues derived from the gross
3914 receipts taxes collected from every person, including
3915 municipalities, as provided and levied pursuant to the
3916 provisions of chapter 203, Florida Statutes, as such chapter is
3917 amended from time to time, shall, as collected, be placed in a
3918 trust fund to be known as the "public education capital outlay
3919 and debt service trust fund" in the state treasury (hereinafter
3920 referred to as "capital outlay fund"), and used only as provided

3921 herein.
3922 c. The capital outlay fund shall be administered by the
3923 state board of education as created and constituted by Article
3924 IX, section 2, ~~of Article IX~~ of this ~~the~~ constitution ~~of Florida~~
3925 ~~as revised in 1968~~ (hereinafter referred to as "state board"),
3926 or by such other instrumentality of the state that ~~which~~ shall
3927 hereafter succeed by law to the powers, duties, and functions of
3928 the state board, including the powers, duties, and functions of
3929 the state board provided in this paragraph ~~subsection (a)(2)~~.
3930 The state board shall be a body corporate and shall have all the
3931 powers provided herein in addition to all other constitutional
3932 and statutory powers related to the purposes of this paragraph
3933 ~~subsection (a)(2)~~ heretofore or hereafter conferred by law upon
3934 the state board, or its predecessor created by the constitution
3935 of 1885, as amended.
3936 d. State bonds pledging the full faith and credit of the
3937 state may be issued, without a vote of the electors, by the
3938 state board pursuant to law to finance or refinance capital
3939 projects theretofore authorized by the legislature, and any
3940 purposes appurtenant or incidental thereto, for the state system
3941 of public education provided for in Article IX, section 1, ~~of~~
3942 ~~Article IX~~ of this constitution (hereinafter referred to as
3943 "state system"), including but not limited to institutions of
3944 higher learning, community colleges, vocational technical
3945 schools, or public schools, as now defined or as may hereafter
3946 be defined by law. All such bonds shall mature not later than
3947 thirty years after the date of issuance thereof. All other
3948 details of such bonds shall be as provided by law or by the

3949 proceedings authorizing such bonds; provided, however, that no
3950 bonds, except refunding bonds, shall be issued, and no proceeds
3951 shall be expended for the cost of any capital project, unless
3952 such project has been authorized by the legislature.
3953 e. Bonds issued pursuant to this paragraph ~~subsection~~
3954 ~~(a)(2)~~ shall be primarily payable from such revenues derived
3955 from gross receipts taxes, and shall be additionally secured by
3956 the full faith and credit of the state. No such bonds shall ever
3957 be issued in an amount exceeding ninety percent of the amount
3958 that ~~which~~ the state board determines can be serviced by the
3959 revenues derived from the gross receipts taxes accruing
3960 thereafter under the provisions of this paragraph ~~subsection~~
3961 ~~(a)(2)~~, and such determination shall be conclusive.
3962 f. The moneys in the capital outlay fund in each fiscal
3963 year shall be used only for the following purposes and in the
3964 following order of priority:
3965 1.~~a.~~ For the payment of the principal of and interest on
3966 any bonds due in such fiscal year;
3967 2.~~b.~~ For the deposit into any reserve funds provided for
3968 in the proceedings authorizing the issuance of bonds of any
3969 amounts required to be deposited in such reserve funds in such
3970 fiscal year;
3971 3.~~c.~~ For direct payment of the cost or any part of the
3972 cost of any capital project for the state system theretofore
3973 authorized by the legislature, or for the purchase or redemption
3974 of outstanding bonds in accordance with the provisions of the
3975 proceedings that ~~which~~ authorized the issuance of such bonds, or
3976 for the purpose of maintaining, restoring, or repairing existing

3977 public educational facilities.
3978 (b) REFUNDING BONDS.--Revenue bonds to finance the cost of
3979 state capital projects issued prior to the date this revision
3980 becomes effective, including projects of the Florida state
3981 turnpike authority or its successor but excluding all portions
3982 of the state highway system, may be refunded as provided by law
3983 without vote of the electors at a lower net average interest
3984 cost rate by the issuance of bonds maturing not later than the
3985 obligations refunded, secured by the same revenues only.
3986 (c) MOTOR VEHICLE FUEL TAXES.--
3987 (1) A state tax, designated "second gas tax," of two cents
3988 per gallon upon gasoline and other like products of petroleum
3989 and an equivalent tax upon other sources of energy used to
3990 propel motor vehicles as levied by Article IX, section 16, of
3991 the constitution of 1885, as amended, is hereby continued. The
3992 proceeds of said tax shall be placed monthly in the state roads
3993 distribution fund in the state treasury.
3994 (2) Article IX, section 16, of the constitution of 1885,
3995 as amended, is adopted by this reference as a part of this
3996 revision as completely as though incorporated herein verbatim
3997 for the purpose of providing that after the effective date of
3998 this revision the proceeds of the "second gas tax" as referred
3999 to therein shall be allocated among the several counties in
4000 accordance with the formula stated therein to the extent
4001 necessary to comply with all obligations to or for the benefit
4002 of holders of bonds, revenue certificates, and tax anticipation
4003 certificates or any refundings thereof secured by any portion of
4004 the "second gas tax."

4005 (3) No funds anticipated to be allocated under the formula
4006 stated in Article IX, section 16, of the constitution of 1885,
4007 as amended, shall be pledged as security for any obligation
4008 hereafter issued or entered into, except that any outstanding
4009 obligations previously issued pledging revenues allocated under
4010 said Article IX, section 16, may be refunded at a lower average
4011 net interest cost rate by the issuance of refunding bonds,
4012 maturing not later than the obligations refunded, secured by the
4013 same revenues and any other security authorized in paragraph (5)
4014 ~~of this subsection~~.
4015 (4) Subject to the requirements of paragraph (2) ~~of this~~
4016 ~~subsection~~ and after payment of administrative expenses, the
4017 "second gas tax" shall be allocated to the account of each of
4018 the several counties in the amounts to be determined as follows:
4019 There shall be an initial allocation of one-fourth in the ratio
4020 of county area to state area, one-fourth in the ratio of the
4021 total county population to the total population of the state in
4022 accordance with the latest available federal census, and one-
4023 half in the ratio of the total "second gas tax" collected on
4024 retail sales or use in each county to the total collected in all
4025 counties of the state during the previous fiscal year. If the
4026 annual debt service requirements of any obligations issued for
4027 any county, including any deficiencies for prior years, secured
4028 under paragraph (2) ~~of this subsection~~, exceeds the amount <u>that</u>
4029 ~~which~~ would be allocated to that county under the formula set
4030 out in this paragraph, the amounts allocated to other counties
4031 shall be reduced proportionately.
4032 (5) Funds allocated under paragraphs (2) and (4) ~~of this~~

