Civil Justice Committee Meeting

March 28th, 2006
10:15 AM - 12:00 PM
24 House Office Building

Allan G. Bense
Speaker

Mark Mahon
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Civil Justice Committee

Start Date and Time:	Tuesday, March 28, 2006 10:15 am
End Date and Time:	Tuesday, March 28, 2006 12:00 pm
Location:	24 HOB
Duration:	1.75 hrs

Consideration of the following bill(s):

HB 1139 Construction Defects by Murzin
HB 1425 Advisory Council on Condominiums by Brutus
HB 1437 Uniform Commercial Code by Seiler
HB 1443 Construction Lien Law by Russell
HB 1495 Marriage Licenses by Arza
HB 1521 Children in Out-of-Home Placements by Barreiro
HB 1621 Coastal Properties Disclosure Statements by Mayfield
HB 7099 Land Trusts by Judiciary Committee
HB 7111 Review under the Open Government Sunset Review Act regarding the Offense of Interference with Custody by Governmental Operations Committee
HB 7113 Review under the Open Government Sunset Review Act regarding the Public Records Exemption for the Interference with Custody Statute by Governmental Operations Committee

Workshop on the following:

HB 7123 Child Protective Services by Future of Florida's Families Committee

NOTICE FINALIZED on 03/24/2006 16:21 by Hay.Tracey

HB 1139

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1139 Construction Defects
SPONSOR(S): Murzin
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Poblete	Bond
2) Business Regulation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Current law provides an alternative dispute resolution process that persons must follow regarding construction defects that is only applicable to residential property owners. Before a lawsuit can be initiated against a contractor, subcontractor, supplier, or design professional for an alleged construction defect, the claimant must serve written notice of the claim to the defendant and provide an opportunity to resolve that claim.

This bill expands the requirement to provide notice and an opportunity to cure to all construction.

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 extends the alternative dispute resolution mechanism regarding construction defects to any property owner, not just owners of residential property.

Promote Personal Responsibility – This bill provides that in construction disputes, all property owners must file a written notice of claim and provide an opportunity to resolve the claim for contractors, subcontractors, suppliers, or design professionals purported to be responsible for construction defects.

B. EFFECT OF PROPOSED CHANGES:

Background

In order to reduce the need for litigation and to protect the rights of homeowners, ch. 558, F.S., was created in 2003 to provide an alternative dispute resolution process that persons must follow regarding construction defects in residential property. Before a lawsuit can be initiated against a contractor, subcontractor, supplier, or design professional for an alleged construction defect, the claimant must serve written notice of the claim to the defendant and provide an opportunity to resolve that claim.[1] The provisions of this chapter apply to the following types of construction:[2]

- Single family homes
- Manufactured or modular homes
- Duplexes
- Triplexes
- Quadruplexes
- Condominiums
- Cooperative Units

Notice[3]

A claimant must serve a written notice of claim within 15 days after discovering the alleged defect, but the failure to do so does not bar the filing of an action. The notice must be served no later than 60 days prior to the filing of an action involving a single family home, an association representing 20 or fewer residential parcels, a manufactured or modular home, a duplex, triplex, or a quadruplex or at least 120 days prior to the filing of an action involving an association representing more than 20 residential parcel owners. The notice must describe the claim in reasonable detail sufficient to determine the nature of each alleged construction defect, and it must include a description of the damage or loss resulting from the defect. Once notice has been properly served, a claimant may file an action.

Opportunity to Repair[4]

Within 30 days after receipt of the notice of claim or 50 days with a notice of claim involving an association representing more than 20 residential parcels, the recipient is entitled to perform a reasonable inspection of the dwelling alleged to have a construction defect. A claimant must provide access to the dwelling during normal working hours such that the nature and cause of the defect as well as the extent to which repairs are needed to remedy the defect can be determined. If destructive testing is necessary to determine the nature and cause of the alleged defect, the recipient must notify

[1] s. 558.004, F.S.
[2] s. 558.002(7), F.S.
[3] s. 558.004(1), F.S.
[4] s. 558.004(2)(a)-(f), F.S.

the claimant in writing, describing specific aspects of the test. If a claimant promptly objects to the testing, the recipient must provide the claimant a list of three qualified persons from which the claimant may select one to perform the testing. If a claimant fails or refuses to agree to destructive testing, the claimant has no claim for damages which could have been avoided or mitigated had the destructive testing been allowed when requested.

Forwarding a Copy of the Notice of Claim[5]

Within 10 days after receipt of the notice of claim or 30 days with a notice of claim involving an association representing more than 20 residential parcels, the recipient may forward a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional reasonably believed to be responsible for each defect, noting the specific defect each is believed to be responsible for. Such persons will be entitled to inspect the dwelling as provided for in s. 558.004(2), F.S.

Written Response to Copy of Notice of Claim[6]

Within 15 days after receipt of the copy of the notice of claim or 30 days with a copy of the notice of claim involving an association representing more than 20 residential parcels, the recipient must serve a written response to the person who forwarded the copy of the notice of claim. The response should indicate the findings and results of the inspection, a statement as to whether the recipient is willing to make repairs to remedy the alleged defect, and a timetable concerning its completion.

Written Response to Claimant After Receipt of Initial Notice of Claim[7]

Within 45 days after receiving notice of claim or 75 days with a notice of claim involving an association representing more than 20 residential parcels, the recipient must serve a written response to the claimant providing for one of the following:

- A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable regarding completion;
- A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer, and a timetable for making payments;
- A written offer to compromise and settle the claim by a combination of repairs and monetary payment in the manners stated above;
- A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- A written statement that a monetary payment will be determined by the person's insurer within 30 days after simultaneous notification to the insurer and the claimant of this settlement option, which the claimant can accept or reject. If the insurer does not respond within the 30 days following notification, the claimant shall be deemed to have met all conditions precedent to commencing an action.

Claimant's Acceptance of an Offer[8]

If a claimant accepts an offer to repair the alleged construction defect, the claimant shall provide the offeror and the offeror's agents reasonable access to the dwelling during normal working hours. If the offeror does not repair or make payment within the agreed time and manner, except for reasonable delays beyond the offeror's control, the claimant may proceed with an action against the offeror. If the offeror does make payment or repairs within the agreed time and manner, the claimant is barred from proceeding with an action.

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[5] s. 558.004(3), F.S.
[6] s. 558.004(4), F.S.
[7] s. 558.004(5)(a)-(e), F.S.
[8] s. 558.004(8), F.S.

Any offer or failure to offer to remedy an alleged defect or to compromise and settle the claim by monetary payment does not constitute an admission of liability and is inadmissible in an action brought under ch. 558, F.S.[9]

After receipt of the first initial notice of claim, a claimant and the recipient may alter the procedure for the notice of claim process by written mutual agreement.[10]

Effect of Bill

This bill amends ss. 558.001, 558.002, 558.004, and 558.005, F.S., to provide that the procedures set forth in ch. 558, F.S., apply to not only residential property owners but to all real property owners. All terms related to residential property are replaced with terms relating to real property.

Because this bill changes the scope of its application from residential construction to all construction related to real property, it has the effect of removing disputes regarding manufactured or modular homes from its provisions, unless the manufactured or modular home is permanently affixed to real property.

C. SECTION DIRECTORY:

Section 1 amends s. 558.001, F.S., to amend legislative findings.

Section 2 amends s. 558.002, F.S., to amend the definitions relating to residential property or homeowners with those relating to real property and property owners, respectively.

Section 3 amends s. 558.004, F.S., to expand the requirements of notice and opportunity to cure to all construction.

Section 4 amends s. 558.005, F.S., by replacing the terms relating to residential property in the notice of claim required for a contract to be subject to this section with terms relating to real property. It also provides that the notice requirements put forth in this section apply to contracts entered into on or after October 1, 2006.

Section 5 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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

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[9] s. 558.004(9), F.S.
[10] s. 558.005(3), F.S.

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, 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

1 A bill to be entitled
2 An act relating to construction defects; amending ss.
3 558.001, 558.002, 558.004, and 558.005, F.S.; revising
4 provisions to expand application to construction defects
5 in any property; deleting language limiting application to
6 only residential property; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 558.001, Florida Statutes, is amended
11 to read:
12 558.001 Legislative findings and declaration.--The
13 Legislature finds that it is beneficial to have an alternative
14 method to resolve construction disputes that would reduce the
15 need for litigation as well as protect the rights of property
16 owners ~~homeowners~~. An effective alternative dispute resolution
17 mechanism in certain construction defect matters should involve
18 the claimant filing a notice of claim with the contractor,
19 subcontractor, supplier, or design professional that the
20 claimant asserts is responsible for the defect, and should
21 provide the contractor, subcontractor, supplier, or design
22 professional with an opportunity to resolve the claim without
23 resort to further legal process.
24 Section 2. Section 558.002, Florida Statutes, is amended
25 to read:
26 558.002 Definitions.--As used in this chapter, the term:
27 (1) "Action" means any civil action or arbitration
28 proceeding for damages or indemnity asserting a claim for damage

29 to or loss of real ~~a dwelling~~ or personal property caused by an
30 alleged construction defect, but does not include any
31 administrative action or any civil action or arbitration
32 proceeding asserting a claim for alleged personal injuries
33 arising out of an alleged construction defect.
34 (2) "Association" has the same meaning as in s.
35 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.
36 (3) "Claimant" means a property owner ~~homeowner~~, including
37 a subsequent purchaser or association, who asserts a claim for
38 damages against a contractor, subcontractor, supplier, or design
39 professional concerning a construction defect or a subsequent
40 owner who asserts a claim for indemnification for such damages.
41 The term does not include a contractor, subcontractor, supplier,
42 or design professional.
43 (4) "Construction defect" means a deficiency in, or a
44 deficiency arising out of, the design, specifications,
45 surveying, planning, supervision, observation of construction,
46 or construction, repair, alteration, or remodeling of ~~a~~
47 ~~dwelling, any appurtenance to the dwelling, or the~~ real property
48 ~~to which the dwelling or appurtenance is affixed~~ resulting from:
49 (a) Defective material, products, or components used in
50 the construction or remodeling;
51 (b) A violation of the applicable codes in effect at the
52 time of construction or remodeling which gives rise to a cause
53 of action pursuant to s. 553.84;
54 (c) A failure of the design of real property ~~a dwelling~~ to
55 meet the applicable professional standards of care at the time
56 of governmental approval; or

57 (d) A failure to construct or remodel real property ~~a~~
58 ~~dwelling~~ in accordance with accepted trade standards for good
59 and workmanlike construction at the time of construction.
60 (5) "Contractor" means any person, as defined in s. 1.01,
61 that is legally engaged in the business of designing,
62 developing, constructing, manufacturing, repairing, or
63 remodeling real property ~~dwellings or attachments thereto~~.
64 (6) "Design professional" means a person, as defined in s.
65 1.01, licensed in this state as an architect, interior designer,
66 landscape architect, engineer, or surveyor.
67 (7) "Real property ~~Dwelling~~" means land that is improved
68 and the improvements on such land, including fixtures ~~a single-~~
69 ~~family house, manufactured or modular home, duplex, triplex,~~
70 ~~quadruplex, or other multifamily unit in a multifamily~~
71 ~~residential building designed for residential use in which title~~
72 ~~to each individual unit is transferred to the owner under a~~
73 ~~condominium or cooperative system and includes common areas and~~
74 ~~improvements that are owned or maintained by an association or~~
75 ~~by members of an association, and also includes the systems,~~
76 ~~other components, improvements, and other structures or~~
77 ~~facilities, including, but not limited to, recreational~~
78 ~~structures or facilities, that are appurtenant to and located on~~
79 ~~the real property on which the house, duplex, triplex,~~
80 ~~quadruplex, or other multifamily unit is located, but are not~~
81 ~~necessarily part of the structure at the time of completion of~~
82 ~~construction~~.
83 (8) "Service" means delivery by certified mail, return
84 receipt requested, to the last known address of the addressee.

85 (9) "Subcontractor" means a person, as defined in s. 1.01,
86 who is a contractor who performs labor and supplies material on
87 behalf of another contractor in the construction or remodeling
88 of real property ~~a dwelling~~.
89 (10) "Supplier" means a person, as defined in s. 1.01, who
90 provides only materials, equipment, or other supplies for the
91 construction or remodeling of real property ~~a dwelling~~.
92 Section 3. Subsections (1), (2), (3), (4), (5), (8), (9),
93 and (14) of section 558.004, Florida Statutes, are amended to
94 read:
95 558.004 Notice and opportunity to repair.--
96 (1) In actions brought alleging a construction defect, the
97 claimant shall, at least 60 days before filing any ~~an~~ action
98 ~~involving a single-family home, an association representing 20~~
99 ~~or fewer residential parcels, a manufactured or modular home, a~~
100 ~~duplex, a triplex, or a quadruplex~~, or at least 120 days before
101 filing an action involving an association representing more than
102 20 parcels ~~residential parcel owners~~, serve written notice of
103 claim on the contractor, subcontractor, supplier, or design
104 professional, as applicable, which notice shall refer to this
105 chapter. If the construction defect claim arises from work
106 performed under a contract, the written notice of claim must be
107 served on the person with whom the claimant contracted. The
108 notice of claim must describe the claim in reasonable detail
109 sufficient to determine the general nature of each alleged
110 construction defect and a description of the damage or loss
111 resulting from the defect, if known. The claimant shall endeavor
112 to serve the notice of claim within 15 days after discovery of

113 an alleged defect, but the failure to serve notice of claim
114 within 15 days does not bar the filing of an action, subject to
115 s. 558.003. This subsection does not preclude a claimant from
116 filing an action sooner than 60 days, or 120 days as applicable,
117 after service of written notice as expressly provided in
118 subsection (6), subsection (7), or subsection (8).
119 (2) Within 30 days after receipt of the notice of claim
120 ~~involving a single-family home, an association representing 20~~
121 ~~or fewer residential parcels, a manufactured or modular home, a~~
122 ~~duplex, a triplex, or a quadruplex~~, or within 50 days after
123 receipt of the notice of claim involving an association
124 representing more than 20 ~~residential~~ parcels, the person
125 receiving the notice of claim under subsection (1) is entitled
126 to perform a reasonable inspection of the property ~~dwelling~~ or
127 of each unit subject to the claim to assess each alleged
128 construction defect. An association's right to access property
129 for either maintenance or repair includes the authority to grant
130 access for the inspection. The claimant shall provide the person
131 receiving the notice under subsection (1) and such person's
132 contractors or agents reasonable access to the property ~~dwelling~~
133 during normal working hours to inspect the property ~~dwelling~~ to
134 determine the nature and cause of each alleged construction
135 defect and the nature and extent of any repairs or replacements
136 necessary to remedy each defect. The person receiving notice
137 under subsection (1) shall reasonably coordinate the timing and
138 manner of any and all inspections with the claimant to minimize
139 the number of inspections. The inspection may include
140 destructive testing by mutual agreement under the following

141 reasonable terms and conditions:
142 (a) If the person receiving notice under subsection (1)
143 determines that destructive testing is necessary to determine
144 the nature and cause of the alleged defects, such person shall
145 notify the claimant in writing.
146 (b) The notice shall describe the destructive testing to
147 be performed, the person selected to do the testing, the
148 estimated anticipated damage and repairs to the property
149 ~~dwelling~~ resulting from the testing, the estimated amount of
150 time necessary for the testing and to complete the repairs, and
151 the financial responsibility offered for covering the costs of
152 repairs.
153 (c) If the claimant promptly objects to the person
154 selected to perform the destructive testing, the person
155 receiving notice under subsection (1) shall provide the claimant
156 with a list of three qualified persons from which the claimant
157 may select one such person to perform the testing. The person
158 selected to perform the testing shall operate as an agent or
159 subcontractor of the person receiving notice under subsection
160 (1) and shall communicate with, submit any reports to and be
161 solely responsible to the person receiving notice.
162 (d) The testing shall be done at a mutually agreeable
163 time.
164 (e) The claimant or a representative of the claimant may
165 be present to observe the destructive testing.
166 (f) The destructive testing shall not render the property
167 ~~dwelling~~ uninhabitable.
168

169 In the event the claimant fails or refuses to agree to
170 destructive testing, the claimant shall have no claim for
171 damages which could have been avoided or mitigated had
172 destructive testing been allowed when requested and had a
173 feasible remedy been promptly implemented.
174 (3) Within 10 days after receipt of the notice of claim
175 ~~involving a single-family home, an association representing 20~~
176 ~~or fewer residential parcels, a manufactured or modular home, a~~
177 ~~duplex, a triplex, or a quadruplex~~, or within 30 days after
178 receipt of the notice of claim involving an association
179 representing more than 20 ~~residential~~ parcels, the person
180 receiving the notice under subsection (1) may forward a copy of
181 the notice of claim to each contractor, subcontractor, supplier,
182 or design professional whom it reasonably believes is
183 responsible for each defect specified in the notice of claim and
184 shall note the specific defect for which it believes the
185 particular contractor, subcontractor, supplier, or design
186 professional is responsible. Each such contractor,
187 subcontractor, supplier, and design professional may inspect the
188 property ~~dwelling~~ as provided in subsection (2).
189 (4) Within 15 days after receiving a copy of the notice of
190 claim pursuant to subsection (3) ~~involving a single-family home,~~
191 ~~an association representing 20 or fewer residential parcels, a~~
192 ~~manufactured or modular home, a duplex, a triplex, or a~~
193 ~~quadruplex~~, or within 30 days after receipt of the copy of the
194 notice of claim involving an association representing more than
195 20 ~~residential~~ parcels, the contractor, subcontractor, supplier,
196 or design professional must serve a written response to the

197 person who forwarded a copy of the notice of claim. The written
198 response shall include a report, if any, of the scope of any
199 inspection of the property ~~dwelling~~, the findings and results of
200 the inspection, a statement of whether the contractor,
201 subcontractor, supplier, or design professional is willing to
202 make repairs to the property ~~dwelling~~ or whether such claim is
203 disputed, a description of any repairs they are willing to make
204 to remedy the alleged construction defect, and a timetable for
205 the completion of such repairs.
206 (5) Within 45 days after receiving the notice of claim
207 ~~involving a single-family home, an association representing 20~~
208 ~~or fewer residential parcels, a manufactured or modular home, a~~
209 ~~duplex, a triplex, or a quadruplex~~, or within 75 days after
210 receipt of a copy of the notice of claim involving an
211 association representing more than 20 ~~residential~~ parcels, the
212 person who received notice under subsection (1) must serve a
213 written response to the claimant. The response shall be served
214 to the attention of the person who signed the notice of claim,
215 unless otherwise designated in the notice of claim. The written
216 response must provide:
217 (a) A written offer to remedy the alleged construction
218 defect at no cost to the claimant, a detailed description of the
219 proposed repairs necessary to remedy the defect, and a timetable
220 for the completion of such repairs;
221 (b) A written offer to compromise and settle the claim by
222 monetary payment, that will not obligate the person's insurer,
223 and a timetable for making payment;
224 (c) A written offer to compromise and settle the claim by

225 a combination of repairs and monetary payment, that will not
226 obligate the person's insurer, that includes a detailed
227 description of the proposed repairs and a timetable for the
228 completion of such repairs and making payment;
229 (d) A written statement that the person disputes the claim
230 and will not remedy the defect or compromise and settle the
231 claim; or
232 (e) A written statement that a monetary payment, including
233 insurance proceeds, if any, will be determined by the person's
234 insurer within 30 days after notification to the insurer by
235 means of forwarding the claim, which notification shall occur at
236 the same time the claimant is notified of this settlement
237 option, which the claimant can accept or reject. A written
238 statement under this paragraph may also include an offer under
239 paragraph (c), but such offer shall be contingent upon the
240 claimant also accepting the determination of the insurer whether
241 to make any monetary payment in addition thereto. If the insurer
242 for the person receiving the claim makes no response within the
243 30 days following notification, then the claimant shall be
244 deemed to have met all conditions precedent to commencing an
245 action.
246 (8) If the claimant timely and properly accepts the offer
247 to repair an alleged construction defect, the claimant shall
248 provide the offeror and the offeror's agents reasonable access
249 to the claimant's property ~~dwelling~~ during normal working hours
250 to perform the repair by the agreed-upon timetable as stated in
251 the offer. If the offeror does not make the payment or repair
252 the defect within the agreed time and in the agreed manner,

253 except for reasonable delays beyond the control of the offeror,
254 including, but not limited to, weather conditions, delivery of
255 materials, claimant's actions, or issuance of any required
256 permits, the claimant may, without further notice, proceed with
257 an action against the offeror based upon the claim in the notice
258 of claim. If the offeror makes payment or repairs the defect
259 within the agreed time and in the agreed manner, the claimant is
260 barred from proceeding with an action for the claim described in
261 the notice of claim or as otherwise provided in the accepted
262 settlement offer.
263 (9) This section does not prohibit or limit the claimant
264 from making any necessary emergency repairs to the property
265 ~~dwelling~~ as are required to protect the health, safety, and
266 welfare of the claimant. In addition, any offer or failure to
267 offer pursuant to subsection (5) to remedy an alleged
268 construction defect or to compromise and settle the claim by
269 monetary payment does not constitute an admission of liability
270 with respect to the defect and is not admissible in an action
271 brought under this chapter.
272 (14) To the extent that an arbitration clause in a
273 contract for the sale, design, construction, or remodeling of
274 real property ~~a dwelling~~ conflicts with this section, this
275 section shall control.
276 Section 4. Section 558.005, Florida Statutes, is amended
277 to read:
278 558.005 Contract provisions; application.--
279 (1) Except as otherwise provided in subsections (3) and
280 (4), the provisions of this chapter shall control every contract

281 for the design, construction, or remodeling of real property ~~a~~
282 ~~dwelling~~ entered into on or after July 1, 2004, which contains
283 the notice as set forth in subsection (2) and is conspicuously
284 set forth in capitalized letters.
285 (2) The notice required by subsection (1) must be in
286 substantially the following form:
287
288 CHAPTER 558 NOTICE OF CLAIM
289
290 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS
291 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN
292 ALLEGED CONSTRUCTION DEFECT ~~IN YOUR HOME~~. SIXTY DAYS BEFORE YOU
293 BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO
294 THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY
295 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE
296 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION
297 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE
298 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
299 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND
300 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED
301 TO PROTECT YOUR INTERESTS.
302 (3) After receipt of the initial notice of claim, a
303 claimant and the person receiving notice under s. 558.004(1)
304 may, by written mutual agreement, alter the procedure for the
305 notice of claim process described in this chapter.
306 (4) This chapter applies to all actions accruing on or
307 after July 1, 2004, and all actions commenced on or after such
308 date, regardless of the date of sale, issuance of a certificate

309 of occupancy or its equivalent, or substantial completion of the
310 construction ~~dwelling~~. Notwithstanding the notice requirements
311 of this section for contracts entered into on or after October
312 ~~July~~ 1, 2006 ~~2004~~, this chapter applies to all actions accruing
313 before July 1, 2004, but not yet commenced as of July 1, 2004,
314 and failure to include the notice requirements of this section
315 in a contract entered into prior to July 1, 2004, does not
316 operate to bar the procedures of this chapter from applying to
317 all such actions.
318 Section 5. This act shall take effect October 1, 2006.

HB 1425

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 Advisory Council on Condominiums
SPONSOR(S): Brutus
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Blalock	Bond
2) Business Regulation Committee			
3) State Administration Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.

The bill provides that the Advisory Council on Condominiums must review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires that the council submit a report to the Legislature by November 30, 2006, which evaluates whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties, and that recommends any proposed legislation needed to improve the protection provided by part VI of ch. 718, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill adds additional responsibilities for the Advisory Council on Condominiums.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Advisory Council on Condominiums

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.[1] The issues the council is required to consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.[2] The council is also charged with recommending necessary improvements to the education programs offered by the Division of Florida Land Sales, Condominiums, and Mobile Homes and reviewing, evaluating, and advising the division about revisions and adoption of rules affecting condominiums.[3] The council is administratively assigned to the division within the Department of Business and Professional Regulation (DBPR).[4] The members of the council serve on a voluntary basis, but are entitled to receive per diem and travel expenses while on official business.[5]

The Roth Act

In 1980, the Legislature enacted Part VI of the Condominium Act (ch. 718, F.S.), also known as the Roth Act, which addresses condominium conversions.[6] The Roth Act is the result of a detailed report prepared by James S. Roth, the Director of what was formerly known as the Department of Professional Regulation, Division of Florida Land Sales and Condominiums. The Roth Report recommended that legislation be enacted to provide sufficient time and information so that tenants could make informed decisions about conversion of their rental facilities and protections to purchasing and nonpurchasing tenants.[7]

Part VI of the Condominium Act is devoted exclusively to condominiums which are created when existing improvements are converted to a residential condominium. This part of the Act provides protections to the existing renters in the building and to prospective purchasers of the converted condominium units. Renters are entitled to written notice of the proposed conversion and an option to extend their current lease. Each tenant has the right of first refusal to purchase the unit and the developer must provide basic background information to assist each tenant in evaluating the potential purchase.[8]

Section 718.616, F.S., requires each developer of a residential condominium to provide to new prospective purchasers and the ultimate owners of converted condominium units the same basic

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[1] Section 5, ch. 2004-345, L.O.F.
[2] Section 718.50151(2)(a), F.S.
[3] Section 718.50151(2)(b) and (c), F.S.
[4] Section 718.50151(1), F.S.
[5] *Id.*
[6] Section 1, ch. 80-3, L.O.F.
[7] *Florida Condominium Law and Practice*, 3d ed., s. 9.1 (The Florida Bar, 2003).
[8] Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners and Directors of Florida Condominiums*, 8th ed., s. 2.7, 33-34 (Aras Publishing 2003).

disclosures that are required in all condominium developments.[9] The developer must disclose the following information concerning the improvements:

- Date and type of construction;
- Prior use;
- Existence of any termite damage or infestation and whether it has been treated properly. A report from a certified pest control operator must substantiate the inspection.

The developer must also disclose the condition for each of the components listed in s. 718.616(3)(a), F.S. The components include the roof, structure, fireproofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical systems, swimming pools, seawalls, pavement and parking areas, and drainage systems. The developer must also disclose the components age, estimated remaining useful life, estimated current replacement cost, and structural and functional soundness.[10] The disclosure must be substantiated by attaching a copy of a certificate by a Florida licensed architect or engineer under seal.[11]

The developer is not required to certify that the replacement or renewal meets the requirements of the then-applicable building code. However, for purposes of funding a reserve account, this certification is required. The estimated current replacement cost of the component must be given as a total amount and as a per-unit amount based on each unit's proportional share of the common expenses.[12]

If the proposed condominium is situated within a municipality, the disclosure must include a letter from the municipality that acknowledges that it has been notified of the proposed conversion.[13]

Section 718.618, F.S., requires that once a conversion has taken place, the developer has to create financial safeguards for the condominiums. The developer must either: (1) establish reserve accounts for capital expenditures and deferred maintenance; (2) give implied warranties of fitness and merchantability for a period of three years beginning with the notice of intended conversion and continuing for three years, or the recording of the declaration to condominium and continuing for three years, or one year after owners other than the developer obtain control of the association, whichever occurs later; or (3) post a surety bond in an amount which would be equal to the total amount of all required reserve accounts payable to the association.[14]

A recent article on condominium conversions identified several issues regarding the conversion process.[15] The article maintained that the current statutory law offered little protection for consumers and required limited accountability for developers. The article noted that once the condominium association assumes control over the converted condominium, it may face hidden structural problems and problems regarding the reserve accounts. Another criticism identified was that the corporations created for the conversion may be limited liability companies with little assets to be attached when problems arise after the conversion.[16]

Compliance with s. 718.618, F.S., does not shield the developer from all liability in connection with the components involved. The statute does not foreclose other legal actions based upon negligence, misrepresentation, strict liability, or similar liability actions.[17]

The Division of Florida Land Sales, Condominiums, and Mobile Homes in the Department of Business and Professional Regulation indicated the number of conversions in the table below.

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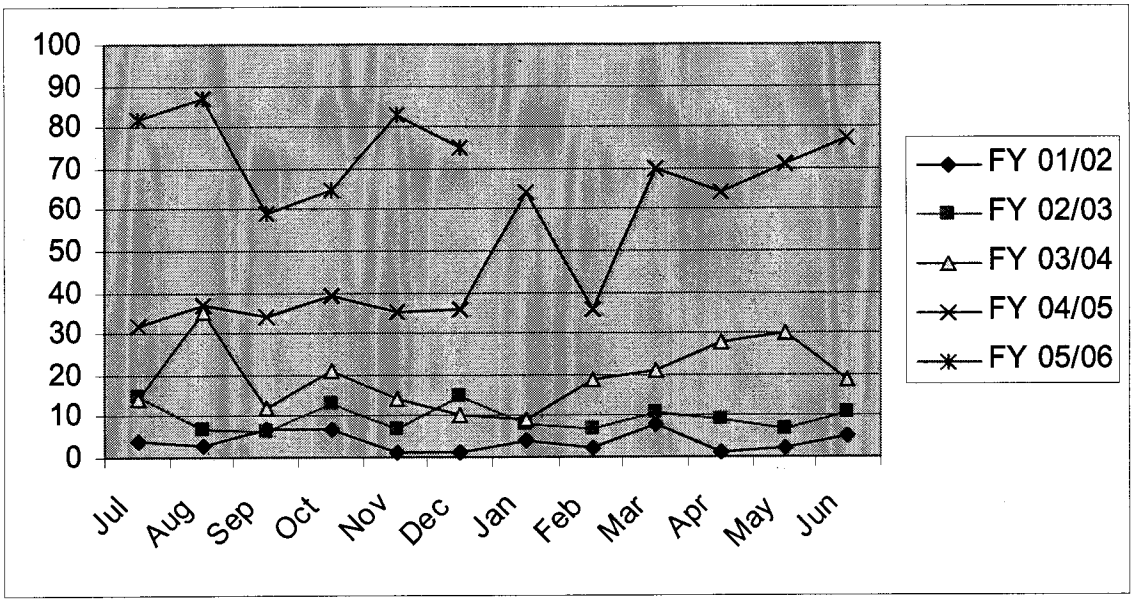
[9] Section 718.616, F.S.; Rule 61B-24.004(1)(a), F.A.C.
[10] Section 718.616(3)(b), F.S.
[11] *Id.*
[12] Section 718.616(3)(b)3., F.S.
[13] Section 718.616(4), F.S.
[14] Section 718.618, F.S.
[15] Paola Iuspa-Abbott, "Condo Conversion Blues," *Daily Business Review,* 15 Aug. 2005, A8.
[16] *Id.*
[17] *Supra* at note 8, s. 9.50.



Effect of Bill

The bill directs the Advisory Council on Condominiums to review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires the council to submit a report to the Legislature by November 30, 2006. The report must evaluate whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties and recommend any proposed legislation needed to improve the protection provided by part VI of ch. 718, F.S.

In particular, the bill requires that the report examine ss. 718.616 and 718.618, F.S., as they relate to:

- Whether the disclosures required by s. 718.616, F.S., provide adequate information to the purchaser; whether more specific guidelines regarding the contents of the reports should be established; and whether the creation of privity or potential liability between persons who certify such disclosure reports and the unit owners should be addressed; and
- Whether the provisions of s. 718.618, F.S., which require developers to fund reserve accounts or alternatives to such accounts, are adequate or should be modified.

C. SECTION DIRECTORY:

Section 1 requires the Advisory Council on Condominiums to review certain provisions related to protections of condominium conversions, and requiring a report to the Legislature.

Section 2 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure 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

N/A

1 A bill to be entitled
2 An act relating to the Advisory Council on Condominiums;
3 requiring the Advisory Council on Condominiums to review
4 certain provisions related to protections for purchasers
5 of condominium conversions; requiring a report to the
6 Legislature; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. (1) The Advisory Council on Condominiums,
11 created by s. 718.50151, Florida Statutes, shall review part VI
12 of chapter 718, Florida Statutes, concerning condominium
13 conversions, and shall submit a report to the Legislature by
14 November 30, 2006, which evaluates whether such provisions
15 provide adequate postpurchase protection for purchasers of
16 condominium conversion properties and recommends any proposed
17 legislation needed to improve the protection provided by part VI
18 of chapter 718, Florida Statutes.
19 (2) The report must examine the existing provisions,
20 particularly ss. 718.616 and 718.618, Florida Statutes, as they
21 relate to the following issues:
22 (a) Whether the disclosures required by s. 718.616,
23 Florida Statutes, provide adequate information to the purchaser;
24 whether more specific guidelines regarding the contents of such
25 reports should be established; and whether the creation of
26 privity or potential liability between persons who certify such
27 disclosure reports and the unit owners should be addressed; and
28 (b) Whether the provisions of s. 718.618, Florida

29 Statutes, which require developers to fund reserve accounts or
30 alternatives to such accounts, are adequate or should be
31 modified.
32 Section 2. This act shall take effect upon becoming a law.

HB 1437

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1437 Uniform Commercial Code
SPONSOR(S): Seiler; Goodlette
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Transportation & Economic Development Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Uniform Commercial Code governs commercial transactions. Article 1 of the Uniform Commercial Code ("UCC") provides definitions and general provisions which apply as default rules covering transactions and matters covered under different articles of the UCC. As parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications are reflected in this bill. Thus, this bill contains many changes of a technical, non-substantive nature. Several changes reflect an effort to add greater clarity. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

The first substantive change is intended to clarify the scope of Article 1. The bill now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. Second, the bill attempts to define the application of supplemental principles of law, with distinctions about where the UCC is preemptive. Third, the statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. The definition of "good faith" is revised to conform to the definition of good faith that applies in the majority of recently revised UCC articles. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

The bill repeals the existing Florida Secured Transaction Registry ("FSTR"), and redefines that term. Currently, the FSTR is a centralized database in which financial statements are filed to register a secured party's interest in a loan secured by non-titled property. In 2001, the Department of State ("department") privatized the process of filing and maintaining the Florida Secured Transaction Registry, but retained sole and exclusive ownership of the materials and records of the registry. Currently, the department has the right to reclaim the registry if the private contractor does not perform the contract or becomes insolvent. This bill eliminates the definition and description of the FTSR, eliminates the provisions providing that the state maintains title and control over the records, and, in effect eliminates all oversight over a privatized state function.

The fiscal impact on the Department of State is unknown and likely significant. This bill does not appear to have a fiscal impact on local governments. This bill reduces UCC filing fees charged to the public. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government --decreases the amount of governmental involvement with the Florida Secured Transaction Registry.

B. EFFECT OF PROPOSED CHANGES:[1]

Background

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 2001, the conference finalized the Revision of Uniform Commercial Code Article 1 - General Provisions. Currently, the act has been enacted in 14 states and the U.S. Virgin Islands, and is filed in the legislatures of 8 more.[3] The NCCUSL provided the following information regarding the proposed act.[4]

Article 1 of the UCC[5] provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. Article 2 of the UCC pertains to sales and transactions in goods.[6] Article 3 governs negotiable instruments.[7] Article 4 governs bank deposits and collections,[8] whereas Article 5 is concerned with letters of credit.[9] Article 7 pertains to documents of title,[10] and Article 8 governs investment securities.[11] Article 9 encompasses secured transactions.[12] The final section of the UCC concerns leases.[13]

Current Article 1 is sub-divided into three parts. Part I is entitled "Short Title, Construction, Application and Subject Matter of Act."[14] Part II is entitled "General Definitions and Principles of Interpretation."[15]

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[1] The bulk of this analysis is specifically derived from the Business Law Section of the Florida Bar's report that incorporates National Conference of Commissioners on Uniform State Laws' ("NCCUSL") report which was graciously supplied to the Civil Justice Committee. The Drafting Committee ("the Drafting Committee") to revise Article 1 of the UCC included the following: Boris Auerbach, Marion W. Benfield, Jr. Amelia H. Boss, James C. McKay, Jr., H. Kathleen Patchel, Curtis R. Reitz, Carlyle C. Ring, Jr., James J. White, Neil B. Cohen, John L. McClaugherty, Robert J. Tennessen, Harry C. Sigman,
Richard R. Goldberg, William J. Woodward, Jr., Fred H. Miller, and William J. Pierce.
[2] *Uniform Law Commissioners*, (Mar. 6, 2006) <http://www.nccusl.org/Update/>.
[3] *Revised Uniform Commercial Code Article I, General Provisions (2001)*, (Mar. 22, 2006) <http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ucc1.asp>. Florida is not included in this list.
[4] *Summary, Uniform Real Property Electronic Recording Act*, (Mar. 22, 2006) <http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-ucc1.asp>.
[5] Article 1 is located in ch. 671, F.S.
[6] Article 2 is located in ch. 672, F.S.
[7] Article 3 is located in ch. 673, F.S.
[8] Article 4 is located in ch. 674, F.S.
[9] Article 5 is located in ch. 675, F.S.
[10] Article 7 is located in ch. 677, F.S.
[11] Article 8 is located in ch. 678, F.S.
[12] Article 9 is located in ch. 679, F.S.
[13] The UCC provisions related to leases is located in ch. 680, F.S.
[14] Sections 671.101-671.109, F.S.
[15] Sections 671.201-671.208, F.S.

Part III is entitled "Effective Date and Repealer."[16] The following are significant substantive issues raised by changes from current Article 1.

Substantive Issues

Scope

Article 1 contains a relatively small number of substantive rules, but those rules are of fundamental importance. Occasionally courts and commentators have expressed uncertainty as to which transactions are governed by the substantive rules. Section 671.102, F.S. is amended to express a point that is implicit in current Article 1 – namely, that the substantive rules in Article 1 apply only to transactions within the scope of the other Articles.

Applicability of Supplemental Principles of Law

This bill merges sections (1) and (2) of current s. 671.102, F.S. (concerning the underlying purposes and policies of the UCC) and current s. 671.103, F.S. (concerning the applicability of supplemental principles of law) into a revised s. 671.103, F.S. The provisions have been combined to reflect the interrelationship between the Code's purposes and policies and the extent to which other law is available to supplement it.

Good Faith[17]

In the new definitions, the only significant substantive change lies in the definition of good faith. Section. 671.201(19), F.S. defined good faith simply as honesty in fact, a purely subjective definition containing no element of commercial reasonableness. In contrast, in Article 2[18], the definition of good faith applicable to merchants means "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." Over time, amendments to other Articles incorporated the broader standard adopting it for all parties in Articles 3, 4, 8, and 9. Only Revised Article 5 defines "good faith" solely in terms of subjective honesty. Article 6 has been deleted from the Florida Uniform Commercial Code, and Article 7 contains no reference to "good faith." Thus, adoption of the broader definition in Article 1 merely states generally the standard already applicable throughout the Code. The narrower definition in Article 5 is explicitly applicable to that chapter and will not be disturbed by this bill.

Only one Florida case has been found in which the holding relied on the narrower former definition of good faith. In *Espirito Santo Bank of Florida v. Agronomics Finance Corporation*, 591 So. 2d 1078 (3d DCA 1991), the court held that even though the bank had been negligent, it did not act in subjective bad faith so as to justify consequential damages under s. 674.104, F.S. (1989). Of course the bank's negligence might have been seen as a bad faith failure to observe reasonable commercial standards had the amended definition been in place. However, the legislative decision to make this change is not presented at this time. The decision to broaden the definition applicable to Article 4 was made soon after this case was decided when the 1992 Amendments to Article 4 were adopted; s. 674.104(2), F.S. (1992). The amendment to the definition of good faith in Article 1 will affect no change in the law currently applicable to the above case.

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[16] Sections 671.301-671.311, F.S.

[17] On June 7, 2005, Governor M. Jodi Rell signed Connecticut HB 6985 into law, making Connecticut the ninth state (out of fourteen who have adopted some form of the proposed Uniform UCC Article One) to adopt the uniform "good faith" definition found in bill. Other states adopting the uniform good faith definition found in proposed 1-102(b)(20) include Arkansas, Delaware, Minnesota, Montana, Nevada, New Mexico, Oklahoma and Texas.

[18] Section 672.103(1)(b), F.S.

Course of Performance

Section 671.205, F.S. adds the concept of "course of performance," currently utilized only in Article 2, to course of dealing and usage of trade as the contextual clues that a court may use to interpret a contract.

Statute of Frauds[19]

The Statute of Frauds "for kinds of personal property not otherwise covered" that appears in current s. 671.206, F.S. has been repealed in this bill. The Drafting Committee for the NCCUSL noted that the other Articles of the UCC make individual determinations as to writing requirements for transactions within their scope, so that the only effect of s. 671.206, F.S was to impose a writing requirement on transactions not otherwise governed by the UCC. It was decided that it is inappropriate for Article 1 to impose that requirement.

Structural Issues

Relocation of Substantive Rules Embedded in Definitions

The Drafting Committee identified four cases in which definitions in s. 671.201 were made unnecessarily complicated by substantive rules embedded within them. Extracting those substantive rules and placing them in separate sections enables those rules to be presented more effectively and is more consistent with current drafting principles in many States.

Notice and Knowledge

The rules concerning notice and knowledge have been moved from their current location in three subsections of s. 671.201 to a separate substantive section. The Drafting Committee believes that, with this reorganization, the concepts are more clearly articulated and more easily found.

Distinguishing Leases from Security Interests

In Article 1, the definition of "security interest," s. 671.201(37), F.S. consists of a short paragraph elucidating a basic principle that resolves almost every issue, followed by over 50 lines of clarification and qualification that serve only one function – distinguishing "true leases" from transactions that are leases in form but security interests in substance. This extended rule even contains a nested definition of the term "present value," which it uses as part of drawing the distinction between true leases and security interests. The portion of the definition of "security interest" that distinguishes true leases from security interests has been moved to a separate substantive section. As a result, the remaining portion of the definition of "security interest" is shorter and clearer. The definition of "present value" is moved to its own definitional subsection.