4033 ~~subsection~~ shall be administered by the state board of
4034 administration created under Article IV, section 4. The board
4035 shall remit the proceeds of the "second gas tax" in each county
4036 account for use in said county as follows: eighty percent ~~per~~
4037 ~~cent~~ to the state agency supervising the state road system and
4038 twenty percent ~~per cent~~ to the governing body of the county. The
4039 percentage allocated to the county may be increased by general
4040 law. The proceeds of the "second gas tax" subject to allocation
4041 to the several counties under this paragraph ~~(5)~~ shall be used
4042 first, for the payment of obligations pledging revenues
4043 allocated pursuant to Article IX, section 16, of the
4044 constitution of 1885, as amended, and any refundings thereof;
4045 second, for the payment of debt service on bonds issued as
4046 provided by this paragraph (5) to finance the acquisition and
4047 construction of roads as defined by law; and third, for the
4048 acquisition and construction of roads and for road maintenance
4049 as authorized by law. When authorized by law, state bonds
4050 pledging the full faith and credit of the state may be issued
4051 without any election to:
4052 a. ~~(i) to~~ Refund obligations secured by any portion of the
4053 "second gas tax" allocated to a county under Article IX, section
4054 16, of the constitution of 1885, as amended.~~;~~
4055 b. ~~(ii) to~~ Finance the acquisition and construction of
4056 roads in a county when approved by the governing body of the
4057 county and the state agency supervising the state road system.~~;~~
4058 c. ~~and (iii) to~~ Refund obligations secured by any portion
4059 of the "second gas tax" allocated under paragraph ~~9(c)~~(4).
4060

4061 No such bonds shall be issued unless a state fiscal agency
4062 created by law has made a determination that in no state fiscal
4063 year will the debt service requirements of the bonds and all
4064 other bonds secured by the pledged portion of the "second gas
4065 tax" allocated to the county exceed seventy-five percent ~~per~~
4066 ~~cent~~ of the pledged portion of the "second gas tax" allocated to
4067 that county for the preceding state fiscal year, of the pledged
4068 net tolls from existing facilities collected in the preceding
4069 state fiscal year, and of the annual average net tolls
4070 anticipated during the first five state fiscal years of
4071 operation of new projects to be financed, and of any other
4072 legally available pledged revenues collected in the preceding
4073 state fiscal year. Bonds issued pursuant to this subsection
4074 shall be payable primarily from the pledged tolls, the pledged
4075 portions of the "second gas tax" allocated to that county, and
4076 any other pledged revenue, and shall mature not later than forty
4077 years from the date of issuance.
4078 (d) SCHOOL BONDS.--
4079 (1) Article XII, section 7(d), ~~9, Subsection (d)~~ of this
4080 constitution, as amended~~,~~ (which, by reference, adopted Article
4081 XII, section 18, of the constitution of 1885, as amended), as
4082 the same existed immediately before the effective date of this
4083 amendment is adopted by this reference as part of this amendment
4084 as completely as though incorporated herein verbatim, for the
4085 purpose of providing that after the effective date of this
4086 amendment the first proceeds of the revenues derived from the
4087 licensing of motor vehicles as referred to therein shall be
4088 distributed annually among the several counties in the ratio of

4089 the number of instruction units in each county, the same being
4090 coterminous ~~coterminus~~ with the school district of each county
4091 as provided in Article IX, section 4(a), ~~4, Subsection (a)~~ of
4092 this constitution, in each year computed as provided therein to
4093 the extent necessary to comply with all obligations to or for
4094 the benefit of holders of bonds or motor vehicle tax
4095 anticipation certificates issued before the effective date of
4096 this amendment or any refundings thereof that ~~which~~ are secured
4097 by any portion of such revenues derived from the licensing of
4098 motor vehicles.
4099 (2) No funds anticipated to be distributed annually among
4100 the several counties under the formula stated in Article XII,
4101 section 7(d), ~~9, Subsection (d)~~ of this constitution, as
4102 amended, as the same existed immediately before the effective
4103 date of this amendment shall be pledged as security for any
4104 obligations hereafter issued or entered into, except that any
4105 outstanding obligations previously issued pledging such funds
4106 may be refunded by the issuance of refunding bonds.
4107 (3) Subject to the requirements of paragraph (d)(1)
4108 ~~paragraph (1) of this subsection (d)~~ beginning July 1, 1973, the
4109 first proceeds of the revenues derived from the licensing of
4110 motor vehicles (hereinafter called "motor vehicle license
4111 revenues") to the extent necessary to comply with the provisions
4112 of this amendment, shall, as collected, be placed monthly in the
4113 school district and community college district capital outlay
4114 and debt service fund in the state treasury and used only as
4115 provided in this amendment. Such revenue shall be distributed
4116 annually among the several school districts and community

4117 college districts in the ratio of the number of instruction
4118 units in each school district or community college district in
4119 each year computed as provided herein. The amount of the first
4120 motor vehicle license revenues to be so set aside in each year
4121 and distributed as provided herein shall be an amount equal in
4122 the aggregate to the product of six hundred dollars ~~($600)~~
4123 multiplied by the total number of instruction units in all the
4124 school districts of Florida for the school fiscal year 1967-68,
4125 plus an amount equal in the aggregate to the product of eight
4126 hundred dollars ~~($800)~~ multiplied by the total number of
4127 instruction units in all the school districts of Florida for the
4128 school fiscal year 1972-73 and for each school fiscal year
4129 thereafter that ~~which~~ is in excess of the total number of such
4130 instruction units in all the school districts of Florida for the
4131 school fiscal year 1967-68, such excess units being designated
4132 "growth units." The amount of the first motor vehicle license
4133 revenues to be so set aside in each year and distributed as
4134 provided herein shall additionally be an amount equal in the
4135 aggregate to the product of four hundred dollars ~~($400)~~
4136 multiplied by the total number of instruction units in all
4137 community college districts of Florida. The number of
4138 instruction units in each school district or community college
4139 district in each year for the purposes of this amendment shall
4140 be the greater of:
4141 a. ~~(1)~~ The number of instruction units in each school
4142 district for the school fiscal year 1967-68 or community college
4143 district for the school fiscal year 1968-69 computed in the
4144 manner heretofore provided by general law; ~~, or~~