Value

Whether a person acquires rights "for value" is at present the subject of a definitional provision in current s. 671.201(44), F.S. The provision is more appropriately articulated as a free-standing rule.

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[19] The statute of frauds is defined as "a statute (based on the English Statute of Frauds) designed to prevent fraud and perjury by requiring certain contracts to be in writing and signed by the party to be charged." Black's Law Dictionary 1422 (7th ed. 1999).

Detailed Review[20]

Section 3. Short Title; Scope of Chapter

New language is added in order to make the structure of Article 1 parallel with that of other Articles of the UCC. Moreover additional language is added to which is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear that the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the UCC. This article does not apply to transactions to the extent that they are governed by other law.

Section 5. Remedies to be Liberally Administered

This section is nearly identical to the existing s. 671.106, F.S. The revised section is intended to effect three propositions. The first is to negate the possibility of unduly narrow or technical interpretation of remedial provisions by providing that the remedies in the UCC are to be liberally administered to the end stated in this section. The second is to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the UCC elsewhere makes it clear that damages must be minimized. The third purpose of subsection (1) is to reject any doctrine that damages must be calculable with mathematical accuracy. Compensatory damages are often at best approximate: they have to be proved with whatever definiteness and accuracy the facts permit, but no more.

Under the unchanged s. 671.106(2), F.S provides any right or obligation described in the UCC is enforceable by action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Consequential" or "special" damages and "penal" damages are not defined in the UCC; rather, these terms are used in the sense in which they are used outside the UCC.

Section 6. Waiver or Renunciation of Claim or Right after Breach

Section 6 of the bill is drawn from s. 671.107, F.S. This section changes former law in two respects. First, s. 671.107, F.S, requiring the "delivery" of a "written waiver or renunciation" merges the separate concepts of the aggrieved party's agreement to forego rights and the manifestation of that agreement. This section separates those concepts, and explicitly requires agreement of the aggrieved party. Second, the revised section reflects developments in electronic commerce by providing for memorialization in an authenticated record.

This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where the agreement effecting such renunciation is memorialized in a record authenticated by the aggrieved party. Its provisions, however, must be read in conjunction with the section imposing an obligation of good faith.

Section 7. General Definitions

This section defines 43 terms and phrases appearing throughout the UCC. Most of the definitions are taken from s. 671.201, F.S. with very little change. For the most part the changes are intended to clarify the definition or bring it up to date with modern commercial practice. A number of the subsections of s. 671.201, F.S. have been relocated to reflect the determination that they are truly substantive rather than purely definitional.

[20] This more extensive review of various sections of the bill does not address the sections covered elsewhere in the analysis or the sections containing the more routine modifications.

In order to make it clear that all definitions in the UCC – not just those in Article 1 – do not apply if the context otherwise requires, a new subsection (a) to that effect has been added. The reference to the "context" is intended to refer to the context in which the defined term is used in the UCC. In other words, the definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense.

Other than minor stylistic changes, the definitions in this bill are as in Article 1 except as noted below.

- Action. Is unchanged from s. 671.201(1), F.S., and it was derived from similar definitions in the Uniform Negotiable Instruments Law, the Uniform Sales Act; the Uniform Warehouse Receipts Act; and the Uniform Bills of Lading Act.

- Aggrieved party. Essentially, this definition is unchanged from s. 671.201(2), F.S.

- Agreement. This definition is derived from s. 671.201(3), F.S. As used in the UCC the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the UCC to displace a stated rule of law. Whether an agreement has legal consequences is determined by applicable provisions of the UCC and, to the extent provided in the UCC, by the law of contracts.

- Bank. This definition is derived from s. 674.105(1), F.S.

- Bearer. This definition is essentially unchanged from s. 671.201(5), F.S., which was derived from the Uniform Negotiable Instruments Law.

- Bill of Lading. This definition is derived from s. 671.201(6), F.S. The references to airbills has been deleted as they are no longer necessary.

- Branch. This definition is unchanged from s. 671.201(7), F.S.,.

- Burden of establishing. This definition is unchanged from s. 671.201(8), F.S.

- Buyer in ordinary course of business. This definition is essentially unchanged from s. 671.201(9), F.S. The first sentence of paragraph makes clear that a buyer from a pawnbroker cannot be a buyer in ordinary course of business. The second sentence tracks Section 6-102(1)(m). It explains what it means to buy "in the ordinary course." The penultimate sentence prevents a buyer that does not have the right to possession as against the seller from being a buyer in ordinary course of business. Concerning when a buyer obtains possessory rights. However, the penultimate sentence is not intended to affect a buyer's status as a buyer in ordinary course of business in cases (such as a "drop shipment") involving delivery by the seller to a person buying from the buyer or a donee from the buyer. The requirement relates to whether as against the seller the buyer or one taking through the buyer has possessory rights.

- Conspicuous. This definition is derived from s. 671.201(10), F.S. It states the general standard that to be conspicuous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is an issue for the court. The subparagraphs set out several methods for making a term conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with that test.

- Consumer. This definition is derived from other portions of the UCC.

- Contract. This definition is essentially unchanged from s. 671.201(11), F.S.

- Creditor. This definition is unchanged from s. 671.201(12), F.S.

- Defendant. This definition is essentially unchanged from s. 671.201(13), F.S., which was derived from the Uniform Sales Act.

- Delivery. This definition is derived from s. 671.201(14), F.S.. The reference to certificated securities has been deleted in light of the more specific treatment of the matter elsewhere in the UCC.

- Document of title. This definition is unchanged from s. 671.201(15), F.S., which was derived from the Uniform Sales Act. By making it explicit that the obligation or designation of a third party as "bailee" is essential to a document of title, this definition clearly rejects any such result as obtained in Hixson v. Ward, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a bill can move through banking channels faster than the goods themselves can reach their destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as "Documents of Title." The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

  Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by steamship companies upon delivery of the goods at the dock, entitling a designated person to have issued to him at the company's office a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this section regardless of the name given to the instrument.

  The goods must be "described," but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this Article.

  The definition is broad enough to include an airway bill.

- Fault. This definition is derived from s. 671.201(16), F.S. "Default" has been added to the list events constituting fault.

- Fungible Goods. This definition is derived from s. 671.201(17), F.S. The definition has been reorganized and references to securities have been deleted since other portions of the UCC no longer use the term "fungible" to describe securities.

- Genuine. This definition is unchanged from s. 671.201(18), F.S.

- Good faith. This definition modifies s. 671.201(19), F.S. See above discussion.

- Holder. This definition is derived from s. 671.201(20), F.S. The definition has been reorganized for clarity.

- Insolvency proceedings. This definition is essentially unchanged from s. 671.201(22), F.S.

- Insolvent. This definition is derived from s. 671.201(23), F.S. The three tests of insolvency – "generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute as to them," "unable to pay debts as they become due," and "insolvent within the meaning of the federal bankruptcy law" – are expressly set up as alternative tests and must be approached from a commercial standpoint.

- Money. This definition is essentially unchanged from s. 671.201(24), F.S. The test is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.

- Organization. The definition of this word, found in s. 671.201(28), F.S., has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

- Party. This definition is substantively identical to s. 671.201(26), F.S. Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to the principal, particular account is taken of that situation.

- Person. The definition of this word, found in s. 671.201(30), F.S., has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

- Present value. This definition was formerly contained within the definition of "security interest."

- Purchase. This definition is derived from s. 671.201(29), F.S. The form of definition has been changed from "includes" to "means."

- Purchaser. This definition is unchanged from s. 671.201(33), F.S.

- Record. This definition is derived from other portions of the UCC.

- Remedy. This definition is unchanged from s. 671.201(34), F.S. The purpose is to make it clear that both remedy and right (as defined) include those remedial rights of "self help" which are among the most important bodies of rights under the UCC, remedial rights being those to which an aggrieved party can resort on its own motion.

- Representative. This definition is derived from s. 671.201(35), F.S. Reorganized, and form changed from "includes" to "means."

- Right. This definition is unchanged from s. 671.201(36), F.S.

- Security Interest. The definition is the first paragraph of the definition of "security interest" in s. 671.201(37), F.S.. The remaining portion has been moved to another section. Notice that the term includes the interest of certain outright buyers of certain kinds of property.

- Send. This definition contains slight changes to s. 671.201(38), F.S.

- Signed. This definition is derived from s. 671.201(39), F.S. The former definition referred to "authenticate"; because authenticate is now a defined term, the language has been changed to

"intention to adopt or accept." The latter formulation is derived from the definition of "authenticate," The definition of "signed" is to make clear that, as the term is used in the UCC, a complete signature is not necessary. The symbol may be printed, stamped or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible situations can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to adopt or accept the writing.

- State. This is the standard definition of the term used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

- Surety. This definition makes it clear that "surety" includes all secondary obligors, not just those whose obligation refers to them person obligated as a surety

- Term. This definition is essentially unchanged from s. 671.201(42), F.S.

- Unauthorized signature. This definition is essentially unchanged from s. 671.201(43), F.S.

- Warehouse receipt. This definition contains minor changes to s. 671.201(45), F.S. This definition was derived from the Uniform Sales Act and the Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons.

- Writing. This definition is essentially unchanged from s. 671.201(46), F.S.

Section 8. Prima Facie Evidence by Third-Party Documents

This section is nearly identical to s. 671.202, F.S. This section supplies judicial recognition for documents that are relied upon as trustworthy by commercial parties. This section is concerned only with documents that have been given a preferred status by the parties themselves who have required their procurement in the agreement, and for this reason the applicability of the section is limited to actions arising out of the contract that authorized or required the document. The list of documents is intended to be illustrative and not exclusive.

The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation. Documents governed by this section need not be writings if records in another medium are generally relied upon in the context.

Section 9. Obligation of Good Faith

The source for this section is s. 671.203, F.S. This section sets forth a basic principle running throughout the UCC. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. While this duty is explicitly stated in some provisions of the UCC, the applicability of the duty is broader than merely these situations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this Act. It is further implemented by other provisions on course of dealing, course of performance, and usage of trade. This section does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.

"Performance and enforcement" of contracts and duties within the UCC include the exercise of rights created by the UCC.

Section 10. Reasonable Time

Section (1) makes it clear that requirements that actions be taken within a "reasonable" time are to be applied in the transactional context of the particular action.

Under section (2), the agreement that fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of "agreement" the circumstances of the transaction, including course of dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

Section 11. Course of Performance; Course of Dealing; Usage of Trade

This is derived from s. 671.205, F.S. and other sections. This section integrates the "course of performance" concept from other articles of the UCC into the principles of s. 671.205, F.S., which deals with course of dealing and usage of trade. In so doing, the section slightly modifies the articulation of the course of performance rules to fit more comfortably with the approach and structure of s. 671.205, F.S. There are also slight modifications to be more consistent with the definition of "agreement." It should be noted that a course of performance that might otherwise establish a defense to the obligation of a party to a negotiable instrument is not available as a defense against a holder in due course who took the instrument without notice of that course of performance.

The UCC rejects both the "lay-dictionary" and the "conveyancer's" reading of a commercial agreement. Instead the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

"Course of dealing," as defined in section (2), is restricted, literally, to a sequence of conduct between the parties previous to the agreement. A sequence of conduct after or under the agreement, however, is a "course of performance." "Course of dealing" may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

The UCC deals with "usage of trade" as a factor in reaching the commercial meaning of the agreement that the parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term "usage of trade," the UCC expresses its intent to reject those cases which see evidence of "custom" as representing an effort to displace or negate "established rules of law." A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold "unless otherwise agreed" but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

A usage of trade under section (3) must have the "regularity of observance" specified. The ancient English tests for "custom" are abandoned in this connection. Therefore, it is not required that a usage of trade be "ancient or immemorial." "universal," or the like. Under the requirement of section (3) full recognition is thus available for new usages and for usages currently observed by the great majority of

decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

The policies of the UCC controlling explicit unconscionable contracts and clauses apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage must be "reasonable." However, the emphasis is shifted. The very fact of commercial acceptance makes out a prima facie case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

Section (4), giving the prescribed effect to usages of which the parties "are or should be aware," reinforces the provision of section (3) requiring not universality but only the described "regularity of observance" of the practice or method. This subsection also reinforces the point of section (3) that such usages may be either general to trade or particular to a special branch of trade.

Although the definition of "agreement" includes the elements of course of performance, course of dealing, and usage of trade, the fact that express reference is made in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere.

In cases of a well established line of usage varying from the general rules of the UCC where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the minimum variation demonstrated. The whole is not to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

Section (7) is intended to insure that this Act's liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

Section 12. Repeal of Statute of Frauds

The Statute of Frauds "for kinds of personal property not otherwise covered" that appears in s. 671.206, F.S. has been repealed in this bill. The Drafting Committee noted that the other Articles of the UCC make individual determinations as to writing requirements for transactions within their scope, so that the only effect of s. 671.206, F.S was to impose a writing requirement on transactions not otherwise governed by the UCC. It was decided that it is inappropriate for Article 1 to impose that requirement.

Section 13. Option to Accelerate at Will

Except for minor stylistic changes, this section is nearly identical to s. 671.208, F.S. The common use of acceleration clauses in many transactions governed by the UCC, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

Obviously this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an obligation of payment or performance which in the first instance is due at a future date.

Section 14. Notice; Knowledge

This section was derived from other sections of the UCC. These provisions are substantive rather than purely definitional. Accordingly, they have been relocated to this new section.

Under section (1), a person has notice when, inter alia, the person has received a notification of the fact in question. The subsection leaves open the time and circumstances under which notice or notification may cease to be effective.

As shown in section (4), the word "notifies" is used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "Send." When the essential fact is the other party's receipt of the notice, that is stated. Section (5) states when a notification is received.

Section (6) makes clear that reason to know, knowledge, or a notification, although "received" for instance by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

Section 15. Presumptions

This new section is created dealing with presumptions, however it is essentially unchanged from s. 671.201(31), F.S, . This section provides that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

Section 16. Value

This section is unchanged from s. 671.201(44), F.S., which was derived from other uniform acts. These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from the definition section.

All the Uniform Acts in the commercial law field (except the Uniform Conditional Sales Act) have carried definitions of "value." All those definitions provided that value was any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a pre-existing claim. Sections (1), (2), and (4) in substance continue the definitions of "value" in the earlier acts. Section (3) makes explicit that "value" is also given in a third situation: where a buyer by taking delivery under a pre-existing contract converts a contingent into a fixed obligation.

This definition is not applicable to Articles 3 and 4 of the UCC, but the express inclusion of immediately available credit as value follows the separate definitions in those Articles. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is "immediately available" within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

Section 17. Electronic Signatures

As a result of the enactment of 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.

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.,[21] but this section does not modify, limit, or supersede s. 101(c) of that act,[22] 15 U.S.C. s. 7001(c),[23] or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).[24]

Section 18. Subordinated Obligations

Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or non-negotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation," "subordination," and "subordinated creditor."

Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior creditor. This "turn-over" practice has on occasion been explained in terms of "equitable lien," "equitable assignment," or "constructive trust," but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction "that creates a security interest in personal property . . . by contract" or a "sale of accounts, chattel paper, payment intangibles, or promissory notes." On the other hand, nothing in this section prevents one creditor from assigning his rights to another creditor of the same debtor in such a way as to create a security interest within Article 9, where the parties so intend.

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[21] 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>.

[22] 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>.

[23] 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.

[24] 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 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.

The enforcement of subordination agreements is largely left to supplementary principles under s. 671.103, F.S.

Miscellaneous Provisions

The bill has a number of miscellaneous provisions not directly contained within the UCC. One such provision removes documents under ch. 679, F.S. from the requirement that they be filed with the Department of State. A second such provision requires the governing body of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians to file certain records relating to secured transactions with the central filing office.

Florida Secured Transaction Registry

The bill deletes s. 679.527, F.S. which established the Florida Secured Transaction Registry ("FSTR"). The FSTR is a centralized database in which financial statements are filed to register the secured party's interest in a loan secured by non-titled property. In 2001, the Department of State ("department") privatized the process of filing and maintaining the Florida Secured Transaction Registry, but the department retained sole and exclusive ownership of the materials and records of the registry. The department also has the right of reclaiming the registry if the private contractor does not perform the contract or becomes insolvent.[25] This bill eliminates the state oversight of a privatized state function.

The bill defines the term "Florida Secured Transaction Registry" to mean the centralized database in which all initial financing statements, amendments, assignments, and other statements of change authorized to be filed under this chapter are filed, maintained, and retrieved. However, the statutes as amended by this bill will not designate or describe who selects, operates or controls the FSTR. The term does not apply to documents that are filed under ch. 679 with the clerk of a circuit court. The bill permits the registry to certify copies of financing statements, and permits the registry to retain the fees it collects to run its operation.

Fees

The bill also reduces the filing fees required for filing documents with the FSTR. Two fees for $25 and $30 dollars are reduced to $13 and $15 dollars respectively. These are fees to filing an initial financing statement and for obtaining certified copies of financing statements. See fiscal comments.

The bill also specifies fees under the Florida Uniform Federal Lien Registration Act, s. 713.901, F.S., that were previously provided through cross-references.

C. SECTION DIRECTORY:

Section 1 amends s. 15.16, F.S. to remove provision requiring certain records to be filed with the Department of State.

Section 2 amends s. 285.20, F.S. requiring the governing body of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians to file certain records with the central filing office.

Section 3 amends s. 671.101, F.S. by providing a chapter and a short title

Section 4 amends s. 671.102, F.S. to authorize certain timeframes to be fixed by agreement and making editorial changes.

Section 5 amends s. 671.106, F.S. making minor grammatical changes.

[25] Section 679.527(4), F.S.

Section 6 amends s. 671.107, F.S. providing for the discharge of a claim or right under certain circumstances.

Section 7 amends s. 671.201, F.S. providing, revising, and deleting definitions.

Section 8 amends s. 671.202, F.S. making an editorial change.

Section 9 amends s. 671.203, F.S.; making an editorial change.

Section 10 amends s. 671.204, F.S.; revising criteria determining when an action is taken within a reasonable time and seasonably.

Section 11 amends s. 671.205, F.S.; defining "course of performance."

Section 12 repealing s. 671.206, F.S., relating to statute of frauds for kinds of personal property not otherwise covered.

Section 13 amends s. 671.208, F.S. making editorial changes.

Section 14 creates s. 671.209, F.S. to provide definitions; specifying when notice, knowledge, or notification becomes effective with the exercise of due diligence.

Section 15 creates s. 671.210, F.S. to provide that whenever the code creates certain presumptions, the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that supports a finding of its nonexistence.

Section 16 creates s. 671.211, F.S. to provide in what instances a person gives value for rights.

Section 17 creates s. 671.212, F.S. to provide that the code modifies, limits, and supersedes certain provisions of the federal Electronic Signatures in Global and National Commerce Act.

Section 18 creates s. 671.213, F.S. authorizing the subordination of certain obligations.

Section 19 amends s. 671.301, F.S. by revising the effective date of the act.

Section 20 amends s. 679.5011, F.S.; providing a definition for "Florida Secured Transaction Registry"; requires certain financial statements to be filed with the central filing office; authorizing the registry to certify a copy of certain financing statements.

Section 21 amends s. 679.525, F.S.; reducing the amount of certain processing fees; authorizing the registry to use the fees collected to fund its operations.

Section 22 repeals ss. 15.091, 679.521, 679.526, and 679.527, F.S.

Section 23 amends s. 319.27, F.S. conforming cross-references.

Section 24 amends s.559.9232, F.S. conforming cross-references.

Section 25 amends s.563.022, F.S. conforming cross-references.

Section 26 amends s. 668.50, F.S. conforming cross-references.

Section 27 amends s. 670.106, F.S. conforming cross-references.

Section 28 amends s. 670.204, F.S. conforming cross-references.

Section 29 amends s. 675.102, F.S. conforming cross-references.

Section 30 amends s. 679.1021, F.S. conforming cross-references.

Section 31 amends s. 679.5021, F.S. conforming cross-references.

Section 32 amends s. 679.512, F.S. conforming cross-references.

Section 33 amends s.679.516, F.S. conforming cross-references.

Section 34 amends s. 679.519, F.S. conforming cross-references.

Section 35 amends s. 679.520, F.S. conforming cross-references.

Section 36 amends s. 679.523, F.S. conforming cross-references.

Section 37 amends s. 680.1031, F.S. conforming cross-references.

Section 38 amends s. 680.518, F.S. conforming cross-references.

Section 39 amends s. 680.519, F.S. conforming cross-references.

Section 40 amends s. 680.527, F.S. conforming cross-references.

Section 41 amends s. 680.528, F.S.; conforming cross-references.