4145 b.~~(2)~~ The number of instruction units in such school
4146 district, including growth units, or community college district
4147 for the school fiscal year computed in the manner heretofore or
4148 hereafter provided by general law and approved by the state
4149 board of education (hereinafter called the state board);~~,~~ or
4150 c.~~(3)~~ The number of instruction units in each school
4151 district, including growth units, or community college district
4152 on behalf of which the state board has issued bonds or motor
4153 vehicle license revenue anticipation certificates under this
4154 amendment that ~~which~~ will produce sufficient revenues under this
4155 amendment to equal one and twelve-hundredths (1.12) times the
4156 aggregate amount of principal of and interest on all bonds or
4157 motor vehicle license revenue anticipation certificates issued
4158 under this amendment that ~~which~~ will mature and become due in
4159 such year, computed in the manner heretofore or hereafter
4160 provided by general law and approved by the state board.
4161 (4) Such funds so distributed shall be administered by the
4162 state board as now created and constituted by Article IX,
4163 section 2, ~~of Article IX~~ of this ~~the State~~ constitution ~~as~~
4164 ~~revised in 1968~~, or by such other instrumentality of the state
4165 that ~~which~~ shall hereafter succeed by law to the powers, duties,
4166 and functions of the state board, including the powers, duties,
4167 and functions of the state board provided in this amendment. For
4168 the purposes of this amendment, said state board shall be a body
4169 corporate and shall have all the powers provided in this
4170 amendment in addition to all other constitutional and statutory
4171 powers related to the purposes of this amendment heretofore or
4172 hereafter conferred upon said state board.

4173 (5) The state board shall, in addition to its other
4174 constitutional and statutory powers, have the management,
4175 control, and supervision of the proceeds of the first motor
4176 vehicle license revenues provided for in this subsection ~~(d)~~.
4177 The state board shall also have power, for the purpose of
4178 obtaining funds for the use of any school board of any school
4179 district or board of trustees of any community college district
4180 in acquiring, building, constructing, altering, remodeling,
4181 improving, enlarging, furnishing, equipping, maintaining,
4182 renovating, or repairing of capital outlay projects for school
4183 purposes to issue bonds or motor vehicle license revenue
4184 anticipation certificates, and also to issue such bonds or motor
4185 vehicle license revenue anticipation certificates to pay, fund,
4186 or refund any bonds or motor vehicle license revenue
4187 anticipation certificates theretofore issued by said state
4188 board. All such bonds or motor vehicle license revenue
4189 anticipation certificates shall bear interest at not exceeding
4190 the rate provided by general law and shall mature not later than
4191 thirty years after the date of issuance thereof. The state board
4192 shall have power to determine all other details of the bonds or
4193 motor vehicle license revenue anticipation certificates and to
4194 sell in the manner provided by general law, or exchange the
4195 bonds or motor vehicle license revenue anticipation
4196 certificates, upon such terms and conditions as the state board
4197 shall provide.
4198 (6) The state board shall also have power to pledge for
4199 the payment of the principal of and interest on such bonds or
4200 motor vehicle license revenue anticipation certificates,

4201 including refunding bonds or refunding motor vehicle license
4202 revenue anticipation certificates, all or any part from the
4203 motor vehicle license revenues provided for in this amendment
4204 and to enter into any covenants and other agreements with the
4205 holders of such bonds or motor vehicle license revenue
4206 anticipation certificates at the time of the issuance thereof
4207 concerning the security thereof and the rights of the holders
4208 thereof, all of which covenants and agreements shall constitute
4209 legally binding and irrevocable contracts with such holders and
4210 shall be fully enforceable by such holders in any court of
4211 competent jurisdiction.
4212 (7) No such bonds or motor vehicle license revenue
4213 anticipation certificates shall ever be issued by the state
4214 board, except to refund outstanding bonds or motor vehicle
4215 license revenue anticipation certificates, until after the
4216 adoption of a resolution requesting the issuance thereof by the
4217 school board of the school district or board of trustees of the
4218 community college district on behalf of which the obligations
4219 are to be issued. The state board of education shall limit the
4220 amount of such bonds or motor vehicle license revenue
4221 anticipation certificates that ~~which~~ can be issued on behalf of
4222 any school district or community college district to ninety
4223 percent ~~(90%)~~ of the amount that ~~which~~ it determines can be
4224 serviced by the revenue accruing to the school district or
4225 community college district under the provisions of this
4226 amendment, and shall determine the reasonable allocation of the
4227 interest savings from the issuance of refunding bonds or motor
4228 vehicle license revenue anticipation certificates, and such

4229 determinations shall be conclusive. All such bonds or motor
4230 vehicle license revenue anticipation certificates shall be
4231 issued in the name of the state board of education but shall be
4232 issued for and on behalf of the school board of the school
4233 district or board of trustees of the community college district
4234 requesting the issuance thereof, and no election or approval of
4235 qualified electors shall be required for the issuance thereof.
4236 (8) The state board shall in each year use the funds
4237 distributable pursuant to this amendment to the credit of each
4238 school district or community college district only in the
4239 following manner and in order of priority:
4240 a. To comply with the requirements of paragraph (d)(1)
4241 ~~paragraph (1) of this subsection (d)~~.
4242 b. To pay all amounts of principal and interest due in
4243 such year on any bonds or motor vehicle license revenue
4244 anticipation certificates issued under the authority hereof,
4245 including refunding bonds or motor vehicle license revenue
4246 anticipation certificates, issued on behalf of the school board
4247 of such school district or board of trustees of such community
4248 college district; subject, however, to any covenants or
4249 agreements made by the state board concerning the rights between
4250 holders of different issues of such bonds or motor vehicle
4251 license revenue anticipation certificates, as herein authorized.
4252 c. To establish and maintain a sinking fund or funds to
4253 meet future requirements for debt service or reserves therefor,
4254 on bonds or motor vehicle license revenue anticipation
4255 certificates issued on behalf of the school board of such school
4256 district or board of trustees of such community college district

4257 under the authority hereof, whenever the state board shall deem
4258 it necessary or advisable, and in such amounts and under such
4259 terms and conditions as the state board shall in its discretion
4260 determine.
4261 d. To distribute annually to the several school boards of
4262 the school districts or the boards of trustees of the community
4263 college districts for use in payment of debt service on bonds
4264 heretofore or hereafter issued by any such school boards of the
4265 school districts or boards of trustees of the community college
4266 districts where the proceeds of the bonds were used, or are to
4267 be used, in the acquiring, building, constructing, altering,
4268 remodeling, improving, enlarging, furnishing, equipping,
4269 maintaining, renovating, or repairing of capital outlay projects
4270 in such school districts or community college districts and
4271 which capital outlay projects have been approved by the school
4272 board of the school district or board of trustees of the
4273 community college district, pursuant to the most recent survey
4274 or surveys conducted under regulations prescribed by the state
4275 board to determine the capital outlay needs of the school
4276 district or community college district. The state board shall
4277 have power at the time of issuance of any bonds by any school
4278 board of any school district or board of trustees of any
4279 community college district to covenant and agree with such
4280 school board or board of trustees as to the rank and priority of
4281 payments to be made for different issues of bonds under this
4282 subparagraph ~~d.~~, and may further agree that any amounts to be
4283 distributed under this subparagraph ~~d.~~ may be pledged for the
4284 debt service on bonds issued by any school board of any school

4285 district or board of trustees of any community college district
4286 and for the rank and priority of such pledge. Any such covenants
4287 or agreements of the state board may be enforced by any holders
4288 of such bonds in any court of competent jurisdiction.
4289 e. To pay the expenses of the state board in administering
4290 this subsection ~~(d)~~, which shall be prorated among the various
4291 school districts and community college districts and paid out of
4292 the proceeds of the bonds or motor vehicle license revenue
4293 anticipation certificates or from the funds distributable to
4294 each school district and community college district on the same
4295 basis as such motor vehicle license revenues are distributable
4296 to the various school districts and community college districts.
4297 f. To distribute annually to the several school boards of
4298 the school districts or boards of trustees of the community
4299 college districts for the payment of the cost of acquiring,
4300 building, constructing, altering, remodeling, improving,
4301 enlarging, furnishing, equipping, maintaining, renovating, or
4302 repairing of capital outlay projects for school purposes in such
4303 school district or community college district as shall be
4304 requested by resolution of the school board of the school
4305 district or board of trustees of the community college district.
4306 g. When all major capital outlay needs of a school
4307 district or community college district have been met as
4308 determined by the state board, on the basis of a survey made
4309 pursuant to regulations of the state board and approved by the
4310 state board, all such funds remaining shall be distributed
4311 annually and used for such school purposes in such school
4312 district or community college district as the school board of

4313 the school district or board of trustees of the community
4314 college district shall determine, or as may be provided by
4315 general law.
4316 (9) Capital outlay projects of a school district or
4317 community college district shall be eligible to participate in
4318 the funds accruing under this amendment and derived from the
4319 proceeds of bonds and motor vehicle license revenue anticipation
4320 certificates and from the motor vehicle license revenues, only
4321 in the order of priority of needs, as shown by a survey or
4322 surveys conducted in the school district or community college
4323 district under regulations prescribed by the state board, to
4324 determine the capital outlay needs of the school district or
4325 community college district and approved by the state board;
4326 provided that the priority of such projects may be changed from
4327 time to time upon the request of the school board of the school
4328 district or board of trustees of the community college district
4329 and with the approval of the state board; and provided, further,
4330 that this paragraph ~~(9)~~ shall not in any manner affect any
4331 covenant, agreement, or pledge made by the state board in the
4332 issuance by said state board of any bonds or motor vehicle
4333 license revenue anticipation certificates, or in connection with
4334 the issuance of any bonds of any school board of any school
4335 district or board of trustees of any community college district.
4336 (10) The state board shall have power to make and enforce
4337 all rules and regulations necessary to the full exercise of the
4338 powers herein granted and no legislation shall be required to
4339 render this amendment of full force and operating effect. The
4340 legislature shall not reduce the levies of said motor vehicle

4341 license revenues during the life of this amendment to any degree
4342 that ~~which~~ will fail to provide the full amount necessary to
4343 comply with the provisions of this amendment and pay the
4344 necessary expenses of administering the laws relating to the
4345 licensing of motor vehicles, and shall not enact any law having
4346 the effect of withdrawing the proceeds of such motor vehicle
4347 license revenues from the operation of this amendment and shall
4348 not enact any law impairing or materially altering the rights of
4349 the holders of any bonds or motor vehicle license revenue
4350 anticipation certificates issued pursuant to this amendment or
4351 impairing or altering any covenant or agreement of the state
4352 board, as provided in such bonds or motor vehicle license
4353 revenue anticipation certificates.
4354 (11) Bonds issued by the state board pursuant to this
4355 subsection ~~(d)~~ shall be payable primarily from said motor
4356 vehicle license revenues as provided herein, and if heretofore
4357 or hereafter authorized by law, may be additionally secured by
4358 pledging the full faith and credit of the state without an
4359 election. When heretofore or hereafter authorized by law, bonds
4360 issued pursuant to Article XII, section 18, of the constitution
4361 of 1885, as amended prior to 1968, and bonds issued pursuant to
4362 Article XII, section 7(d), ~~9, subsection (d)~~ of this ~~the~~
4363 constitution ~~as revised in 1968~~, and bonds issued pursuant to
4364 this subsection ~~(d)~~, may be refunded by the issuance of bonds
4365 additionally secured by the full faith and credit of the state.
4366 (e) DEBT LIMITATION.--Bonds issued pursuant to this
4367 section ~~9~~ of Article XII that ~~which~~ are payable primarily from
4368 revenues pledged pursuant to this section shall not be included