Section 42 amends s. 713.901, F.S.; specifying fees under the Florida Uniform Federal Lien Registration Act previously provided through cross-reference, reducing a fee and deleting a cross-reference to conform to changes made by the act.

Section 43 providing an effective date of January 1, 2007.

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:

This bill reduces UCC filing fees charged to the public. See chart below in Fiscal Comments.

D. FISCAL COMMENTS:

It is unclear how this bill can reduce current filing fees in the Florida Secured Transaction Registry by more than half in some situations, yet there is no fiscal impact. Section 679.525(1)(a), F.S. provides the following fee schedule for filings:

Description of Processing Fee	Fee
Initial financing statement	$25 for the first page
An amendment	$12 for the first page.
Indexing	$3 per additional name indexed
Use of a nonapproved form	$5
Additional page attached to a record	$3
A financing statement communicated by an electronic filing process authorized by the filing office	$15 with no additional fees.
Filing an amendment communicated by an electronic filing process authorized by the filing office	$5 with no additional fees for multiple names or attached pages
For a certified copy of a financing statement and any and all associated amendments	$30.

The bill provides the following fee reductions.

Description of Processing Fee	Fee
Initial financing statement	$13 for the first page
An amendment	$6 for the first page.
Indexing	$2 per additional name indexed
Use of a nonapproved form	$3
Additional page attached to a record	$2
A financing statement communicated by an electronic filing process authorized by the filing office	$8 with no additional fees.
Filing an amendment communicated by an electronic filing process authorized by the filing office	$3 with no additional fees for multiple names or attached pages
For a certified copy of a financing statement and any and all associated amendments	$15.

The current fees collected by the Department of State are used to pay the private contractor and cover the department's expenditures. It is unclear how the decrease in fees coupled with complete privatization will effect the state revenues and expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill deletes s. 679.527, F.S. which established the Florida Secured Transaction Registry ("FSTR"). The FSTR is a centralized database in which financial statements are filed to register the secured

party's interest in a loan secured by non-titled property. In 2001, the Department of State ("department") privatized the process of filing and maintaining the Florida Secured Transaction Registry, but the department retained sole and exclusive ownership of the materials and records of the registry. The department also has the right of reclaiming the registry if the private contractor does not perform the contract or becomes insolvent. It is unclear why this bill eliminates state oversight over a privatized state function. It is also unclear what the effect of no state oversight will be on the FSTR.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to the Uniform Commercial Code; amending
3 s. 15.16, F.S.; removing provision requiring certain
4 records to be filed with the Department of State; amending
5 s. 285.20, F.S.; requiring the governing body of the
6 Seminole Tribe of Florida or the Miccosukee Tribe of
7 Indians to file certain records with the central filing
8 office; amending s. 671.101, F.S.; providing scope of
9 chapter and a short title; amending s. 671.102, F.S.;
10 authorizing certain timeframes to be fixed by agreement;
11 amending s. 671.106, F.S.; making editorial changes;
12 amending s. 671.107, F.S.; providing for the discharge of
13 a claim or right under certain circumstances; amending s.
14 671.201, F.S.; providing, revising, and deleting
15 definitions; amending ss. 671.202 and 671.203, F.S.;
16 making editorial changes; amending s. 671.204, F.S.;
17 revising criteria determining when an action is taken
18 within a reasonable time and seasonably; amending s.
19 671.205, F.S.; defining "course of performance"; revising
20 the definition of "course of dealing"; providing that
21 course of performance and course of dealing may be used
22 for certain purposes; revising uses for express terms of
23 an agreement; specifying when course of performance,
24 course of dealing, or usage of trade prevails; providing
25 that course of performance is relevant to show a waiver or
26 modification in certain circumstances; repealing s.
27 671.206, F.S., relating to statute of frauds for kinds of
28 personal property not otherwise covered; amending s.

29 671.208, F.S.; making editorial changes; creating s.
30 671.209, F.S.; providing definitions; specifying when
31 notice, knowledge, or notification becomes effective with
32 the exercise of due diligence; creating s. 671.210, F.S.;
33 providing that whenever the code creates certain
34 presumptions, the trier of fact must find the existence of
35 the fact presumed unless and until evidence is introduced
36 that supports a finding of its nonexistence; creating s.
37 671.211, F.S.; providing in what instances a person gives
38 value for rights; creating s. 671.212, F.S.; providing
39 that the code modifies, limits, and supersedes certain
40 provisions of the federal Electronic Signatures in Global
41 and National Commerce Act; creating s. 671.213, F.S.;
42 authorizing the subordination of certain obligations;
43 amending s. 671.301, F.S.; revising the effective date of
44 the act; amending s. 679.5011, F.S.; providing a
45 definition for "Florida Secured Transaction Registry";
46 requires certain financial statements to be filed with the
47 central filing office; authorizing the registry to certify
48 a copy of certain financing statements; amending s.
49 679.525, F.S.; reducing the amount of certain processing
50 fees; authorizing the registry to use the fees collected
51 to fund its operations; repealing s. 15.091, F.S.,
52 relating to processing fees for filing certain statements
53 under ch. 679, F.S.; repealing s. 679.521, F.S., relating
54 to the uniform form of written financing statements and
55 amendments; repealing s. 679.526, F.S., relating to
56 filing-office rules; repealing s. 679.527, F.S., relating

57 to the Florida Secured Transaction Registry; amending ss.
58 319.27, 559.9232, 563.022, 668.50, 670.106, 670.204,
59 675.102, 679.1021, 679.5021, 679.512, 679.516, 679.519,
60 679.520, 679.523, 680.1031, 680.518, 680.519, 680.527, and
61 680.528, F.S.; conforming cross-references; amending s.
62 713.901, F.S.; specifying fees under the Florida Uniform
63 Federal Lien Registration Act previously provided through
64 cross-reference; reducing a fee and deleting a cross-
65 reference to conform to changes made by the act; providing
66 an effective date.
67
68 Be It Enacted by the Legislature of the State of Florida:
69
70 Section 1. Subsection (3) of section 15.16, Florida
71 Statutes, is amended to read:
72 15.16 Reproduction of records; admissibility in evidence;
73 electronic receipt and transmission of records; certification;
74 acknowledgment.--
75 (3) The Department of State may cause to be received
76 electronically any records that are required to be filed with it
77 pursuant to chapter 55, chapter 606, chapter 607, chapter 608,
78 chapter 617, chapter 620, chapter 621, ~~chapter 679,~~ chapter 713,
79 or chapter 865, through facsimile or other electronic transfers,
80 for the purpose of filing such records. The originals of all
81 such electronically transmitted records must be executed in the
82 manner provided in paragraph (5)(b). The receipt of such
83 electronic transfer constitutes delivery to the department as
84 required by law.

85 Section 2. Subsection (1) of section 285.20, Florida
86 Statutes, is amended to read:
87 285.20 Tribal Secured Transactions Filing Offices.--
88 (1) If the governing body of the Seminole Tribe of Florida
89 or the governing body of the Miccosukee Tribe of Indians adopts
90 or enacts a law or ordinance governing secured transactions
91 arising within or relating to the reservation of such tribe in
92 this state, and if such tribal law or ordinance authorizes
93 financing statements and other records relating to secured
94 transactions to be filed:
95 (a) With the ~~Department of State or such other~~ central
96 filing office ~~as may be established from time to time under the~~
97 ~~Uniform Commercial Code of this state~~, then the ~~Department of~~
98 ~~State or other~~ central filing office~~, including any private~~
99 ~~secured transaction registry that may be designated as such in~~
100 ~~this state,~~ shall accept and process such filings made under the
101 tribal secured transactions law in accordance with this section
102 and the provisions of chapter 679; or
103 (b) With the office of the clerk of circuit court in any
104 county of this state in which the tribal secured transactions
105 law requires a local filing, then such county filing office
106 shall accept and process such filings made under such tribal law
107 in accordance with this section and the provisions of chapter
108 28.
109 Section 3. Section 671.101, Florida Statutes, is amended
110 to read:
111 671.101 Short title; scope of chapter.--

112 (1) Chapters 670-680 may be cited as the "Uniform
113 Commercial Code."
114 (2) This chapter applies to a transaction to the extent
115 that it is governed by another chapter of this code and may be
116 cited as the "Uniform Commercial Code--General Provisions."
117 Section 4. Section 671.102, Florida Statutes, is amended
118 to read:
119 671.102 Purposes; rules of construction; variation by
120 agreement.--
121 (1) This code shall be liberally construed and applied to
122 promote its underlying purposes and policies, which~~.~~
123 ~~(2) Underlying purposes and policies of this code~~ are:
124 (a) To simplify, clarify, and modernize the law governing
125 commercial transactions.~~;~~
126 (b) To permit the continued expansion of commercial
127 practices through custom, usage, and agreement of the parties.~~;~~
128 (c) To make uniform the law among the various
129 jurisdictions.
130 (2)(a)~~(3)~~ Except as otherwise provided in this code, the
131 effect of provisions of this code may be varied by agreement.~~,~~
132 ~~except as otherwise provided in this code and except that~~
133 (b) The obligations of good faith, diligence,
134 reasonableness, and care prescribed by this code may not be
135 disclaimed by agreement, but the parties may by agreement
136 determine the standards by which the performance of such
137 obligations is to be measured if such standards are not
138 manifestly unreasonable. Whenever this code requires an action

139 to be taken within a reasonable time, a time that is not
140 manifestly unreasonable may be fixed by agreement.
141 (c) ~~(4)~~ The presence in certain provisions of this code of
142 the words "unless otherwise agreed" or words of similar import
143 does not imply that the effect of other provisions may not be
144 varied by agreement under this subsection ~~(3)~~.
145 (3) ~~(5)~~ In this code, unless the context otherwise
146 requires:
147 (a) Words in the singular ~~number~~ include the plural, and
148 words in the plural include the singular.~~;~~
149 (b) ~~Gender-specific language includes the other gender and~~
150 ~~neuter, and when the sense so indicates~~ Words of either ~~the~~
151 ~~neuter~~ gender also ~~may~~ refer to any other ~~any~~ gender.
152 Section 5. Subsection (1) of section 671.106, Florida
153 Statutes, is amended to read:
154 671.106 Remedies to be liberally administered.--
155 (1) The remedies provided by this code must ~~shall~~ be
156 liberally administered to the end that the aggrieved party may
157 be put in as good a position as if the other party had fully
158 performed, but neither consequential or special nor penal
159 damages may be had except as specifically provided in this code
160 or by other rule of law.
161 Section 6. Section 671.107, Florida Statutes, is amended
162 to read:
163 671.107 Waiver or renunciation of claim or right after
164 breach.--A ~~Any~~ claim or right arising out of an alleged breach
165 can be discharged in whole or in part without consideration by

166 agreement of ~~a written waiver or renunciation signed and~~
167 ~~delivered by~~ the aggrieved party in an authenticated record.
168 Section 7. Section 671.201, Florida Statutes, is amended
169 to read:
170 671.201 General definitions.--Unless the context otherwise
171 requires, words or phrases defined in this section, or in the
172 additional definitions contained in other chapters of this code
173 that apply to particular chapters or parts thereof, have the
174 meanings stated. Subject to ~~additional~~ definitions contained in
175 other ~~the subsequent~~ chapters of this code that apply ~~which are~~
176 ~~applicable~~ to particular ~~specific~~ chapters or parts thereof~~, and~~
177 ~~unless the context otherwise requires, in this code~~:
178 (1) "Action," in the sense of a judicial proceeding,
179 includes recoupment, counterclaim, setoff, suit in equity, and
180 any other proceedings in which rights are determined.
181 (2) "Aggrieved party" means a party entitled to pursue
182 ~~resort to~~ a remedy.
183 (3) "Agreement," as distinguished from "contract," means
184 the bargain of the parties in fact, as found in their language
185 or inferred ~~by implication~~ from other circumstances, including
186 course of dealing, ~~or~~ usage of trade, or course of performance
187 as provided in ~~this code (~~ss. 671.205 and 672.208~~)~~. ~~Whether an~~
188 ~~agreement has legal consequences is determined by the provisions~~
189 ~~of this code, if applicable; otherwise by the law of contracts~~
190 ~~(s. 671.103). (Compare "contract.")~~
191 (4) "Bank" means a ~~any~~ person engaged in the business of
192 banking and includes a savings bank, a savings and loan
193 association, a credit union, and a trust company.

194 (5) "Bearer" means a ~~the~~ person in possession of a
195 negotiable ~~an~~ instrument, document of title, or certificated
196 security that is payable to bearer or indorsed in blank.
197 (6) "Bill of lading" means a document evidencing the
198 receipt of goods for shipment issued by a person engaged in the
199 business of transporting or forwarding goods~~, and includes an~~
200 ~~airbill. "Airbill" means a document serving for air~~
201 ~~transportation as a bill of lading does for marine or rail~~
202 ~~transportation, and includes an air consignment note or air~~
203 ~~waybill~~.
204 (7) "Branch" includes a separately incorporated foreign
205 branch of a bank.
206 (8) "Burden of establishing" a fact means the burden of
207 persuading the triers of fact that the existence of the fact is
208 more probable than its nonexistence.
209 (9) "Buyer in ordinary course of business" means a person
210 who, in ordinary course, buys goods in good faith, without
211 knowledge that the sale violates the rights of another person in
212 the goods, ~~and in the ordinary course~~ from a person, other than
213 a pawnbroker, in the business of selling goods of that kind. A
214 person buys goods in ~~the~~ ordinary course if the sale to the
215 person comports with the usual or customary practices in the
216 kind of business in which the seller is engaged or with the
217 seller's own usual or customary practices. A person who sells
218 oil, gas, or other minerals at the wellhead or minehead is a
219 person in the business of selling goods of that kind. A buyer in
220 ~~the~~ ordinary course of business may buy for cash, by exchange of
221 other property, or on secured or unsecured credit and may

222 acquire goods or documents of title under a preexisting contract
223 for sale. Only a buyer who takes possession of the goods or has
224 a right to recover the goods from the seller under chapter 672
225 may be a buyer in ~~the~~ ordinary course of business. "Buyer in
226 ordinary course of business" does not include a person who
227 acquires goods in a transfer in bulk or as security for or in
228 total or partial satisfaction of a money debt ~~is not a buyer in~~
229 ~~the ordinary course of business~~.
230 (10) ~~A term or clause is~~ "Conspicuous," with reference to
231 a term, means ~~when it is~~ so written, displayed, or presented
232 that a reasonable person against whom it is to operate ought to
233 have noticed it. Whether a term is "conspicuous" is a decision
234 for the court. Conspicuous terms include the following:
235 (a) A ~~printed~~ heading in capitals in a size equal to or
236 larger than that of the surrounding text or in a ~~(as:~~
237 ~~NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the~~
238 ~~body of a form is conspicuous if it is in larger or other~~
239 ~~contrasting~~ type, font, or color in contrast to the surrounding
240 text of the same or lesser size.
241 (b) Language in the body of a record or display in type
242 larger than that of the surrounding text; in a type, font, or
243 color in contrast to the surrounding text of the same size; or
244 set off from surrounding text of the same size by symbols or
245 other marks that call attention to the language. ~~But in a~~
246 ~~telegram any stated term is conspicuous. Whether a term or~~
247 ~~clause is conspicuous or not is for decision by the court.~~

248 (11) "Consumer" means an individual who enters into a
249 transaction primarily for personal, family, or household
250 purposes.
251 (12) ~~(11)~~ "Contract," as distinguished from "agreement,"
252 means the total legal obligation that ~~which~~ results from the
253 parties' agreement as determined ~~affected~~ by this code and as
254 supplemented by any other applicable laws ~~rules of law~~. ~~(Compare~~
255 ~~"agreement.")~~
256 (13) ~~(12)~~ "Creditor" includes a general creditor, a secured
257 creditor, a lien creditor, and any representative of creditors,
258 including an assignee for the benefit of creditors, a trustee in
259 bankruptcy, a receiver in equity, and an executor or
260 administrator of an insolvent debtor's or assignor's estate.
261 (14) ~~(13)~~ "Defendant" includes a person in the position of
262 defendant in a ~~cross-action or~~ counterclaim, cross-claim, or
263 third-party claim.
264 (15) ~~(14)~~ "Delivery," with respect to an instrument
265 ~~instruments~~, document ~~documents~~ of title, or chattel paper, ~~or~~
266 ~~certificated securities~~ means voluntary transfer of possession.
267 (16) ~~(15)~~ "Document of title" includes bill of lading, dock
268 warrant, dock receipt, warehouse receipt or order for the
269 delivery of goods, and ~~also~~ any other document that ~~which~~ in the
270 regular course of business or financing is treated as adequately
271 evidencing that the person in possession of it is entitled to
272 receive, hold, and dispose of the document and the goods it
273 covers. To be a document of title, a document must purport to be
274 issued by or addressed to a bailee and purport to cover goods in

275 the bailee's possession that ~~which~~ are either identified or are
276 fungible portions of an identified mass.
277 (17) ~~(16)~~ "Fault" means a default, breach, or wrongful act
278 or~~,~~ omission ~~or breach~~.
279 (18) ~~(17)~~ "Fungible goods" ~~with respect to goods or~~
280 ~~securities~~ means:
281 (a) Goods ~~or securities~~ of which any unit ~~is~~, by nature or
282 usage of trade, is the equivalent of any other like unit; or~~.~~
283 (b) Goods ~~which are not fungible shall be deemed fungible~~
284 ~~for the purposes of this code to the extent~~ that, by ~~under a~~
285 ~~particular~~ agreement, ~~or document unlike units~~ are treated as
286 equivalents.
287 (19) ~~(18)~~ "Genuine" means free of forgery or
288 counterfeiting.
289 (20) ~~(19)~~ "Good faith," except as otherwise provided in
290 this code, means honesty in fact and ~~in~~ the observance of
291 reasonable commercial standards of fair dealing ~~conduct or~~
292 ~~transaction concerned~~.
293 (21) ~~(20)~~ "Holder~~,~~" ~~with respect to a negotiable~~
294 ~~instrument,~~ means:
295 (a) The person in possession of a negotiable ~~if the~~
296 instrument that is payable either to bearer or~~, in the case of~~
297 ~~an instrument payable~~ to an identified person that is~~, if~~ the
298 ~~identified~~ person ~~is~~ in possession; or~~. "Holder," with respect~~
299 ~~to a document of title, means~~
300 (b) The person in possession of a document of title if the
301 goods are deliverable either to bearer or to the order of the
302 person in possession.