4369 in applying the limits upon the amount of state bonds contained
4370 in Section 11, Article VII, of this revision.
4371 SECTION 8 ~~10~~. Preservation of constitutional provisions as
4372 statutes ~~Preservation of existing government~~.--
4373 (a) The following provisions, as they existed on November
4374 6, 2006, shall become statutes:
4375 1. Article I, section 26.
4376 2. Article II, section 9.
4377 3. Article IX, section 7.
4378 4. Article X, section 21.
4379 5. Article X, section 24.
4380 6. Article X, section 25.
4381 7. Article X, section 26.
4382 (b) The Division of Statutory Revision shall codify a
4383 provision made statutory law by subsection (a) in the manner
4384 described in s. 11.242, Florida Statutes (2005). The Division of
4385 Statutory Revision may make alterations to a provision described
4386 in subsection (a) to reflect its status as statutory law, but
4387 the effect of the provision must be preserved.
4388 (c) Each provision made statutory law by subsection (a)
4389 shall not be subject to modification or repeal, except by a two-
4390 thirds vote of the membership of each house of the legislature,
4391 in the first 5 years from the date it becomes a statute.
4392 Thereafter, it shall be subject to modification or repeal as are
4393 other statutes. ~~All provisions of Articles I through IV, VII and~~
4394 ~~IX through XX of the Constitution of 1885, as amended, not~~
4395 ~~embraced herein which are not inconsistent with this revision~~
4396 ~~shall become statutes subject to modification or repeal as are~~

4397 ~~other statutes.~~
4398 SECTION 9 ~~11~~. Deletion of obsolete schedule items.--The
4399 legislature shall have power, by joint resolution, to delete
4400 from this article ~~revision~~ any section ~~of this Article XII~~,
4401 including this section, when all events to which the section to
4402 be deleted is or could become applicable have occurred. A
4403 legislative determination of fact made as a basis for
4404 application of this section shall be subject to judicial review.
4405 SECTION 10 ~~12~~. Senators.--The requirements of staggered
4406 terms of senators in Article III, section 15(a), ~~of Article III~~
4407 ~~of this revision~~ shall apply only to senators elected in
4408 November~~,~~ 1972, and thereafter.
4409 SECTION 11 ~~13~~. Legislative apportionment.--The
4410 requirements of legislative apportionment in Article III,
4411 section 16, ~~of Article III of this revision~~ shall apply only to
4412 the apportionment of the legislature following the decennial
4413 census of 1970, and thereafter.
4414 SECTION 12 ~~14~~. Representatives; terms.--The legislature at
4415 its first regular session following the ratification of this
4416 revision, by joint resolution, shall propose to the electors of
4417 the state for ratification or rejection in the general election
4418 of 1970 an amendment to Article III, section 15(b), ~~of the~~
4419 ~~constitution~~ providing staggered terms of four years for members
4420 of the house of representatives.
4421 SECTION 13 ~~15~~. Special district taxes.--Ad valorem taxing
4422 power vested by law in special districts existing when this
4423 revision becomes effective shall not be abrogated by Article
4424 VII, section 9(b) ~~of Article VII herein~~, but such powers, except

4425 to the extent necessary to pay outstanding debts, may be
4426 restricted or withdrawn by law.
4427 ~~SECTION 16. Reorganization.--The requirement of Section 6,~~
4428 ~~Article IV of this revision shall not apply until July 1, 1969.~~
4429 SECTION 14 ~~17~~. Conflicting provisions.--This schedule is
4430 designed to effect the orderly transition of government from the
4431 constitution of 1885, as amended, to this revision and shall
4432 control in all cases of conflict with any part of Article I
4433 through IV, VII, and IX through XI herein.
4434 ~~SECTION 18. Bonds for housing and related~~
4435 ~~facilities.--Section 16 of Article VII, providing for bonds for~~
4436 ~~housing and related facilities, shall take effect upon approval~~
4437 ~~by the electors.~~
4438 ~~SECTION 19. Renewable energy source property.--The~~
4439 ~~amendment to Section 3 of Article VII, relating to an exemption~~
4440 ~~for a renewable energy source device and real property on which~~
4441 ~~such device is installed, if adopted at the special election in~~
4442 ~~October 1980, shall take effect January 1, 1981.~~
4443 ~~SECTION 20. Access to public records.--Section 24 of~~
4444 ~~Article I, relating to access to public records, shall take~~
4445 ~~effect July 1, 1993.~~
4446 SECTION 15 ~~21~~. State revenue limitation.--The amendment to
4447 Article VII, section 1, ~~of Article VII~~ limiting state revenues
4448 shall take effect January 1, 1995, and shall first be applicable
4449 to state fiscal year 1995-1996.
4450 SECTION 16 ~~22~~. Historic property exemption and
4451 assessment.--The amendments to Article VII, Sections 3 and 4, ~~of~~
4452 ~~Article VII~~ relating to ad valorem tax exemption for, and

4453 assessment of, historic property shall take effect January 1,
4454 1999.
4455 SECTION 17 ~~23~~. Fish and wildlife conservation
4456 commission.--
4457 (a) The initial members of the commission shall be the
4458 members of the game and fresh water fish commission and the
4459 marine fisheries commission who are serving on those commissions
4460 on the effective date of this amendment, who may serve the
4461 remainder of their respective terms. New appointments to the
4462 commission shall not be made until the retirement, resignation,
4463 removal, or expiration of the terms of the initial members
4464 results in fewer than seven members remaining.
4465 (b) The jurisdiction of the marine fisheries commission as
4466 set forth in statutes in effect on March 1, 1998, shall be
4467 transferred to the fish and wildlife conservation commission.
4468 The jurisdiction of the marine fisheries commission transferred
4469 to the commission shall not be expanded except as provided by
4470 general law. All rules of the marine fisheries commission and
4471 game and fresh water fish commission in effect on the effective
4472 date of this amendment shall become rules of the fish and
4473 wildlife conservation commission until superseded or amended by
4474 the commission.
4475 (c) On the effective date of this amendment, the marine
4476 fisheries commission and game and fresh water fish commission
4477 shall be abolished.
4478 (d) This amendment shall take effect July 1, 1999.
4479 SECTION 18 ~~24~~. Executive branch reform.--
4480 (a) The amendments contained in this revision shall take