303 ~~(21) To "honor" is to pay or to accept and pay, or where a~~
304 ~~credit so engages to purchase or discount a draft complying with~~
305 ~~the terms of the credit.~~
306 (22) "Insolvency proceeding ~~proceedings~~" includes an ~~any~~
307 assignment for the benefit of creditors or other proceeding
308 ~~proceedings~~ intended to liquidate or rehabilitate the estate of
309 the person involved.
310 (23) ~~A person is~~ "Insolvent" means:
311 (a) Having ~~who either has~~ ceased to pay ~~his or her~~ debts
312 in the ordinary course of business other than as a result of a
313 bona fide dispute;
314 (b) Being unable to ~~or cannot~~ pay ~~his or her~~ debts as they
315 become due; or
316 (c) Being ~~is~~ insolvent within the meaning of the Federal
317 Bankruptcy Law.
318 (24) "Money" means a medium of exchange currently
319 authorized or adopted by a domestic or foreign government. The
320 term ~~and~~ includes a monetary unit of account established by an
321 intergovernmental organization or by agreement between two or
322 more countries ~~nations~~.
323 ~~(25) A person has "notice" of a fact when~~
324 ~~(a) He or she has actual knowledge of it; or~~
325 ~~(b) He or she has received a notice or notification of it;~~
326 ~~or~~
327 ~~(c) From all the facts and circumstances known to the~~
328 ~~person at the time in question he or she has reason to know that~~
329 ~~it exists.~~
330

331 ~~A person "knows" or has "knowledge" of a fact when he or she has~~
332 ~~actual knowledge of it. "Discover" or "learn" or a word or~~
333 ~~phrase of similar import refers to knowledge rather than to~~
334 ~~reason to know. The time and circumstances under which a notice~~
335 ~~or notification may cease to be effective are not determined by~~
336 ~~this code.~~
337 ~~(26) A person "notifies" or "gives" a notice or~~
338 ~~notification to another by taking such steps as may be~~
339 ~~reasonably required to inform the other in ordinary course~~
340 ~~whether or not such other actually comes to know of it. A person~~
341 ~~"receives" a notice or notification when~~
342 ~~(a) It comes to his or her attention; or~~
343 ~~(b) It is duly delivered at the place of business through~~
344 ~~which the contract was made or at any other place held out by~~
345 ~~the person as the place for receipt of such communications.~~
346 ~~(27) Notice, knowledge or a notice or notification~~
347 ~~received by an organization is effective for a particular~~
348 ~~transaction from the time when it is brought to the attention of~~
349 ~~the individual conducting that transaction, and in any event~~
350 ~~from the time when it would have been brought to his or her~~
351 ~~attention if the organization had exercised due diligence. An~~
352 ~~organization exercises due diligence if it maintains reasonable~~
353 ~~routines for communicating significant information to the person~~
354 ~~conducting the transaction and there is reasonable compliance~~
355 ~~with the routines. Due diligence does not require an individual~~
356 ~~acting for the organization to communicate information unless~~
357 ~~such communication is part of his or her regular duties or~~
358 ~~unless the individual has reason to know of the transaction and~~

359 ~~that the transaction would be materially affected by the~~
360 ~~information.~~
361 (25) ~~(28)~~ "Organization" means a person other than an
362 individual ~~includes a corporation, government or governmental~~
363 ~~subdivision or agency, business trust, estate, trust,~~
364 ~~partnership or association, two or more persons having a joint~~
365 ~~or common interest, or any other legal or commercial entity~~.
366 (26) ~~(29)~~ "Party," as distinguished ~~distinct~~ from "third
367 party," means a person who has engaged in a transaction or made
368 an agreement subject to ~~within~~ this code.
369 (27) ~~(30)~~ "Person" means ~~includes~~ an individual,
370 corporation, business trust, estate, trust, partnership, limited
371 liability company, association, joint venture, government,
372 governmental subdivision, agency, or instrumentality, public
373 corporation, or any other legal or commercial entity ~~or an~~
374 ~~organization (see s. 671.102)~~.
375 (28) "Present value" means the amount as of a date certain
376 of one or more sums payable in the future, discounted to the
377 date certain by use of either an interest rate specified by the
378 parties if that rate is not manifestly unreasonable at the time
379 the transaction is entered into or, if an interest rate is not
380 so specified, a commercially reasonable rate that takes into
381 account the facts and circumstances at the time the transaction
382 is entered into.
383 ~~(31) "Presumption" or "presumed" means that the trier of~~
384 ~~fact must find the existence of the fact presumed unless and~~
385 ~~until evidence is introduced which would support a finding of~~
386 ~~its nonexistence.~~

387 (29) ~~(32)~~ "Purchase" means ~~includes~~ taking by sale, lease,
388 discount, negotiation, mortgage, pledge, lien, security
389 interest, issue or reissue, gift, or any other voluntary
390 transaction creating an interest in property.
391 (30) ~~(33)~~ "Purchaser" means a person who takes by purchase.
392 (31) "Record" means information that is inscribed on a
393 tangible medium or that is stored in an electronic or other
394 medium and is retrievable in perceivable form.
395 (32) ~~(34)~~ "Remedy" means any remedial right to which an
396 aggrieved party is entitled with or without resort to a
397 tribunal.
398 (33) ~~(35)~~ "Representative" means a person empowered to act
399 for another, including ~~includes~~ an agent, an officer of a
400 corporation or association, and a trustee, executor, or
401 administrator of an estate~~, or any other person empowered to act~~
402 ~~for another~~.
403 (34) ~~(36)~~ "Right ~~Rights~~" includes remedy ~~remedies~~.
404 (35) ~~(37)~~ "Security interest" means an interest in personal
405 property or fixtures which secures payment or performance of an
406 obligation. "Security interest" ~~The term also~~ includes any
407 interest of a consignor and a buyer of accounts, chattel paper,
408 a payment intangible, or a promissory note in a transaction that
409 ~~which~~ is subject to chapter 679. "Security interest" does not
410 include the special property interest of a buyer of goods on
411 identification of those goods to a contract for sale under s.
412 672.401 ~~is not a security interest~~, but a buyer may also acquire
413 a security interest by complying with chapter 679. Except as
414 otherwise provided in s. 672.505, the right of a seller or

415 lessor of goods under chapter 672 or chapter 680 to retain or
416 acquire possession of the goods is not a security interest, but
417 a seller or lessor may also acquire a security interest by
418 complying with chapter 679. The retention or reservation of
419 title by a seller of goods, notwithstanding shipment or delivery
420 to the buyer under ~~(~~s. 672.401~~)~~, is limited in effect to a
421 reservation of a security interest. Whether a transaction in the
422 form of a lease creates a ~~lease or~~ security interest is
423 determined by the facts of each case; however:
424 (a) A transaction in the form of a lease creates a
425 security interest if the consideration that the lessee is to pay
426 the lessor for the right to possession and use of the goods is
427 an obligation for the term of the lease not subject to
428 termination by the lessee~~,~~ and:~~;~~
429 1. The original term of the lease is equal to or greater
430 than the remaining economic life of the goods;
431 2. The lessee is bound to renew the lease for the
432 remaining economic life of the goods or is bound to become the
433 owner of the goods;
434 3. The lessee has an option to renew the lease for the
435 remaining economic life of the goods for no additional
436 consideration or nominal additional consideration upon
437 compliance with the lease agreement; or
438 4. The lessee has an option to become the owner of the
439 goods for no additional consideration or nominal additional
440 consideration upon compliance with the lease agreement.
441 (b) A transaction does not create a security interest
442 merely because ~~it provides that~~:

443 1. The present value of the consideration the lessee is
444 obligated to pay the lessor for the right to possession and use
445 of the goods is substantially equal to or is greater than the
446 fair market value of the goods at the time the lease is entered
447 into;
448 2. The lessee assumes the risk of loss of the goods ~~or~~
449 ~~agrees to pay taxes; insurance; filing, recording, or~~
450 ~~registration fees; or service or maintenance costs with respect~~
451 ~~to the goods~~;
452 3. The lessee agrees to pay, with respect to the goods,
453 taxes; insurance; filing, recording, or registration fees; or
454 service or maintenance costs;
455 4.~~3.~~ The lessee has an option to renew the lease or to
456 become the owner of the goods;
457 5.~~4.~~ The lessee has an option to renew the lease for a
458 fixed rent that is equal to or greater than the reasonably
459 predictable fair market rent for the use of the goods for the
460 term of the renewal at the time the option is to be performed;
461 or
462 6.~~5.~~ The lessee has an option to become the owner of the
463 goods for a fixed price that is equal to or greater than the
464 reasonably predictable fair market value of the goods at the
465 time the option is to be performed.
466 (c) ~~For purposes of this subsection:~~
467 ~~1.~~ Additional consideration is ~~not~~ nominal if it is less
468 than the lessee's reasonably predictable cost of performing
469 under the lease agreement if the option is not exercised.
470 Additional consideration is not nominal if:~~,~~

471 1. When the option to renew the lease is granted to the
472 lessee, the rent is stated to be the fair market rent for the
473 use of the goods for the term of the renewal determined at the
474 time the option is to be performed; or ~~if,~~
475 2. When the option to become the owner of the goods is
476 granted to the lessee, the price is stated to be the fair market
477 value of the goods determined at the time the option is to be
478 performed. ~~Additional consideration is nominal if it is less~~
479 ~~than the lessee's reasonably predictable cost of performing~~
480 ~~under the lease agreement if the option is not exercised.~~
481 (d)~~2.~~ The ~~"Reasonably predictable" and~~ "remaining economic
482 life of the goods" and "reasonably predictable" fair market
483 rent, fair market value, or cost of performing under the lease
484 agreement must ~~are to~~ be determined with reference to the facts
485 and circumstances at the time the transaction is entered into.
486 ~~3. "Present value" means the amount as of a date certain~~
487 ~~of one or more sums payable in the future, discounted to the~~
488 ~~date certain. The discount is determined by the interest rate~~
489 ~~specified by the parties if the rate is not manifestly~~
490 ~~unreasonable at the time the transaction is entered into;~~
491 ~~otherwise, the discount is determined by a commercially~~
492 ~~reasonable rate that takes into account the facts and~~
493 ~~circumstances of each case at the time the transaction was~~
494 ~~entered into.~~
495 (36)~~(38)~~ "Send," in connection with a ~~any~~ writing, record,
496 or notice, means:
497 (a) To deposit in the mail or deliver for transmission by
498 any other usual means of communication with postage or cost of

499 transmission provided for and properly addressed and, in the
500 case of an instrument, to an address specified thereon or
501 otherwise agreed~~,~~ or, if there be none, to any address
502 reasonable under the circumstances; or~~.~~
503 (b) In any other way to cause to be received ~~The receipt~~
504 ~~of~~ any record ~~writing~~ or notice within the time ~~at which~~ it
505 would have arrived if properly sent ~~has the effect of a proper~~
506 ~~sending~~.
507 (37) ~~(39)~~ "Signed" means bearing ~~includes~~ any symbol
508 executed or adopted by a party with present intention to adopt
509 or accept ~~authenticate~~ a writing.
510 (38) "State" means a state of the United States, the
511 District of Columbia, Puerto Rico, the United States Virgin
512 Islands, or any territory or insular possession subject to the
513 jurisdiction of the United States.
514 (39) ~~(40)~~ "Surety" includes a guarantor or other secondary
515 obligor.
516 ~~(41) "Telegram" includes a message transmitted by radio,~~
517 ~~teletype, cable, any mechanical method of transmission, or the~~
518 ~~like.~~
519 (40) ~~(42)~~ "Term" means a ~~that~~ portion of an agreement that
520 ~~which~~ relates to a particular matter.
521 (41) ~~(43)~~ "Unauthorized~~"~~ signature" means a signature ~~one~~
522 made without actual, implied, or apparent authority. The term
523 ~~and~~ includes a forgery.
524 ~~(44) "Value." Except as otherwise provided with respect to~~
525 ~~negotiable instruments and bank collections (ss. 673.3031,~~

526 ~~674.2101, and 674.2111), a person gives value for rights if he~~
527 ~~or she acquires them:~~
528 ~~(a) In return for a binding commitment to extend credit or~~
529 ~~for the extension of immediately available credit whether or not~~
530 ~~drawn upon and whether or not a charge-back is provided for in~~
531 ~~the event of difficulties in collection;~~
532 ~~(b) As security for or in total or partial satisfaction of~~
533 ~~a preexisting claim;~~
534 ~~(c) By accepting delivery pursuant to a preexisting~~
535 ~~contract for purchase; or~~
536 ~~(d) Generally, in return for any consideration sufficient~~
537 ~~to support a simple contract.~~
538 (42) ~~(45)~~ "Warehouse receipt" means a ~~written~~ receipt ~~or an~~
539 ~~electronic notification of receipt~~ issued by a person engaged in
540 the business of storing goods for hire.
541 (43) ~~(46) "Written" or~~ "Writing" includes printing,
542 typewriting, or any other intentional reduction to tangible
543 form. "Written" has a corresponding meaning.
544 Section 8. Section 671.202, Florida Statutes, is amended
545 to read:
546 671.202 Prima facie evidence by third-party documents.--A
547 document in due form purporting to be a bill of lading, policy
548 or certificate of insurance, official weigher's or inspector's
549 certificate, consular invoice, or any other document authorized
550 or required by the contract to be issued by a third party is
551 ~~shall be~~ prima facie evidence of its own authenticity and
552 genuineness and of the facts stated in the document by the third
553 party.

554 Section 9. Section 671.203, Florida Statutes, is amended
555 to read:
556 671.203 Obligation of good faith.--Every contract or duty
557 within this code imposes an obligation of good faith in its
558 performance and ~~or~~ enforcement.
559 Section 10. Section 671.204, Florida Statutes, is amended
560 to read:
561 671.204 Actions taken within ~~Time;~~ reasonable time;
562 ~~"~~seasonably.~~"~~--
563 (1) Whether a time for taking an action required by
564 ~~Whenever~~ this code is ~~requires any action to be taken within a~~
565 reasonable ~~time, any time which is not manifestly unreasonable~~
566 ~~may be fixed by agreement.~~
567 ~~(2) What is a reasonable time for taking any action~~
568 depends on the nature, purpose, and circumstances of the ~~such~~
569 action.
570 (2) ~~(3)~~ An action is taken ~~"~~seasonably~~"~~ if ~~when~~ it is taken
571 at or within the time agreed or, if no time is agreed, at or
572 within a reasonable time.
573 Section 11. Section 671.205, Florida Statutes, is amended
574 to read:
575 671.205 Course of performance; course of dealing; ~~and~~
576 usage of trade.--
577 (1) A "course of performance" is a sequence of conduct
578 between the parties to a particular transaction that exists if:
579 (a) The agreement of the parties with respect to the
580 transaction involves repeated occasions for performance by a
581 party; and

582 (b) The other party, with knowledge of the nature of the
583 performance and opportunity for objection to it, accepts the
584 performance or acquiesces in it without objection.
585 (2) ~~(1)~~ A "course of dealing" is a sequence of ~~previous~~
586 conduct concerning previous transactions between the parties to
587 a particular transaction that ~~which~~ is fairly to be regarded as
588 establishing a common basis of understanding for interpreting
589 their expressions and other conduct.
590 (3) ~~(2)~~ A "usage of trade" is any practice or method of
591 dealing having such regularity of observance in a place,
592 vocation, or trade as to justify an expectation that it will be
593 observed with respect to the transaction in question. The
594 existence and scope of such a usage are to be proved as facts.
595 If it is established that such a usage is embodied in a written
596 trade code or similar record, ~~writing~~ the interpretation of the
597 record ~~writing~~ is a question of law ~~for the court~~.
598 (4) ~~(3)~~ A course of performance or a course of dealing
599 between the parties or ~~and any~~ usage of trade in the vocation or
600 trade in which they are engaged or of which they are or should
601 be aware is relevant in ascertaining the ~~give particular~~ meaning
602 of the parties' ~~to and supplement or qualify terms of an~~
603 agreement, may give particular meaning to specific terms of the
604 agreement, and may supplement or qualify the terms of the
605 agreement. A usage of trade applicable in the place in which
606 part of the performance under the agreement is to occur may be
607 so utilized as to that part of the performance.
608 (5) ~~(4)~~ Except as otherwise provided in subsection (6), the
609 express terms of an agreement and any ~~an~~ applicable course of

610 performance, course of dealing, or usage of trade must ~~shall~~ be
611 construed whenever ~~wherever~~ reasonable as consistent with each
612 other. If~~, but when~~ such a construction is unreasonable:
613 (a) Express terms prevail over ~~control both~~ course of
614 performance, course of dealing, and usage of trade;
615 (b) Course of performance prevails over course of dealing
616 and usage of trade; and
617 (c) Course of dealing prevails over ~~controls~~ usage of
618 trade.
619 (6) A course of performance is relevant to show a waiver
620 or modification of any term inconsistent with the course of
621 performance.
622 ~~(5) An applicable usage of trade in the place where any~~
623 ~~part of performance is to occur shall be used in interpreting~~
624 ~~the agreement as to that part of the performance.~~
625 (7) ~~(6)~~ Evidence of a relevant usage of trade offered by
626 one party is not admissible unless that party ~~and until he or~~
627 ~~she~~ has given the other party ~~such~~ notice that ~~as~~ the court
628 finds sufficient to prevent unfair surprise to the other party
629 ~~latter~~.
630 Section 12. Section 671.206, Florida Statutes, is
631 repealed.
632 Section 13. Section 671.208, Florida Statutes, is amended
633 to read:
634 671.208 Option to accelerate at will.--A term providing
635 that one party or the party's successor in interest may
636 accelerate payment or performance or require collateral or
637 additional collateral "at will" or "when she or he deems herself

638 or himself insecure" or in words of similar import must ~~shall~~ be
639 construed to mean that she or he has ~~shall have~~ power to do so
640 only if she or he in good faith believes that the prospect of
641 payment or performance is impaired. The burden of establishing
642 lack of good faith is on the party against whom the power has
643 been exercised.
644 Section 14. Section 671.209, Florida Statutes, is created
645 to read:
646 671.209 Notice; knowledge.--
647 (1) Subject to subsection (6), a person has "notice" of a
648 fact if the person:
649 (a) Has actual knowledge of it;
650 (b) Has received a notice or notification of it; or
651 (c) From all the facts and circumstances known to the
652 person at the time in question, has reason to know that it
653 exists.
654 (2) "Knowledge" means actual knowledge. "Knows" has a
655 corresponding meaning.
656 (3) "Discover," "learn," or words of similar import refer
657 to knowledge rather than to reason to know.
658 (4) A person "notifies" or "gives a notice or notification
659 to" another person by taking such steps as may be reasonably
660 required to inform the other person in ordinary course,
661 regardless of whether the other person actually comes to know of
662 it.
663 (5) Subject to subsection (6), a person "receives" a
664 notice or notification when:
665 (a) It comes to that person's attention; or

666 (b) It is duly delivered in a form reasonable under the
667 circumstances at the place of business through which the
668 contract was made or at another location held out by that person
669 as the place for receipt of such communications.
670 (6) Notice, knowledge, or a notice or notification
671 received by an organization is effective for a particular
672 transaction from the time it is brought to the attention of the
673 person conducting that transaction and, in any event, from the
674 time it would have been brought to the person's attention if the
675 organization had exercised due diligence. An organization
676 exercises due diligence if it maintains reasonable routines for
677 communicating significant information to the person conducting
678 the transaction and there is reasonable compliance with the
679 routines. Due diligence does not require an individual acting
680 for the organization to communicate information unless the
681 communication is part of the individual's regular duties or the
682 individual has reason to know of the transaction and that the
683 transaction would be materially affected by the information.
684 Section 15. Section 671.210, Florida Statutes, is created
685 to read:
686 671.210 Presumptions.--Whenever this code creates a
687 "presumption" with respect to a fact or provides that a fact is
688 "presumed," the trier of fact must find the existence of the
689 fact presumed unless and until evidence is introduced that
690 supports a finding of its nonexistence.
691 Section 16. Section 671.211, Florida Statutes, is created
692 to read:

693 671.211 Value.--Except as otherwise provided with respect
694 to negotiable instruments and bank collections as provided in
695 ss. 673.3031, 674.2101, and 674.2111, a person gives value for
696 rights if the person acquires them:
697 (1) In return for a binding commitment to extend credit or
698 for the extension of immediately available credit whether or not
699 drawn upon and whether or not a charge-back is provided for in
700 the event of difficulties in collection;
701 (2) As security for, or in total or partial satisfaction
702 of, a preexisting claim;
703 (3) By accepting delivery under a preexisting contract for
704 purchase; or
705 (4) In return for any consideration sufficient to support
706 a simple contract.
707 Section 17. Section 671.212, Florida Statutes, is created
708 to read:
709 671.212 Relation to Electronic Signatures in Global and
710 National Commerce Act.--This code modifies, limits, and
711 supersedes the federal Electronic Signatures in Global and
712 National Commerce Act, 15 U.S.C. ss. 7001 et seq., except that
713 nothing in this code modifies, limits, or supersedes s. 7001(c)
714 of that act or authorizes electronic delivery of any of the
715 notices described in s. 7003(b) of that act.
716 Section 18. Section 671.213, Florida Statutes, is created
717 to read:
718 671.213 Subordinated obligations.--An obligation may be
719 issued as subordinated to performance of another obligation of
720 the person obligated, or a creditor may subordinate its right to

721 performance of an obligation by agreement with either the person
722 obligated or another creditor of the person obligated.
723 Subordination does not create a security interest as against
724 either the common debtor or a subordinated creditor.
725 Section 19. Subsection (1) of section 671.301, Florida
726 Statutes, is amended to read:
727 671.301 Effective date; provision for transition;
728 preservation of old transition provision.--
729 (1) This act shall take effect at 12:01 a.m. on January 1,
730 2007 ~~1980~~.
731 Section 20. Section 679.5011, Florida Statutes, is amended
732 to read:
733 679.5011 Filing office.--
734 (1) As used in this section, the term "Florida Secured
735 Transaction Registry" or "registry" means the centralized
736 database in which all initial financing statements, amendments,
737 assignments, and other statements of change authorized to be
738 filed under this chapter are filed, maintained, and retrieved.
739 The term does not apply to documents that are filed under this
740 chapter with the clerk of a circuit court.
741 (2) ~~(1)~~ Except as otherwise provided in subsection (3) ~~(2)~~,
742 the office in which to file a financing statement to perfect a
743 security interest or agricultural lien is:
744 (a) The office of the clerk of the circuit court, if:
745 1. The collateral is as-extracted collateral or timber to
746 be cut; or
747 2. The collateral is goods that are or are to become
748 fixtures and the financing statement is filed as a fixture

749 filing.
750 (b) The Florida Secured Transaction Registry, in
751 accordance with ss. 679.3011-679.3071, in all other cases,
752 including cases in which the collateral is goods that are or are
753 to become fixtures and the financing statement is not filed as a
754 fixture filing.
755 (3) ~~(2)~~ The office in which to file a financing statement
756 to perfect a security interest in collateral, including
757 fixtures, of a transmitting utility is ~~the Office of the~~
758 ~~Secretary of State, or~~ the central filing office ~~authorized by~~
759 ~~s. 679.527 to accept filings for the Florida Secured Transaction~~
760 ~~Registry~~. The financing statement also constitutes a fixture
761 filing as to the collateral indicated in the financing statement
762 which is or is to become fixtures.
763 (4) The Florida Secured Transaction Registry may certify a
764 copy of a financing statement, or an amendment thereto, which
765 shall be admissible in a state or federal court or in a
766 proceeding before any other tribunal.
767 Section 21. Section 679.525, Florida Statutes, is amended
768 to read:
769 679.525 Processing fees.--
770 (1) Except as otherwise provided in subsection (3), the
771 nonrefundable processing fee for filing and indexing a record
772 under this part, other than an initial financing statement of
773 the kind described in s. 679.5021(3), is:
774 (a) For filing an initial financing statement, $13 ~~$25~~ for
775 the first page, which shall include the cost of filing a
776 termination statement for the financing statement;

777 (b) For filing an amendment, $6 ~~$12~~ for the first page;
778 (c) For indexing by additional debtor, secured party, or
779 assignee, $2 ~~$3~~ per additional name indexed;
780 (d) For use of a nonapproved form, $3 ~~$5~~;
781 (e) For each additional page attached to a record, $2 ~~$3~~;
782 (f) For filing a financing statement communicated by an
783 electronic filing process authorized by the filing office, $8
784 ~~$15~~ with no additional fees for multiple names or attached
785 pages;
786 (g) For filing an amendment communicated by an electronic
787 filing process authorized by the filing office, $3 ~~$5~~ with no
788 additional fees for multiple names or attached pages;
789 (h) For a certified copy of a financing statement and any
790 and all associated amendments, $15 ~~$30~~; and
791 (i) For a photocopy of a filed record, $1 per page.
792 (2) Except as otherwise provided in subsection (3), the
793 fee for filing and indexing an initial financing statement of
794 the kind described in s. 679.5021(3) is the amount specified in
795 chapter 28.
796 (3) This section does not require a fee with respect to a
797 mortgage that is effective as a financing statement filed as a
798 fixture filing or as a financing statement covering as-extracted
799 collateral or timber to be cut under s. 679.5021(3). However,
800 the recording and satisfaction fees that otherwise would be
801 applicable to the mortgage apply.
802 (4) The Florida Secured Transaction Registry shall use the
803 fees collected to fund its operations.
804 Section 22. Sections 15.091, 679.521, 679.526, and

805 679.527, Florida Statutes, are repealed.
806 Section 23. Subsection (2) and paragraph (b) of subsection
807 (3) of section 319.27, Florida Statutes, are amended to read:
808 319.27 Notice of lien on motor vehicles or mobile homes;
809 notation on certificate; recording of lien.--
810 (2) No lien for purchase money or as security for a debt
811 in the form of a security agreement, retain title contract,
812 conditional bill of sale, chattel mortgage, or other similar
813 instrument or any other nonpossessory lien, including a lien for
814 child support, upon a motor vehicle or mobile home upon which a
815 Florida certificate of title has been issued shall be
816 enforceable in any of the courts of this state against creditors
817 or subsequent purchasers for a valuable consideration and
818 without notice, unless a sworn notice of such lien has been
819 filed in the department and such lien has been noted upon the
820 certificate of title of the motor vehicle or mobile home. Such
821 notice shall be effective as constructive notice when filed. The
822 interest of a statutory nonpossessory lienor; the interest of a
823 nonpossessory execution, attachment, or equitable lienor; or the
824 interest of a lien creditor as defined in s.
825 679.1021(1)(yy) ~~(zz)~~, if nonpossessory, shall not be enforceable
826 against creditors or subsequent purchasers for a valuable
827 consideration unless such interest becomes a possessory lien or
828 is noted upon the certificate of title for the subject motor
829 vehicle or mobile home prior to the occurrence of the subsequent
830 transaction. Provided the provisions of this subsection relating
831 to a nonpossessory statutory lienor; a nonpossessory execution,
832 attachment, or equitable lienor; or the interest of a lien

833 creditor as defined in s. 679.1021(1)(yy) ~~(zz)~~ shall not apply to
834 liens validly perfected prior to October 1, 1988. The notice of
835 lien shall provide the following information:
836 (a) The date of the lien if a security agreement, retain
837 title contract, conditional bill of sale, chattel mortgage, or
838 other similar instrument was executed prior to the filing of the
839 notice of lien;
840 (b) The name and address of the registered owner;
841 (c) A description of the motor vehicle or mobile home,
842 showing the make, type, and vehicle identification number; and
843 (d) The name and address of the lienholder.
844 (3)
845 (b) As applied to a determination of the respective rights
846 of a secured party under this chapter and a lien creditor as
847 defined by s. 679.1021(1)(yy) ~~(zz)~~, or a nonpossessory statutory
848 lienor, a security interest under this chapter shall be
849 perfected upon the filing of the notice of lien with the
850 department, the county tax collector, or their agents. Provided,
851 however, the date of perfection of a security interest of such
852 secured party shall be the same date as the execution of the
853 security agreement or other similar instrument if the notice of
854 lien is filed in accordance with this subsection within 15 days
855 after the debtor receives possession of the motor vehicle or
856 mobile home and executes such security agreement or other
857 similar instrument. The date of filing of the notice of lien
858 shall be the date of its receipt by the department central
859 office in Tallahassee, if first filed there, or otherwise by the
860 office of the county tax collector, or their agents.

861 Section 24. Paragraph (f) of subsection (2) of section
862 559.9232, Florida Statutes, is amended to read:
863 559.9232 Definitions; exclusion of rental-purchase
864 agreements from certain regulations.--
865 (2) A rental-purchase agreement that complies with this
866 act shall not be construed to be, nor be governed by, any of the
867 following:
868 (f) A security interest as defined in s. 671.201(35) ~~(37)~~.
869 Section 25. Paragraph (g) of subsection (2) of section
870 563.022, Florida Statutes, is amended to read:
871 563.022 Relations between beer distributors and
872 manufacturers.--
873 (2) DEFINITIONS.--In construing this section, unless the
874 context otherwise requires, the word, phrase, or term:
875 (g) "Good faith" means honesty in fact in the conduct or
876 transaction concerned as defined and interpreted under s.
877 671.201(20) ~~(19)~~.
878 Section 26. Paragraph (b) of subsection (3) and paragraph
879 (d) of subsection (16) of section 668.50, Florida Statutes, are
880 amended to read:
881 668.50 Uniform Electronic Transaction Act.--
882 (3) SCOPE.--
883 (b) This section does not apply to a transaction to the
884 extent the transaction is governed by:
885 1. A provision of law governing the creation and execution
886 of wills, codicils, or testamentary trusts;
887 2. The Uniform Commercial Code other than s. ~~ss.~~ 671.107
888 ~~and 671.206~~ and chapters 672 and 680;

889 3. The Uniform Computer Information Transactions Act; or
890 4. Rules relating to judicial procedure.
891 (16) TRANSFERABLE RECORDS.--
892 (d) Except as otherwise agreed, a person having control of
893 a transferable record is the holder, as defined in s.
894 671.201(21) ~~(20)~~, of the transferable record and has the same
895 rights and defenses as a holder of an equivalent record or
896 writing under the Uniform Commercial Code, including, if the
897 applicable statutory requirements under s. 673.3021, s. 677.501,
898 or s. 679.308 are satisfied, the rights and defenses of a holder
899 in due course, a holder to which a negotiable document of title
900 has been duly negotiated, or a purchaser, respectively.
901 Delivery, possession, and indorsement are not required to obtain
902 or exercise any of the rights under this paragraph.
903 Section 27. Subsection (1) of section 670.106, Florida
904 Statutes, is amended to read:
905 670.106 Time payment order is received.--
906 (1) The time of receipt of a payment order or
907 communication canceling or amending a payment order is
908 determined by the rules applicable to receipt of a notice stated
909 in s. 671.209 ~~671.201(27)~~. A receiving bank may fix a cut-off
910 time or times on a funds-transfer business day for the receipt
911 and processing of payment orders and communications canceling or
912 amending payment orders. Different cut-off times may apply to
913 payment orders, cancellations, or amendments or to different
914 categories of payment orders, cancellations, or amendments. A
915 cut-off time may apply to senders generally, or different cut-
916 off times may apply to different senders or categories of

917 payment orders. If a payment order or communication canceling or
918 amending a payment order is received after the close of a funds-
919 transfer business day or after the appropriate cut-off time on a
920 funds-transfer business day, the receiving bank may treat the
921 payment order or communication as received at the opening of the
922 next funds-transfer business day.
923 Section 28. Subsection (2) of section 670.204, Florida
924 Statutes, is amended to read:
925 670.204 Refund of payment and duty of customer to report
926 with respect to unauthorized payment order.--
927 (2) Reasonable time under subsection (1) may be fixed by
928 agreement ~~as stated in s. 671.204(1)~~, but the obligation of a
929 receiving bank to refund payment as stated in subsection (1) may
930 not otherwise be varied by agreement.
931 Section 29. Subsection (3) of section 675.102, Florida
932 Statutes, is amended to read:
933 675.102 Scope.--
934 (3) With the exception of this subsection, subsections (1)
935 and (4), ss. 675.103(1)(i) and (j), 675.106(4), and 675.114(4),
936 and except to the extent prohibited in ss. 671.102(2) ~~(3)~~ and
937 675.117(4), the effect of this chapter may be varied by
938 agreement or by a provision stated or incorporated by reference
939 in an undertaking. A term in an agreement or undertaking
940 generally excusing liability or generally limiting remedies for
941 failure to perform obligations is not sufficient to vary
942 obligations prescribed by this chapter.
943 Section 30. Paragraphs (mm) through (aaaa) of subsection
944 (1) of section 679.1021, Florida Statutes, are redesignated as

945 paragraphs (ll) through (zzz), respectively, and present
946 paragraph (ll) of that subsection is amended to read:
947 679.1021 Definitions and index of definitions.--
948 (1) In this chapter, the term:
949 ~~(ll) "Filing office rule" means a rule adopted pursuant to~~
950 ~~s. 679.526.~~
951 Section 31. Subsection (2) of section 679.5021, Florida
952 Statutes, is amended to read:
953 679.5021 Contents of financing statement; record of
954 mortgage as financing statement; time of filing financing
955 statement.--
956 (2) Except as otherwise provided in s. 679.5011(3) ~~(2)~~, to
957 be sufficient, a financing statement that covers as-extracted
958 collateral or timber to be cut, or that is filed as a fixture
959 filing and covers goods that are or are to become fixtures, must
960 comply with the requirements of subsection (1) and also:
961 (a) Indicate that it covers this type of collateral;
962 (b) Indicate that it is to be filed in the real property
963 records;
964 (c) Provide a description of the real property to which
965 the collateral is related; and
966 (d) If the debtor does not have an interest of record in
967 the real property, provide the name of a record owner.
968 Section 32. Paragraph (b) of subsection (1) of section
969 679.512, Florida Statutes, is amended to read:
970 679.512 Amendment of financing statement.--
971 (1) Subject to s. 679.509, a person may add or delete
972 collateral covered by, continue or terminate the effectiveness

973 of, or, subject to subsection (5), otherwise amend the
974 information provided in, a financing statement by filing an
975 amendment that:
976 (b) If the amendment relates to an initial financing
977 statement filed or recorded in a filing office described in s.
978 679.5011(2) ~~(1)~~ (a), provides the information specified in s.
979 679.5021(2), the official records book and page number of the
980 initial financing statement to which the amendment relates, and
981 the name of the debtor and secured party of record.
982 Section 33. Paragraph (c) of subsection (2) of section
983 679.516, Florida Statutes, is amended to read:
984 679.516 What constitutes filing; effectiveness of
985 filing.--
986 (2) Filing does not occur with respect to a record that a
987 filing office refuses to accept because:
988 (c) The filing office is unable to index the record
989 because:
990 1. In the case of an initial financing statement, the
991 record does not provide an organization's name or, if an
992 individual, the individual's last name and first name;
993 2. In the case of an amendment or correction statement,
994 the record:
995 a. Does not correctly identify the initial financing
996 statement as required by s. 679.512 or s. 679.518, as
997 applicable; or
998 b. Identifies an initial financing statement the
999 effectiveness of which has lapsed under s. 679.515;

1000 3. In the case of an initial financing statement that
1001 provides the name of a debtor identified as an individual or an
1002 amendment that provides a name of a debtor identified as an
1003 individual which was not previously provided in the financing
1004 statement to which the record relates, the record does not
1005 identify the debtor's last name and first name; or
1006 4. In the case of a record filed or recorded in the filing
1007 office described in s. 679.5011(2)~~(1)~~(a), the record does not
1008 provide a sufficient description of the real property to which
1009 it relates;
1010 Section 34. Subsection (9) of section 679.519, Florida
1011 Statutes, is amended to read:
1012 679.519 Numbering, maintaining, and indexing records;
1013 communicating information provided in records.--
1014 (9) Subsections (1), (2), and (8) do not apply to a filing
1015 office described in s. 679.5011(2)~~(1)~~(a).
1016 Section 35. Subsection (2) of section 679.520, Florida
1017 Statutes, is amended to read:
1018 679.520 Acceptance and refusal to accept record.--
1019 (2) If a filing office refuses to accept a record for
1020 filing, it shall communicate to the person that presented the
1021 record the fact of and reason for the refusal and the date and
1022 time the record would have been filed had the filing office
1023 accepted it. The communication must be made at the time and in
1024 the manner prescribed by any filing-office rule but, in the case
1025 of a filing office described in s. 679.5011(2)~~(1)~~(b), in no
1026 event more than 3 business days after the filing office receives
1027 the record, if practical.

1028 Section 36. Subsections (2), (3), and (4) of section
1029 679.523, Florida Statutes, are amended to read:
1030 679.523 Information from filing office; sale or license of
1031 records.--
1032 (2) If a person files a record other than a written
1033 record, the filing office described in s. 679.5011(2) ~~(1)~~(b)
1034 shall communicate to the person an image that provides:
1035 (a) The information in the record;
1036 (b) The number assigned to the record pursuant to s.
1037 679.519(1)(a); and
1038 (c) The date and time of the filing of the record.
1039 (3) In complying with its duty under this chapter, the
1040 filing office described in s. 679.5011(2) ~~(1)~~(b) may communicate
1041 information in any medium. However, if requested, the filing
1042 office shall communicate information by issuing its written
1043 certificate or a record that can be admitted into evidence in
1044 the courts of the state without extrinsic evidence of its
1045 authenticity.
1046 (4) The filing office described in s. 679.5011(2) ~~(1)~~(b)
1047 shall perform the acts required by subsections (1) and (2) at
1048 the time and in the manner prescribed by any filing-office rule,
1049 but not later than 3 business days after the filing office
1050 receives the request, if practical.
1051 Section 37. Paragraphs (h), (j), (l), and (m) of
1052 subsection (3) of section 680.1031, Florida Statutes, are
1053 amended to read:
1054 680.1031 Definitions and index of definitions.--
1055 (3) The following definitions in other chapters of this

1056 code apply to this chapter:
1057 (h) "General intangible," s. 679.1021(1)(oo)~~(pp)~~.
1058 (j) "Instrument," s. 679.1021(1)(tt)~~(uu)~~.
1059 (l) "Mortgage," s. 679.1021(1)(bbb)~~(ccc)~~.
1060 (m) "Pursuant to a commitment," s. 679.1021(1)(nnn)~~(ooo)~~.
1061 Section 38. Subsection (2) of section 680.518, Florida
1062 Statutes, is amended to read:
1063 680.518 Cover; substitute goods.--
1064 (2) Except as otherwise provided with respect to damages
1065 liquidated in the lease agreement (s. 680.504) or otherwise
1066 determined pursuant to agreement of the parties (ss.
1067 671.102(2)~~(3)~~ and 680.503), if a lessee's cover is by lease
1068 agreement substantially similar to the original lease agreement
1069 and the new lease agreement is made in good faith and in a
1070 commercially reasonable manner, the lessee may recover from the
1071 lessor as damages:
1072 (a) The present value, as of the date of the commencement
1073 of the term of the new lease agreement, of the rent under the
1074 new lease agreement and applicable to that period of the new
1075 lease term which is comparable to the then remaining term of the
1076 original lease agreement minus the present value as of the same
1077 date of the total rent for the then remaining lease term of the
1078 original lease agreement; and
1079 (b) Any incidental or consequential damages, less expenses
1080 saved in consequence of the lessor's default.
1081 Section 39. Subsection (1) of section 680.519, Florida
1082 Statutes, is amended to read:

1083 680.519 Lessee's damages for nondelivery, repudiation,
1084 default, or breach of warranty in regard to accepted goods.--
1085 (1) Except as otherwise provided with respect to damages
1086 liquidated in the lease agreement (s. 680.504) or otherwise
1087 determined pursuant to agreement of the parties (ss.
1088 671.102(2) ~~(3)~~ and 680.503), if a lessee elects not to cover or a
1089 lessee elects to cover and the cover is by lease agreement,
1090 whether or not the lease agreement qualifies for treatment under
1091 s. 680.518(2), or is by purchase or otherwise, the measure of
1092 damages for nondelivery or repudiation by the lessor or for
1093 rejection or revocation of acceptance by the lessee is the
1094 present value, as of the date of the default, of the then market
1095 rent minus the present value as of the same date of the original
1096 rent, computed for the remaining lease term of the original
1097 lease agreement, together with incidental and consequential
1098 damages, less expenses saved in consequence of the lessor's
1099 default.
1100 Section 40. Subsection (2) of section 680.527, Florida
1101 Statutes, is amended to read:
1102 680.527 Lessor's rights to dispose of goods.--
1103 (2) Except as otherwise provided with respect to damages
1104 liquidated in the lease agreement (s. 680.504) or otherwise
1105 determined pursuant to agreement of the parties (ss.
1106 671.102(2) ~~(3)~~ and 680.503), if the disposition is by lease
1107 agreement substantially similar to the original lease agreement
1108 and the new lease agreement is made in good faith and in a
1109 commercially reasonable manner, the lessor may recover from the
1110 lessee as damages:

1111 (a) Accrued and unpaid rent as of the date of the
1112 commencement of the term of the new lease agreement;
1113 (b) The present value, as of the same date, of the
1114 commencement of the term of the new lease agreement of the total
1115 rent for the then remaining lease term of the original lease
1116 agreement minus the present value, as of the same date, of the
1117 rent under the new lease agreement applicable to that period of
1118 the new lease term which is comparable to the then remaining
1119 term of the original lease agreement; and
1120 (c) Any incidental damages allowed under s. 680.53, less
1121 expenses saved in consequence of the lessee's default.
1122 Section 41. Subsection (1) of section 680.528, Florida
1123 Statutes, is amended to read:
1124 680.528 Lessor's damages for nonacceptance or
1125 repudiation.--
1126 (1) Except as otherwise provided with respect to damages
1127 liquidated in the lease agreement (s. 680.504) or otherwise
1128 determined pursuant to agreement of the parties (ss.
1129 671.102(2) ~~(3)~~ and 580.503), if a lessor elects to retain the
1130 goods or a lessor elects to dispose of the goods and the
1131 disposition is by lease agreement that for any reason does not
1132 qualify for treatment under s. 680.527(2), or is by sale or
1133 otherwise, the lessor may recover from the lessee as damages a
1134 default of the type described in s. 680.523(1) or (3)(a), or if
1135 agreed, for other default of the lessee:
1136 (a) Accrued and unpaid rent as of the date of default if
1137 the lessee has never taken possession of the goods, or, if the
1138 lessee has taken possession of the goods, as of the date the

1139 lessor repossesses the goods or an earlier date on which the
1140 lessee makes a tender of the goods to the lessor.
1141 (b) The present value as of the date determined under
1142 paragraph (a) of the total rent for the then remaining lease
1143 term of the original lease agreement minus the present value as
1144 of the same date of the market rent at the place where the goods
1145 were located on that date computed for the same lease term.
1146 (c) Any incidental damages allowed under s. 680.53, less
1147 expenses saved in consequence of the lessee's default.
1148 Section 42. Subsection (6) of section 713.901, Florida
1149 Statutes, is amended to read:
1150 713.901 Florida Uniform Federal Lien Registration Act.--
1151 (6) FEES.--The charges or fees of the Secretary of State,
1152 with respect to a notice or certificate filed under this
1153 section, or for searching records with respect thereto, are:
1154 (a) For filing any financing statement, $25 for the first
1155 page, which fee shall include the cost of filing a termination
1156 statement for the financing statement.
1157 (b) For filing a continuation, release, amendment,
1158 assignment, or any other writing permitted by chapter 679, $12
1159 for the first page.
1160 (c) For indexing by multiple debtors or secured parties,
1161 $3 for each additional debtor or secured party.
1162 (d) For each additional facing page attached to a
1163 financing statement, continuation, release, amendment,
1164 assignment, or any other writing, $3.
1165 (e) For certifying any record, $10 for the first 10 file
1166 numbers certified and $10 for each subsequent group of 10 file

1167 numbers.
1168 (f) For use, pursuant to s. 679.525(1)(d), of a
1169 nonapproved form, $3 ~~shall be the same as prescribed in s.~~
1170 ~~15.091~~.
1171
1172 The charges or fees of the clerks of the circuit court with
1173 respect to a notice or certificate filed under this section
1174 shall be the same as prescribed in s. 28.24, relating to
1175 instruments recorded in the official records.
1176 Section 43. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1443 Construction Lien Law
SPONSOR(S): Russell; Traviesa
TIED BILLS: None **IDEN./SIM. BILLS:** SB 588

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Blalock	Bond
2) Local Government Council			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill amends the construction lien law to:

- Provide that any payments made by the owner before the recordation of or after the expiration of the notice of commencement are considered improper payments;
- Allow for the local building department to electronically deliver a summary of the Construction Lien Law to the property owner;
- Provide that a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means a certified copy of the recorded notice of commencement;
- Increase from $5,000 to $7,500 the amount of a direct contract to repair or replace an existing heating or air-conditioning system in which a Notice of Commencement need not be filed;
- Provide that an issuing authority or a building official may not require that a notice of commencement be recorded as a condition of the application, processing, or issuance of a building permit;
- Authorize authorities issuing building permits to accept permit applications electronically and requires an electronic application to include a sworn electronic submission statement;
- Require that an authority responsible for issuing building permit applications, which accept building permit applications in an electronic format, provide public Internet access to the electronic building permit applications in a searchable format; and
- Provide that any person, firm, or corporation that furnishes a waiver or release of lien, or other documents containing false information, commits a third degree felony.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill amends construction lien law to both increase and decrease regulation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Notice of Commencement

Section 713.13, F.S., provides that the recording of a notice of commencement gives constructive notice that claims of lien may be recorded and may take priority. It does not constitute a lien, cloud, or encumbrance on real property.[1]

Liens for professional services and subdivision improvements attach at the time they are recorded and take priority at that time.[2] Liens of materialmen or laborers who are in privity with the owner and who comply with the provisions of ch. 713, F.S., attach and take priority at the time the notice of commencement is recorded. However, in the event a notice of commencement is not filed, the liens attach and take priority at the time the claim of lien is recorded.