4481 effect January 7, 2003, but shall govern with respect to the
4482 qualifying for and the holding of primary elections in 2002. The
4483 office of chief financial officer shall be a new office as a
4484 result of this revision.
4485 (b) In the event the secretary of state is removed as a
4486 cabinet office in the 1998 general election, the term "custodian
4487 of state records" shall be substituted for the term "secretary
4488 of state" throughout this ~~the~~ constitution and the duties
4489 previously performed by the secretary of state shall be as
4490 provided by law.
4491 ~~SECTION 25. Schedule to Article V amendment.--~~
4492 ~~(a) Commencing with fiscal year 2000-2001, the legislature~~
4493 ~~shall appropriate funds to pay for the salaries, costs, and~~
4494 ~~expenses set forth in the amendment to Section 14 of Article V~~
4495 ~~pursuant to a phase-in schedule established by general law.~~
4496 ~~(b) Unless otherwise provided herein, the amendment to~~
4497 ~~Section 14 shall be fully effectuated by July 1, 2004.~~
4498 BE IT FURTHER RESOLVED that the following statement be
4499 placed on the ballot:
4500 CONSTITUTIONAL AMENDMENT
4501 MULTIPLE ARTICLES
4502 OBSOLETE, ERRONEOUS, AND INCONSISTENT PROVISIONS;
4503 PRESERVATION OF CERTAIN CONSTITUTIONAL PROVISIONS AS
4504 STATUTES.--Proposing revisions to multiple articles of the State
4505 Constitution to delete obsolete provisions and to correct errors
4506 in spelling, punctuation, and grammar, inconsistencies in
4507 wording and style, and other technical issues; to correct an
4508 erroneous filing date in Article XI, section 6(e), which relates

4509 to the Taxation and Budget Reform Commission; and to remove the
4510 following provisions from the State Constitution, transfer them
4511 to the Florida Statutes, and prohibit the modification or repeal
4512 of those statutes, except by a two-thirds vote of the membership
4513 of each house of the Legislature, for the first 5 years after
4514 each becomes a statute:
4515 ARTICLE I, SECTION 26
4516 Claimant's right to fair compensation.--The provision that
4517 delineates a claimant's right to compensation in medical
4518 liability claims.
4519 ARTICLE II, SECTION 9
4520 English is the official language of Florida.--The provision
4521 that makes English the official language of Florida.
4522 ARTICLE IX, SECTION 7
4523 State University System.--The provision that provides for a
4524 system of governance for the state university system of Florida.
4525 ARTICLE X, SECTION 21
4526 Limiting cruel and inhumane confinement of pigs during
4527 pregnancy.--The provision that makes it unlawful to confine a
4528 pig during pregnancy in such a way that the pig is prevented
4529 from turning around freely.
4530 ARTICLE X, SECTION 24
4531 Florida minimum wage.--The provision that provides for a
4532 state minimum wage in Florida.
4533 ARTICLE X, SECTION 25
4534 Patients' right to know about adverse medical
4535 incidents.--The provision that delineates a patient's right to
4536 know about adverse medical incidents.

4537 ARTICLE X, SECTION 26

4538 Prohibition of medical license after repeated medical
4539 malpractice.--The provision that prohibits a person from having
4540 a medical license after repeated medical malpractice.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7177 (PCB CRJU 06-09) Statute of Limitations in Criminal Cases
**SPONSOR(S):** Criminal Justice Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Criminal Justice Committee | 7 Y, 0 N | Cunningham | Kramer |
| 1) | | | |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted – has resulted in defendants being identified with crimes that were unsolved for many years.

Section 775.15(15), F.S., seeks to address the situation in which the general time limitations for commencing prosecution have expired before the perpetrator is identified. The statute provides that a prosecution for sexual battery and lewd and lascivious offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence.

This bill provides that a prosecution for any of the below-listed offenses that are not otherwise barred from prosecution on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence. The following offenses are specified:

- An offense of sexual battery under chapter 794;
- A lewd or lascivious offense under s. 800.04 or s. 825.1025;
- Aggravated battery or any felony battery offense under chapter 784;
- Kidnapping under s. 787.01 or false imprisonment under s. 787.02;
- A burglary offense under s. 810.02;
- A robbery offense under s. 812.13, s. 812.131, or s. 812.135;
- Carjacking under s. 812.133; and
- Aggravated child abuse under s. 827.03.

This act takes effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill provides that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced at any time after the date on which the identity of the accused is established, or should have been established using due diligence, through the analysis of DNA evidence.

B. EFFECT OF PROPOSED CHANGES:

*Statute of Limitations*
Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, or "statute of limitations."

There was no statute of limitations at common law.[1] It is purely a statutory creation. In *State v. Hickman*, the court borrowed a section from 22 C.J.S., Criminal Law s. 223 and explained that:

> "Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity." *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

Section 775.15(3), F.S., provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.[2]

Section 775.15, F.S., controls the time limitations for initiating a criminal prosecution for any felony offense in the following manner:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

Generally, the controlling criminal statute of limitations is the version that is in effect when a crime is committed.[3] The legislature can extend the limitations period without violating the constitutional prohibition against ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective.[4] If the pre-existing statute of limitations had already expired prior to passage of the new statue of limitations,

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[1] *State v. McCloud*, 67 So.2d 242 (Fla. 1953).
[2] s. 775.15, F.S.
[3] *See Andrews v. State,* 392 So.2d 270,271 (Fla. 2d DCA 1980).
[4] *Id.*

the retroactive application of the new statute of limitations would violate the ex post facto provisions of both the Unites States Constitution (Art. I, ss. 9, 10) and the Florida Constitution (Art. I, s. 10.).[5]

*DNA – An Investigative Tool*
Florida's DNA database, and others throughout the country, provides opportunities for law enforcement agencies to solve crimes where they have physical evidence containing DNA by checking that evidence against information in the database. The practice of some agencies to sift through evidence in "cold cases" - cases where the investigative leads have long since been exhausted – has resulted in defendants being charged with crimes that were unsolved for many years.

One example of such a case occurred after DNA sample collections from people convicted of burglary offenses in Florida began in July 2000. In October 2000, a man in a Florida prison on a burglary conviction, who gave the required blood samples for inclusion in the FDLE database, became a suspect in a 1999 sexual assault on a 77-year old West Virginia woman. According to reports, when he was identified as a suspect, another man who had previously been charged with the West Virginia crime was likely to be exonerated.[6]

Most of the crimes where it would be more likely to have DNA left at the crime scene, due to the nature of the offense, currently have no time limitation for commencing prosecution of the perpetrator (e.g. murder; sexual battery, when reported within 72 hours after the commission of the crime). However, in some cases the time may have expired before the perpetrator is identified. For example, if a sexual battery offense goes unreported for more than 72 hours, the time limitation for commencing prosecution would be four years (first degree felony) or three years (any other felony).

*Exception to the General Statute of Limitations – Section 775.15(15), F.S.*
Section 775.15(15), F.S., seeks to address the situation in which the general time limitations for commencing prosecution have expired before the perpetrator is identified. Currently, the statute provides:

> In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced within 1 year after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused:
>
> 1. An offense of sexual battery under chapter 794.
> 2. A lewd or lascivious offense under s. 800.04 or s. 825.1025.
>
> This subsection applies to any offense that is not otherwise barred from prosecution on or after July 1, 2004.

**Effect of the Bill**
This bill provides that a prosecution for any of the below-listed offenses that are not otherwise barred from prosecution on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence. The following offenses are specified:

- An offense of sexual battery under chapter 794;
- A lewd or lascivious offense under s. 800.04 or s. 825.1025;
- Aggravated battery or any felony battery offense under chapter 784;
- Kidnapping under s. 787.01 or false imprisonment under s. 787.02;

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[5] *See United States v. Richardson,* 512 F.2d 105, 106 (3rd Cir. 1975); *Reino v. State,* 352 So.2d 853 (Fla. 1977).
[6] *See* Senate Staff Analysis and Economic Impact Statement, CS/SB 300, February 15, 2002.

- A burglary offense under s. 810.02;
- A robbery offense under s. 812.13, s. 812.131, or s. 812.135;
- Carjacking under s. 812.133; and
- Aggravated child abuse under s. 827.03.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 775.15(15), F.S., providing that a prosecution for certain specified offenses, unless otherwise barred by law, may be commenced at any time after the date on which the identity of the accused is established, or should have been established using due diligence, through the analysis of DNA evidence.

**Section 2.** This act takes effect July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the proposed committee bill and reported the bill favorably. The strike-all amendment provides that a prosecution for any of the below-listed offenses that are not otherwise barred from prosecution on or after July 1, 2006, may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of DNA evidence.

1 A bill to be entitled
2 An act relating to time limitations for criminal
3 prosecutions; amending s. 775.15, F.S.; specifying the
4 applicability period of a provision allowing an additional
5 limitations period for specified offenses in certain
6 circumstances; providing that a prosecution for specified
7 offenses, unless otherwise barred by law, may be commenced
8 at any time after the date on which the identity of the
9 accused is established, or should have been established by
10 the exercise of due diligence, through the analysis of
11 deoxyribonucleic acid (DNA) evidence; providing an
12 effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Subsection (15) of section 775.15, Florida
17 Statutes, is amended, and subsection (16) is added to that
18 section, to read:
19 775.15 Time limitations; general time limitations;
20 exceptions.--
21 (15)(a) In addition to the time periods prescribed in this
22 section, a prosecution for any of the following offenses may be
23 commenced within 1 year after the date on which the identity of
24 the accused is established, or should have been established by
25 the exercise of due diligence, through the analysis of
26 deoxyribonucleic acid (DNA) evidence, if a sufficient portion of
27 the evidence collected at the time of the original investigation
28 and tested for DNA is preserved and available for testing by the

29 accused:
30 1. An offense of sexual battery under chapter 794.
31 2. A lewd or lascivious offense under s. 800.04 or s.
32 825.1025.
33 (b) This subsection applies to any offense that is not
34 otherwise barred from prosecution between ~~on or after~~ July 1,
35 2004, and June 30, 2006.
36 (16)(a) In addition to the time periods prescribed in this
37 section, a prosecution for any of the following offenses may be
38 commenced at any time after the date on which the identity of
39 the accused is established, or should have been established by
40 the exercise of due diligence, through the analysis of
41 deoxyribonucleic acid (DNA) evidence, if a sufficient portion of
42 the evidence collected at the time of the original investigation
43 and tested for DNA is preserved and available for testing by the
44 accused:
45 1. Aggravated battery or any felony battery offense under
46 chapter 784.
47 2. Kidnapping under s. 787.01 or false imprisonment under
48 s. 787.02.
49 3. An offense of sexual battery under chapter 794.
50 4. A lewd or lascivious offense under s. 800.04 or s.
51 825.1025.
52 5. A burglary offense under s. 810.02.
53 6. A robbery offense under s. 812.13, s. 812.131, or s.
54 812.135.
55 7. Carjacking under s. 812.133.
56 8. Aggravated child abuse under s. 827.03.

57 (b) This subsection applies to any offense that is not
58 otherwise barred from prosecution on or after July 1, 2006.
59 Section 2. This act shall take effect July 1, 2006.

# HB 7205

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7205 PCB CRJU 06-07 Death Penalty
**SPONSOR(S):** Criminal Justice Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Criminal Justice Committee | 6 Y, 0 N | Kramer | Kramer |
| 1) | | | |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


In 2001, the legislature created section 921.137, F.S. which prohibits the imposition of a death sentence upon a mentally retarded defendant. In May of 2004, the Florida Supreme Court adopted Rule of Criminal Procedure 3.203 which contains provisions which are in conflict with the statute passed by the legislature. The court's majority opinion did not indicate that the statute was constitutionally infirm or otherwise explain the reason that the provisions of the rule of procedure contradicted the statute. This bill repeals the rule of criminal procedure.

A repeal of a rule of procedure requires a 2/3 vote of the members of both chambers of the legislature.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any House principles.

B. EFFECT OF PROPOSED CHANGES:

In 2001, the legislature created section 921.137, F.S. which prohibited the imposition of a death sentence upon a mentally retarded defendant. Specifically, the section provides that a sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined, in accordance with the section, that the defendant has mental retardation.[1] After a defendant who has been given notice of his or her intention to raise mental retardation as a bar to a death sentence is convicted of a capital felony and the jury has recommended a sentence of death, the defendant may file a motion to determine whether the defendant has mental retardation. The judge then must appoint two experts in the field of mental retardation to evaluate the defendant. At the final sentencing hearing, the court must consider the findings of the experts and the findings of any other expert which is offered by the state or defense on the issue of whether the defendant has mental retardation. If the court finds by clear and convincing evidence that the defendant has mental retardation, the court may not impose a sentence of death and must enter a written order that sets forth the findings in support of the determination. The bill specified that the section does not apply to a defendant who was sentenced to death before the effective date of the act.