A notice of commencement must be recorded in the clerk's office before a contractor actually begins an improvement to real property or recommences completion of any improvement after default or abandonment. The notice must provide:

- A description of the real property;
- A general description of the improvement;
- Name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than the owner;
- The name and address of the contractor;
- The name and address of the surety on the payment bond, if any, and the amount of the bond (a copy of the bond must be attached to the notice; however, if the bond is not recorded it may be used as a transfer bond under s. 713.24, F.S.);[3]
- The name and address of any person making a loan for the construction of the improvements; and
- The name and address of a designated person upon whom documents may be served if other than the owner.

As a pre-requisite to perfecting a lien and recording a claim of lien, all lienors who are not in privity with the owner, except laborers, must serve a notice on the owner.[4] A notice to the owner provides the identity of all persons that have furnished labor or materials to improve the owner's property. The notice to the owner protects the owner from double payment and establishes priority of lien.[5]

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[1] Section 713.13(3), F.S.
[2] Section 713.07, F.S.
[3] Section 713.13(1)(e), F.S. A transfer bond allows an owner, who has erred and not recorded the bond with the notice of commencement, to transfer liens which are recorded against the owner's property. A lien may be transferred from the real property by depositing the amount required by s. 713.24(3), F.S., with the Clerk of the Court or by filing a surety bond in that amount with the clerk.
[4] Section 713.06(2)(a), F.S.
[5] Section 713.06, F.S.

When final payment under a direct contract is due, the contractor must provide the owner a final payment affidavit. The contractor's final payment affidavit must state that all lienors under direct contract have been paid in full, or if not paid in full, stating the name of each lienor that has not been paid in full and the amount due. Those lienors that fail to provide a notice to the owner may lose their lien rights if the owner makes proper payments.[6]

After receipt of a lienor notice to the owner,[7] an owner must make proper payments to the lienor. Proper payment means the owner pays all lienors named in the notice directly.[8] Similarly, when an owner receives a contractor's final payment affidavit, the owner must make proper payments to the contractor. Owners that make these payments will have a proper payment defense against any claim of lien.

Section 713.13(1)(c), F.S. provides that the notice of commencement must state if the contract between the owner and the contractor named in the notice is for construction or improvement that takes in excess of one year. Any payments made by the owner after the expiration of the notice are considered improper payments.

Building Permits and the Notice of Commencement

Section 713.135, F.S., provides that when any person applies for a building permit, the authority issuing the permit is required to:

- Print on the face of each permit card a statement that the owner's failure to record a notice of commencement may result in the owner paying twice for improvements to the property;
- Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the construction lien law. The authority must also provide the applicant with a statement from the department providing a summary of construction lien law. The authority must mail the statement to the owner; and
- Inform each applicant who is not the person whose right, title, and interest is subject to attachment, that as a condition to the issuance of a building permit, the applicant must promise in good faith that the statement will be delivered to the person whose property is subject to attachment.[9]

A Notice of Commencement is not required in direct contracts to repair or replace an existing heating or air-conditioning system in an amount less than $5,000.

Making or Furnishing False Statement

Section 713.35, F.S., provides that if any person, firm, or corporation knowingly and intentionally furnishes to another person, firm, or corporation a written statement in the form of an affidavit containing false information about the payment status of subcontractors, sub-subcontractors, or suppliers in connection with the improvement of real property in this state, and that person relies on the information to his detriment, then that person is guilty of a felony of the third degree.[10]

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[6] Section 713.06(3)(d), F.S.
[7] The notice to owner must be served no later then 45 days from commencing services to the property and before the date of the owner's final payment after the contractor has furnished the required final payment affidavit. s. 713.06(2)(a), F.S.
[8] Section 713.06, F.S.
[9] Section 713.135, F.S.
[10] Section 713.35, F.S.

Effect of Bill

Notice of Commencement

This bill amends s. 713.13(1)(c), F.S., to provide that any payments made by the owner "before the recordation of the notice of commencement are also considered improper payments.

Building Permits and the Notice of Commencement

This bill amends s. 713.135(1)(b), F.S., to allow for the building permit issuing authority to deliver by electronic mail or other electronic format or facsimile, or personally deliver a summary of the Construction Lien Law to the owner or personally deliver the summary to the owner or, if the owner is required to personally appear to obtain the permit , provide the summary to any owner making improvements to real property.

This bill amends s. 713.135 (1)(d), F.S., to provide that in addition to a building permit issuing authority, a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means a certified copy of the recorded notice of commencement.

This bill also amends s. 713.135(1)(d), F.S., by increasing the amount from $5,000 to $7,500 in direct contracts to repair or replace an existing heating or air-conditioning system in which a Notice of Commencement need not be filed.

This bill amends s. 713.135(1)(e), F.S., by providing that an issuing authority or a building official may not require that a notice of commencement be recorded as a condition of the application, processing, or issuance of a building permit. It provides that the paragraph does not modify or waive the inspection requirements set forth in the subsection.

This bill amends s. 713.135(4), F.S., to conform with the electronic mail provisions in the new s. 713.135(6)(b), F.S.

This bill amends s. 713.135(6)(b) and (c), F.S., to authorize authorities issuing building permits to accept permit applications electronically. It requires an electronic application to include a sworn electronic submission statement. This bill also requires that an authority responsible for issuing building permit applications that accepts building permit applications in an electronic format provide public Internet access to the electronic building permit applications in a searchable format.

Making or Furnishing False Statement

The bill amends s. 713.35, F.S., by revising the list of legal documents to include a waiver or release of lien, or other document in which it is a third-degree felony to knowingly and intentionally include certain false information about the payment status of subcontractors, sub-subcontractors, or suppliers in connection with the improvement of real property.

C. SECTION DIRECTORY:

Section 1 amends s. 713.13, F.S., regarding payments made prior to the recordation of or after the expiration of the notice of commencement.

Section 2 amends s. 713.135, F.S., relating to the notice of commencement and applicability of a lien.

Section 3 amends s. 713.35, F.S., relating to the making or furnishing a false statement.

Section 4 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:

   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

N/A

1 A bill to be entitled
2 An act relating to the Construction Lien Law; amending s.
3 713.13, F.S.; revising payment requirements relating to
4 notice of commencement; amending s. 713.135, F.S.;
5 revising certain notice of commencement and applicability
6 of lien requirements for certain authorities issuing
7 building permits; prohibiting private providers performing
8 inspection services from performing or approving certain
9 inspections under certain circumstances; increasing a
10 threshold amount for certain application requirement
11 exemptions; prohibiting issuing authorities from requiring
12 recordation of a notice of commencement for certain
13 purposes; authorizing fees for furnishing copies of
14 certain statements; authorizing authorities issuing
15 building permits to accept permit applications
16 electronically; requiring an electronic submission
17 statement on building permit applications; requiring
18 provision of Internet access; amending s. 713.35, F.S.;
19 revising provisions relating to the making or furnishing
20 of false statements on certain construction documents;
21 providing penalties; providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Paragraph (c) of subsection (1) of section
26 713.13, Florida Statutes, is amended to read:
27 713.13 Notice of commencement.--
28 (1)

29 (c) If the contract between the owner and a contractor
30 named in the notice of commencement expresses a period of time
31 for completion for the construction of the improvement greater
32 than 1 year, the notice of commencement must state that it is
33 effective for a period of 1 year plus any additional period of
34 time. Any payments made by the owner prior to the recordation of
35 or after the expiration of the notice of commencement are
36 considered improper payments.
37 Section 2. Paragraphs (b) and (d) of subsection (1) and
38 subsections (4) and (6) of section 713.135, Florida Statutes,
39 are amended, and paragraph (e) is added to subsection (1) of
40 that section, to read:
41 713.135 Notice of commencement and applicability of
42 lien.--
43 (1) When any person applies for a building permit, the
44 authority issuing such permit shall:
45 (b) Provide the applicant and the owner of the real
46 property upon which improvements are to be constructed with a
47 printed statement stating that the right, title, and interest of
48 the person who has contracted for the improvement may be subject
49 to attachment under the Construction Lien Law. The Department of
50 Business and Professional Regulation shall furnish, for
51 distribution, the statement described in this paragraph, and the
52 statement must be a summary of the Construction Lien Law and
53 must include an explanation of the provisions of the
54 Construction Lien Law relating to the recording, and the posting
55 of copies, of notices of commencement and a statement
56 encouraging the owner to record a notice of commencement and

57 post a copy of the notice of commencement in accordance with s.
58 713.13. The statement must also contain an explanation of the
59 owner's rights if a lienor fails to furnish the owner with a
60 notice as provided in s. 713.06(2) and an explanation of the
61 owner's rights as provided in s. 713.22. The authority that
62 issues the building permit must obtain from the Department of
63 Business and Professional Regulation the statement required by
64 this paragraph and must mail, deliver by electronic mail or
65 other electronic format or facsimile, or personally deliver that
66 statement to the owner or, in a case in which the owner is
67 required to personally appear to obtain the permit, provide that
68 statement to any owner making improvements to real property
69 consisting of a single or multiple family dwelling up to and
70 including four units. However, the failure by the authorities to
71 provide the summary does not subject the issuing authority to
72 liability.
73 (d) Furnish to the applicant two or more copies of a form
74 of notice of commencement conforming with s. 713.13. If the
75 direct contract is greater than $2,500, the applicant shall file
76 with the issuing authority prior to the first inspection either
77 a certified copy of the recorded notice of commencement or a
78 notarized statement that the notice of commencement has been
79 filed for recording, along with a copy thereof. In the absence
80 of the filing of a certified copy of the recorded notice of
81 commencement, the issuing authority or a private provider
82 performing inspection services may ~~shall~~ not perform or approve
83 subsequent inspections until the applicant files by mail,
84 facsimile, hand delivery, or any other means such certified copy

85 with the issuing authority. The certified copy of the notice of
86 commencement must contain the name and address of the owner, the
87 name and address of the contractor, and the location or address
88 of the property being improved. The issuing authority shall
89 verify that the name and address of the owner, the name of the
90 contractor, and the location or address of the property being
91 improved which is contained in the certified copy of the notice
92 of commencement is consistent with the information in the
93 building permit application. The issuing authority shall provide
94 the recording information on the certified copy of the recorded
95 notice of commencement to any person upon request. This
96 subsection does not require the recording of a notice of
97 commencement prior to the issuance of a building permit. If a
98 local government requires a separate permit or inspection for
99 installation of temporary electrical service or other temporary
100 utility service, land clearing, or other preliminary site work,
101 such permits may be issued and such inspections may be conducted
102 without providing the issuing authority with a certified copy of
103 a recorded notice of commencement or a notarized statement
104 regarding a recorded notice of commencement. This subsection
105 does not apply to a direct contract to repair or replace an
106 existing heating or air-conditioning system in an amount less
107 than $7,500 ~~$5,000~~.
108 (e) Not require that a notice of commencement be recorded
109 as a condition of the application for or processing or issuance
110 of a building permit. However, this paragraph does not modify or
111 waive the inspection requirements set forth in this subsection.

112 (4) The several boards of county commissioners, municipal
113 councils, or other similar bodies may by ordinance or resolution
114 establish reasonable fees for furnishing copies of the forms and
115 the printed statement provided in paragraphs ~~paragraph~~ (1)(b)
116 and (d) in an amount not to exceed $5 to be paid by the
117 applicant for each permit in addition to all other costs of the
118 permit; however, no forms or statement need be furnished,
119 mailed, or otherwise provided to, nor may such additional fee be
120 obtained from, applicants for permits in those cases in which
121 the owner of a legal or equitable interest (including that of
122 ownership of stock of a corporate landowner) of the real
123 property to be improved is engaged in the business of
124 construction of buildings for sale to others and intends to make
125 the improvements authorized by the permit on the property and
126 upon completion will offer the improved real property for sale.
127 (6)(a) In addition to any other information required by
128 the authority issuing the permit, the building permit
129 application must be in substantially the following form:
130
131 Tax Folio No._____
132 BUILDING PERMIT APPLICATION
133
134 Owner's Name
135 Owner's Address
136 Fee Simple Titleholder's Name (If other than owner)
137 Fee Simple Titleholder's Address (If other than owner)
138 City
139 State_____ Zip_____

140 Contractor's Name
141 Contractor's Address
142 City
143 State_____ Zip_____
144 Job Name
145 Job Address
146 City_____ County_____
147 Legal Description
148 Bonding Company
149 Bonding Company Address
150 City_____ State_____
151 Architect/Engineer's Name
152 Architect/Engineer's Address
153 Mortgage Lender's Name
154 Mortgage Lender's Address
155
156 Application is hereby made to obtain a permit to do the
157 work and installations as indicated. I certify that no work or
158 installation has commenced prior to the issuance of a permit and
159 that all work will be performed to meet the standards of all
160 laws regulating construction in this jurisdiction. I understand
161 that a separate permit must be secured for ELECTRICAL WORK,
162 PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS,
163 TANKS, and AIR CONDITIONERS, etc.
164
165 OWNER'S AFFIDAVIT: I certify that all the foregoing information
166 is accurate and that all work will be done in compliance with
167 all applicable laws regulating construction and zoning.

168
169
170 WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF
171 COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO
172 YOUR PROPERTY.
173
174
175 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR
176 AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.
177
178 (Signature of Owner or Agent)
179 (including contractor)
180 STATE OF FLORIDA
181 COUNTY OF _____
182
183
184 Sworn to (or affirmed) and subscribed before me this _____
185 day of _____, (year) , by (name of person making statement)
186 .
187
188 (Signature of Notary Public - State of Florida)
189 (Print, Type, or Stamp Commissioned Name of Notary Public)
190
191 Personally Known _____ OR Produced Identification _____
192
193 Type of Identification Produced _____
194 (Signature of Contractor)
195

196
197 STATE OF FLORIDA
198 COUNTY OF _____
199
200
201 Sworn to (or affirmed) and subscribed before me this _____
202 day of _____, (year) , by (name of person making statement)
203 .
204
205 (Signature of Notary Public - State of Florida)
206 (Print, Type, or Stamp Commissioned Name of Notary Public)
207
208 Personally Known _____ OR Produced Identification _____
209
210 Type of Identification Produced _____
211
212 (Certificate of Competency Holder)
213
214 Contractor's State Certification or Registration No._____
215
216 Contractor's Certificate of Competency No._____
217
218 APPLICATION APPROVED BY
219 _____ Permit Officer
220
221 (b) Consistent with the requirements of paragraph (a), an
222 authority responsible for issuing building permits under this
223 section may accept a building permit application in an

224 electronic format, as prescribed by the authority. Building
225 permit applications submitted to the authority electronically
226 must contain the following additional statement:
227
228 OWNER'S ELECTRONIC SUBMISSION STATEMENT: Under penalty of
229 perjury, I declare that all the information contained in this
230 building permit application is true and correct.
231
232 (c) An authority responsible for issuing building permit
233 applications which accepts building permit applications in an
234 electronic format shall provide public Internet access to the
235 electronic building permit applications in a searchable format.
236 Section 3. Section 713.35, Florida Statutes, is amended to
237 read:
238 713.35 Making or furnishing false statement.--Any person,
239 firm, or corporation who knowingly and intentionally makes or
240 furnishes to another person, firm, or corporation~~, a written~~
241 ~~statement in the form of~~ an affidavit, a waiver or release of
242 lien, or other document, whether or not under oath, containing
243 false information about the payment status of subcontractors,
244 sub-subcontractors, or suppliers in connection with the
245 improvement of real property in this state, knowing that the one
246 to whom it was furnished might rely on it, and the one to whom
247 it was furnished will part with draw payments or final payment
248 relying on the truth of such statement as an inducement to do so
249 commits ~~is guilty of~~ a felony of the third degree, punishable as
250 provided in s. 775.082 or s. 775.083. A state attorney or the
251 statewide prosecutor, upon the filing of an indictment or

252 information against a contractor, subcontractor, or sub-
253 subcontractor which charges such person with a violation of this
254 section, shall forward a copy of the indictment or information
255 to the Department of Business and Professional Regulation. The
256 Department of Business and Professional Regulation shall
257 promptly open an investigation into the matter and, if probable
258 cause is found, shall furnish a copy of any investigative report
259 to the state attorney or statewide prosecutor who furnished a
260 copy of the indictment or information and to the owner of the
261 property which is the subject of the investigation.
262 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1495 Marriage Licenses
SPONSOR(S): Arza
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Future of Florida's Families Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Current law provides two different avenues for a minor to be granted a marriage license:

- Any minor 16 or 17 years of age may marry with the consent of the minor's parents or legal guardian; or
- Any minor of any age may marry if the female is pregnant or has given birth, the potential groom is the father of the child, and a judge, in his or her discretion, grants permission to marry. This provision does not require notice to, or the consent of, the parents or guardian of the minor.

This bill eliminates the provisions allowing a court to grant a marriage license to a minor, thereby limiting the legal authority of a minor to marry to only those minors 16 or 17 years of age who obtain the consent of the minor's parents or legal guardian.

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 affects the ability of a minor to marry.

Safeguard individual liberty -- This bill decreases the individual liberty of certain minors to marry without parental consent.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Section 741.0405, F.S. provides a method by which minors may obtain a marriage license. If either of the parties seeking to be married is under the age of 18 but at least 16, the issuing authority[1] must issue a marriage license if there is a written consent of the parents or guardian of the minor, acknowledged before some officer authorized by to take acknowledgments and administer oaths. The license must be issued without parental consent when both parents of the minor are deceased at the time of application or when the minor has been married previously.

Current law authorizes a county judge, in his or her discretion, to issue a marriage license without parental consent in limited circumstances. A county court judge may issue a license to any male or female under 18, when both parties swear under oath that they are the parents of a child. When the pregnancy is verified by the written statement of a physician, the county court judge may issue a marriage license: to any male or female under 18 upon a sworn application of both parties that they are the expectant parents, or to any female under 18 and male over 18 upon the female's sworn application that she is an expectant parent. These exceptions too would permit a minor under 16, with or without the consent of the parents, to be issued a marriage license.

Effect of Bill

The bill provides that no marriage license will be granted to any person under 16 with or without the parents consent. Further, this bill eliminates the provisions allowing a court to issue a license without parental consent when one or both parties swear under oath that they are parents of a child or when the pregnancy is verified by a physician's statement.

C. SECTION DIRECTORY:

Section 1 amends s. 741.0405, F.S. by deleting provisions authorizing a court to issue a marriage license in certain circumstances.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[1] The issuing authority is either a county court judge or clerk of the circuit court.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is expected that so few minors under 16 marry that this bill is not expected to have a fiscal impact.