After this law was enacted, the United States Supreme Court ruled that the execution of a mentally retarded criminal is prohibited by the Eighth Amendment of the United States constitution which bars cruel and unusual punishment.[2] The court did not provide guidance as to how the term mentally retarded should be defined and left it up to the individual states to establish their own methods of determining whether an offender is mentally retarded.

In 2003, the Criminal Procedure Rules Committee of the Florida Bar proposed a new rule of criminal procedure to the Florida Supreme Court to implement section 921.137, F.S. The Criminal Court Steering Committee submitted proposed alternative rules. These proposed rules differed from the statute adopted by the legislature in two primary respects. First, the statute requires that the court find by *clear and convincing evidence* that the defendant has mental retardation. The proposed rule did not reference the necessary burden of proof. Second, the statute required that the hearing on whether a defendant was mentally retarded take place after the defendant is found guilty and the jury has recommended a sentence of death. The proposed rule required that the hearing be conducted before the trial commenced.

Several members of the House of Representatives [Representatives Kottkamp, Barreiro, and Kyle] filed comments in the case in opposition to the conflicting parts of the proposed rule and asserted that the legislature and not the court has the authority to set policy. The Attorney General's office filed comments that objected to aspects of the proposed rule and specifically objected on several grounds to the rule's requirement that the hearing be held pre-trial. The brief stated that "[t]here is neither authority

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[1]The section defines the term "mental retardation" to mean significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

[2] Atkins v. Virginia, 122 S.Ct. 2242 (2002)

nor justification for the Court to substitute its judgment for the clearly-expressed intent of the legislature regarding this substantive right."[3]

In May of 2004, the Florida Supreme Court adopted the Rule of Criminal Procedure 3.203 which contained the provisions which are in conflict with the statute passed by the legislature.[4] The opinion acknowledged that under the Atkins decision "individual states are free to establish their own methods for determining which offenders are mentally retarded".[5] The majority opinion of the court did not suggest that the statute was constitutionally inform or give any reasons for adopting a rule which is in conflict with the statute. A concurring opinion indicated that the provision "allowing the determination to be made before trial promotes the most efficient use of increasingly scarce judicial and legal resources."

The Florida Constitution provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts". Art. V. Section 2(a), Fla. Const. According to the constitution, a rule of court "may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature."

This bill repeals Rule of Criminal Procedure 3.203.[6]

C. SECTION DIRECTORY:

Section 1. Repeals Rule of Criminal Procedure 3.203.

Section 2. Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[3] See comments filed on August 10, 2004.

[4] Amendments to Florida Rules of Criminal Procedure and Florida Rules of Appellate Procedure, 875 So.2d 563 (Fla. 2004).

[5] Id. at 565.

[6] The bill contains the following "whereas" clauses:

WHEREAS, in 2001 section 921.137, Florida Statutes, was created to establish the public policy for the State of Florida exempting mentally retarded persons convicted of capital crimes from the death penalty, and

WHEREAS, section 921.137, Florida Statutes, is a current and validly enacted law, and

WHEREAS, it is the public policy of this state that all persons charged by indictment of a capital crime shall be tried before a death-qualified jury, and that hearings for the determination of mental retardation shall be conducted as prescribed in section 921.137, Florida Statutes, and

WHEREAS, the Florida Supreme Court in Amendments to the Florida Rules of Criminal Procedure and Rules of Appellate Procedure, 875 So.2d 563 (Fla. 2004) adopted Rule 3.203, which contradicts and conflicts with the express provisions of section 921.137, Florida Statutes, and

WHEREAS, the United States Supreme Court said in Atkins v. Virginia, 536 U.S. 304 (2002), that it ". . . found no reason to disagree with the judgment of the legislatures which have recently addressed the matter and concluded that death is not a suitable punishment for a mentally retarded criminal," and

WHEREAS, all nine justices of the United States Supreme Court in Atkins agreed that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by this country's legislatures,"

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have any fiscal impact on the state or local government or the private sector.

## 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:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to the death penalty; repealing Rule
3 3.203, Florida Rules of Criminal Procedure, relating to a
4 defendant's mental retardation as a bar to imposition of
5 the death penalty; providing an effective date.
6
7 WHEREAS, in 2001 section 921.137, Florida Statutes, was
8 created to establish the public policy for the State of Florida
9 exempting mentally retarded persons convicted of capital crimes
10 from the death penalty, and
11 WHEREAS, section 921.137, Florida Statutes, is a current
12 and validly enacted law, and
13 WHEREAS, it is the public policy of this state that all
14 persons charged by indictment of a capital crime shall be tried
15 before a death-qualified jury, and that hearings for the
16 determination of mental retardation shall be conducted as
17 prescribed in section 921.137, Florida Statutes, and
18 WHEREAS, the Florida Supreme Court in Amendments to the
19 Florida Rules of Criminal Procedure and Rules of Appellate
20 Procedure, 875 So.2d 563 (Fla. 2004), adopted Rule 3.203, which
21 contradicts and conflicts with the express provisions of section
22 921.137, Florida Statutes, and
23 WHEREAS, the United States Supreme Court said in Atkins v.
24 Virginia, 536 U.S. 304 (2002), that it ". . . found no reason to
25 disagree with the judgment of the legislatures which have
26 recently addressed the matter and concluded that death is not a
27 suitable punishment for a mentally retarded criminal," and
28 WHEREAS, all nine justices of the United States Supreme

29 Court in Atkins agreed that the "clearest and most reliable
30 objective evidence of contemporary values is the legislation
31 enacted by this country's legislatures," NOW, THEREFORE,
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Rule 3.203, Florida Rules of Criminal
36 Procedure, is repealed.
37 Section 2. This act shall take effect upon becoming a law,
38 but only if this act is enacted by a two-thirds vote of the
39 membership of each house of the Legislature.