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

N/A

1 A bill to be entitled
2 An act relating to marriage licenses; amending s.
3 741.0405, F.S.; deleting provisions authorizing the court
4 to issue a marriage license upon the sworn application
5 that both minor applicants are the parents of a child or
6 the expectant parents of a child; deleting provisions
7 authorizing the court to issue a marriage license upon
8 written verification by a physician and sworn application
9 that the minor female applicant is an expectant parent;
10 providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 741.0405, Florida Statutes, is amended
15 to read:
16 741.0405 When marriage license may be issued to persons
17 under 18 years.--
18 (1) If either of the parties shall be under the age of 18
19 years but at least 16 years of age, the county court judge or
20 clerk of the circuit court shall issue a license for the
21 marriage of such party only if there is first presented and
22 filed with him or her the written consent of the parents or
23 guardian of such minor to such marriage, acknowledged before
24 some officer authorized by law to take acknowledgments and
25 administer oaths. However, the license shall be issued without
26 parental consent when both parents of such minor are deceased at
27 the time of making application or when such minor has been
28 married previously.

29 ~~(2) The county court judge of any county in the state may,~~
30 ~~in the exercise of his or her discretion, issue a license to~~
31 ~~marry to any male or female under the age of 18 years, upon~~
32 ~~application of both parties sworn under oath that they are the~~
33 ~~parents of a child.~~
34 ~~(3) When the fact of pregnancy is verified by the written~~
35 ~~statement of a licensed physician, the county court judge of any~~
36 ~~county in the state may, in his or her discretion, issue a~~
37 ~~license to marry:~~
38 ~~(a) To any male or female under the age of 18 years upon~~
39 ~~application of both parties sworn under oath that they are the~~
40 ~~expectant parents of a child; or~~
41 ~~(b) To any female under the age of 18 years and male over~~
42 ~~the age of 18 years upon the female's application sworn under~~
43 ~~oath that she is an expectant parent.~~
44 (2)~~(4)~~ No license to marry shall be granted to any person
45 under the age of 16 years, with or without the consent of the
46 parents~~, except as provided in subsections (2) and (3)~~.
47 Section 2. This act shall take effect July 1, 2006.

HB 1521

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1521 Children in Out-of-Home Placements
SPONSOR(S): Barreiro
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Health Care Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Abused, neglected, abandoned and orphaned children are placed in the foster care system under the supervision of the Department of Children and Family Services ("DCF"), pending reunification with their parents, adoption, or other placement as appropriate. Foster parents and their foster children sometimes develop close emotional bonds that are harmed when the foster children are removed from the foster home. Current law places some limits upon moving a dependent child after a disposition hearing has been conducted and the dependent child is in a placement.

This bill further limits the ability of DCF to move a dependent child from a current out-of-home placement by creating a rebuttable presumption that it is in the best interests of a dependent child who has resided in a particular out-of-home placement for one than 1 year to remain in that placement with the foster parent as the permanent custodian.

The bill also requires that a foster child who has been denied developmental disabilities services must be given an opportunity for an administrative hearing before the Division of Administrative Hearings (DOAH).

The Department of Children and Family Services estimates that this bill may have a recurring negative fiscal impact on state revenues of $16 million annually commencing in FY 2005-2006. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill may provide stability for foster children, but may interfere with reunification of such foster children with their parents.

B. EFFECT OF PROPOSED CHANGES:

Background - Moving Foster Children

Chapter 39, F.S., provides for proceedings regarding dependency of minor children. A dependent child is one that is dependent upon the state for services due to abuse, neglect, abandonment, or death of the parents or guardian. Once a child is adjudicated dependent, the court has the power by order to:

- Require the parent or the legal custodian and the child, to participate in necessary treatment and services;
- Require the parties to participate in dependency mediation; and
- Require placement of the child either under the protective supervision of an authorized agent of the Department of Children and Family Services ("DCF"), in the home of one or both of the child's parents, in the home of a relative of the child, with another adult approved by the court, or in the custody of the DCF.[1]

In 2000, the legislative enacted s. 39.522, F.S., regarding change of custody after the disposition hearing. The statute provides:

- A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement.
- If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court must enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered.
- The standard for changing custody of the child is the best interest of the child.
- If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.
- In cases where the issue before the court is whether a child should be reunited with a parent, the court must determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

[1] 25 Fla. Jur. 2d, Family Law s. 273.

Section 39.701(9)(f), F.S., requires the dependency court to review a child's permanency no later than 12 months after a child was sheltered.[2] Section 39.621, F.S., identifies adoption as the primary permanency option when reunification with a parent is not appropriate.

Section 39.812(4), F.S., provides that, when the department denies foster parents' applications to adopt a child, the Department of Children and Families ("department") must obtain court approval in order to remove the child from the foster home if the child has resided there for at least 6 months.

If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after a hearing, the court can order a change in the placement, modify the conditions of supervision, or continue the conditions of supervision. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to ch. 39, F.S.[3]

Effect of Bill - Moving Foster Children

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. Further, the bill expands who a court must hear in determining the need for a change in custody. If a need for a change of custody has been denied, the court must hear all parties in including the custodian and the interested persons.

The bill also creates a rebuttable presumption that continued placement with the custodian of a child in an out-of-home placement as in the best interest of the child if the child has resided in the same out-of-home placement for more than 1 year. This presumption may not be rebutted solely by the wishes of a parent or by placing the child with a person who is biologically related to the child but who is not living with a parent.

Background - Certain Disability Hearings

All persons who have been denied federally-funded developmental disability services or other public benefits, including foster children, are entitled to a fair hearing conducted by the Office of Appeal Hearings. The fair hearing process is designed to provide relatively rapid and easily accessible due process proceedings to contest the denial, reduction or termination of benefits or services. The fair hearings process is conducted according to federal and state law and rules that ensure the individual's right to due process is protected.[4] Applicants for or recipients of public benefits have the right to appeal an adverse decision in a fair hearing to the District Court of Appeal, but the agency may not seek an appeal.[5]

Effect of Bill - Certain Disability Hearings

Finally, the bill directs that all decision affecting developmental disability benefits of dependent children, who are in the custody of the department, be heard by an administrative law judge, regardless of the facts.

C. SECTION DIRECTORY:

Section 1 amends s. 39.522, F.S. to provide a rebuttable presumption in out-of-home placements.

Section 2 amends s. 63.082, F.S. to include a cross-reference to the rebuttable presumption.

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[2] Sheltered is defined in s. 39.01(64), F.S. as "a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication."
[3] 25 Fla. Jur. 2d, Family Law s. 279.
[4] *See, e.g.,* 42 U.S.C. 1396a(3); 42 CFR 431.200, et seq; s. 409.285, F.S.
[5] Sections 120.68, 409.285, F.S.

Section 3 amends s. 120.80, F.S. to require that hearings be conducted by an administrative law judges in cases involving children with developmental disabilities who are in the custody of the department.

Section 4 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Children and Family Services estimates that this bill may cause the loss of federal matching funds resulting in a loss of $15,952,857.80 annually commencing in FY 2005-2006.

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:

Department of Children and Families Comments

As of January 31, 2006, there were 8,228 children in licensed out-of-home care classified as Title IV-E Eligible/Reimbursable. As of December 31, 2005, the federal share of the average quarterly cost for these IV-E clients is $1,938.85. A statutory rebuttable presumption regarding the appropriateness of a particular placement, without consideration of case specifics as required by Safe Families and Adoptions Act,, has the potential to cost Florida all or a significant portion of that federal share, up to an anticipated maximum of $15,952,857.80. This does not include the concurrent loss of federal administrative or training funds. However, the legislature could choose to continue state matching funds, in order to provide a reduced level of services.

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:

Department of Children and Families Comments:

Page 2, lines 38-39 which describe who has standing to participate in a postdisposition change of custody hearing, the term "other legal custodians" is changed to "other custodians" and "guardians" is added. These changes will give foster parents the standing to object to a modification of placement, even if that modification were actually reunification with a parent.

Page 2, Lines 38-40, provide that the court shall hear, in addition to all parties, "the custodian and the interested persons in person or by counsel" not only reinforces the provision of standing as discussed above for foster parents, but gives party standing to interested persons who would otherwise be, at best, participants. In other words, foster parents and other interested persons would now be entitled to ask the court for relief in regard to children to whom they have no legal rights.

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. This change creates an anomaly, since s. 39.522, F.S., actually provides for modification of legal custody, not modification of physical placements. A foster home is only a physical placement. The actual temporary legal custodian, when a child is in a foster home, is the department. As the legal custodian, the department determines the particular licensed foster care placement for a foster child. Court interference with this determination would violate the separation of power between the judicial and executive branch.

This bill would effect a dramatic expansion of foster parents' rights to custody of dependent children far beyond what the Legislature has provided for in ss. 39.521 or 409.175, F.S. The bill would create a new impediment to the primary goal of reunification, and would create a new ground for litigation in the dependency proceeding that could substantially delay permanency decisions, to the detriment of the child. The bill would, therefore, make it more difficult to comply with the AFSA time parameters.

The bill also adversely impacts the reunification goal by creating a rebuttable presumption that an out-of-home caregiver is the placement that is in the best interest of the child when the same out-of-home placement has continued for more than 12 months. Currently, parents are required by state law to complete case plans within 12 months of a child's removal from the home. The 12-month deadline can be extended under extraordinary circumstances. The effect of the proposed rebuttable presumption would be that, after 12 months, the child's parents would be required to prove that they are superior to the out-of-home placement in order to be reunified with the child upon resolution of the extraordinary circumstances.

There is no "permanent custodian" (see page 2, lines 49-50) currently provided under ch. 39, F.S. Long-term custody is a permissible permanency goal pursuant to s. 39.622, F.S. The "permanent custodian" referenced by the bill appears to be incorporate a concept from another current bill, SB 1080, which

would replace the permanency option of "long-term custodian" with "permanent guardian". The language in the two bills, however, is different. The bill would create a de facto change in the case plan goal on the 366th day of the case, notwithstanding whatever findings a court made regarding the final case plan goal at a permanency hearing prior to the end of the 1st year of an out-of-home placement.

The bill appears to conflict with the Safe Families and Adoptions Act ("ASFA")[6] requirements. AFSA requires the finalization of the case plan goal within 12 months of a child's removal from the home. The case plan goal must be in the best interests of a child, based on the facts and circumstances of that particular child's case. [*See* 45 C.F.R. s. 1356.21(d).] A statutory rebuttable presumption that remaining in a particular placement with a particular person as "permanent custodian" is in a child' best interests is in direct conflict with ASFA requirements.

The language in the bill conflicts with ss 120.569 and 120.57, F.S., because it would direct that all decisions affecting developmental disability benefits of dependent children be heard by an administrative law judge (ALJ), regardless of whether there were disputed issues of material fact. The bill would also place Florida in potential violation of federal law. Subsection 120.80(7), F.S., currently exempts *all* federally funded public benefits decisions from being heard by an administrative law judge, because the federal hearing procedures and requirements (*see* 42 CFR s. 431.200, et seq.) are different from those in ss. 120.569 and 120.57, F.S., and from the Uniform Rules of Procedure that apply to administrative proceedings in Florida. *See* ch. 28-106, F.A.C. To the extent that the federal procedures are different, adherence to the State of Florida Division of Administrative Hearings ("DOAH") requirements would be unlawful.

Additionally, providing that such cases be heard in DOAH would greatly delay their resolution. The Office of Appeal Hearings generally schedules and hears these cases more quickly than DOAH could. Furthermore, the Office of Appeal Hearings has final order authority in these cases, whereas DOAH would not. The client would be required to wait for DOAH to render a Recommended Order, and then for the agency to prepare and issue a Final Order, before the issue were resolved or even ripe for appeal to the District Court of Appeal.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

[6] 42 U.S.C. s. 620, et seq.

1 A bill to be entitled
2 An act relating to children in out-of-home placements;
3 amending s. 39.522, F.S.; providing that a rebuttable
4 presumption arises to continue placement with the
5 custodian of a child in an out-of-home placement as in the
6 best interest of the child if the child has resided in the
7 same out-of-home placement for more than 1 year and the
8 custodian is eligible to be the permanent custodian;
9 providing that the presumption is not rebutted solely by
10 the expressed wishes of a parent or by placing the child
11 with a person who is biologically related to the child but
12 who is not living with a parent; amending s. 63.082, F.S.;
13 conforming provisions to changes made by the act; amending
14 s. 120.80, F.S.; requiring that an administrative hearing
15 be conducted by an administrative law judge assigned by
16 the Division of Administrative Hearings in cases involving
17 children with developmental disabilities who are in the
18 custody of the department and placed in out-of-home care
19 who apply for, are denied, or receive reduced
20 developmental disability services under ch. 393, F.S.;
21 providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Section 39.522, Florida Statutes, is amended to
26 read:
27 39.522 Postdisposition change of custody.--The court may
28 change the temporary legal custody or the conditions of

29 protective supervision at a postdisposition hearing, without the
30 necessity of another adjudicatory hearing.
31 (1) A child who has been placed in the child's own home
32 under the protective supervision of an authorized agent of the
33 department, in the home of a relative, in the home of a legal
34 custodian, or in some other place, including a foster home, may
35 be brought before the court by the department or by any other
36 interested person, upon the filing of a petition alleging a need
37 for a change in the conditions of protective supervision or the
38 placement. If the parents, ~~or~~ other ~~legal~~ custodians, or
39 guardian denies ~~deny~~ the need for a change, the court shall hear
40 all parties, the custodian, and the interested persons in person
41 or by counsel, or both. Upon the admission of a need for a
42 change or after the ~~such~~ hearing, the court shall enter an order
43 changing the placement, modifying the conditions of protective
44 supervision, or continuing the conditions of protective
45 supervision as ordered. The standard for changing custody of the
46 child shall be the best interest of the child. If a child has
47 resided in the same out-of-home placement for more than 1 year
48 and the custodian of the child in that out-of-home placement
49 requests and is eligible for consideration as a permanent
50 custodian for the child, a rebuttable presumption arises that
51 continuing the out-of-home placement is in the best interest of
52 the child. This presumption may not be rebutted solely by the
53 expressed wishes of a parent or by placing the child with a
54 person who is biologically related to the child but who is not
55 living with a parent. If the child is not placed in foster care,
56 ~~then~~ the new placement for the child must meet the home study

57 criteria and court approval pursuant to this chapter.
58 (2) In cases where the issue before the court is whether a
59 child should be reunited with a parent, the court shall
60 determine whether the parent has substantially complied with the
61 terms of the case plan to the extent that the safety, well-
62 being, and physical, mental, and emotional health of the child
63 is not endangered by the return of the child to the home.
64 Section 2. Paragraph (d) of subsection (6) of section
65 63.082, Florida Statutes, is amended to read:
66 63.082 Execution of consent to adoption or affidavit of
67 nonpaternity; family social and medical history; withdrawal of
68 consent.--
69 (6)
70 (d) Subject to s. 39.522(1), when ~~In~~ determining whether
71 the best interest of the child will be served by transferring
72 the custody of the minor child to the prospective adoptive
73 parent selected by the birth parent, the court shall give
74 consideration to the rights of the birth parent to determine an
75 appropriate placement for the child, the permanency offered, the
76 child's bonding with any potential adoptive home that the child
77 has been residing in, and the importance of maintaining sibling
78 relationships, if possible.
79 Section 3. Subsection (18) is added to section 120.80,
80 Florida Statutes, to read:
81 120.80 Exceptions and special requirements; agencies.--
82 (18) AGENCY FOR PERSONS WITH
83 DISABILITIES.--Notwithstanding subsection (7), hearings shall be
84 conducted by an administrative law judge assigned by the

85 division in cases involving children with developmental
86 disabilities who are in the custody of the department and placed
87 in out-of-home care who apply for, are denied, or receive
88 reduced developmental disability services under chapter 393.
89 Section 4. This act shall take effect July 1, 2006.

HB 1621

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1621 Coastal Properties Disclosure Statements
SPONSOR(S): Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Blalock	Bond
2) Agriculture & Environment Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Department of Environmental Protection has established coastal construction control lines along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida. The purpose of these lines is to define the portions of the beach-dune system that are subject to severe erosion, and to prohibit new construction seaward of this line unless granted a special permit by the Department of Environmental Protection.

This bill requires the seller of property subject to the coastal construction control line to present a prospective purchaser with a specific disclosure statement providing that the property is subject to erosion and to federal, state, or local regulations.

The bill also provides that failure to deliver the disclosure will not effect the enforcement of the sale and purchase contract, create a right of recession, or impair the property's title.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the disclosure requirements that a seller of coastal property must provide to a prospective purchaser.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Environmental Protection (department) has established coastal construction control lines, as required by statute, on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, Gulf of Mexico, and the Straits of Florida.[1] The purpose of these lines is to define that portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.[2] Upon the recording of the survey showing the location of a beach erosion control line, title to all lands seaward of the erosion control line are deemed to be vested in the state by right of its sovereignty.[3] Property seaward of the coastal construction control line can be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, such rigid coastal protection structures[4], beach nourishment, and protection of marine turtles.

Current law requires that a seller of real property located partially or totally seaward of the coastal construction control line provide to the purchaser an affidavit, or a survey, that discloses to the purchaser the location of the coastal control line on the property being conveyed.[5] This disclosure requirement was established by the legislature to ensure that purchasers in coastal areas were aware that such lands are subject to frequent and severe fluctuations due to erosion.[6] Critical erosion affects the value of property a great deal more than is often acknowledged. The amount of depression of coastal property values due to erosion over the next twenty years for properties along the Atlantic coast of the United States has been estimated at between $1.7 and $2.7 billion.[7]

There also exists in the common law a general duty to disclose when a seller is aware of facts materially affecting value or desirability of property, which are not readily observable and are not known to the buyer.[8] Several provisions in current law require the seller to provide specific disclosure statements prior to the sale of real property. A seller must disclose:

- The amount of ad valorem taxes on real property;[9]
- Whether there are homeowners' association covenants;[10]
- Energy performance level for each new residential building[11]; and

---

[1] Section 161.053(1)(a), F.S.
[2] Section 161.053(1)(a), F.S.
[3] Section 161.191(1), F.S.
[4] Rigid coastal protection structures are man-made structures or devices in or near the coastal system for the purpose of preventing erosion of the beach or the upland dune system or to protect upland structures from the effects of coastal wave and current activity.
[5] Section 161.57(2), F.S.
[6] Section 161.57(1), F.S.
[7] *Evaluation of Erosion Hazards Summary* A Collaborative Project of The H. John Heinz III Center for Science, Economics and the Environment, (Prepared for the Federal Emergency Management Agency, Contract EMW-97-CO-0375, April 2000) at: http://www.heinzctr.org/NEW_WEB/PDF/erosnsum.pdf#zoom=100 (last visited March 16, 2006).
[8] *Johnson v. Davis*, 449 So.2d 344 (Fla. 3rd DCA 1984)
[9] Section 689.261, F.S.
[10] Section 720.401, F.S.
[11] Section 553.9085, F.S.

- The possibility of increased levels of radon gas.[12]

Contracts for the sale and purchase of a condominium, cooperative, and timeshare interest have several disclosure requirements as well. [13,14,15]

Effect of Bill

The bill amends s. 161.57, F.S., pertaining to the "Coastal Properties Disclosure Statement", to require an additional disclosure of a seller of coastal real property that is seaward of the coastal construction control line as defined s. 161.053, F.S. At or prior to closing the seller is required to disclose that:

> The property being purchased may be subject to coastal erosion and certain federal, state, or local regulations that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Department of Environmental Protection (DEP), including whether there are significant erosion conditions associated with the shore line of the property being purchased.

The disclosure may be set forth in the contract or in a separate writing.

The bill also provides that failure to deliver the disclosure, affidavit, or survey required by s. 161.57, F.S., shall not effect the enforcement of sale and purchase contract by either party, create a right of recession by the purchaser, or impair the property's title.

C. SECTION DIRECTORY:

Section 1 amends s. 161.57, F.S., to provide disclosure requirements for property located seaward of the coastal construction control line.

Section 2 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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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[12] Section 404.056, F.S.
[13] Section 718.503, F.S.
[14] Section 719.503, F.S.
[15] Section 721.06, F.S.

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

N/A

1 A bill to be entitled
2 An act relating to coastal properties disclosure
3 statements; amending s. 161.57, F.S.; requiring sellers of
4 certain coastal properties to provide a disclosure
5 statement to prospective purchasers; providing language
6 for the disclosure statement; preserving the
7 enforceability of certain contracts and title conveyances;
8 providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 161.57, Florida Statutes, is amended to
13 read:
14 161.57 Coastal properties disclosure statement.--
15 (1) The Legislature finds that it is necessary to ensure
16 that the purchasers of interests in real property located in
17 coastal areas partially or totally seaward of the coastal
18 construction control line as defined in s. 161.053 are fully
19 apprised of the character of the regulation of the real property
20 in such coastal areas and, in particular, that such lands are
21 subject to frequent and severe fluctuations.
22 (2) At or prior to the time a seller and a purchaser both
23 execute a contract for the sale and purchase of any interest in
24 real property located either partially or totally seaward of the
25 coastal construction control line as defined in s. 161.053, the
26 seller shall provide to the prospective purchaser the following
27 disclosure, which may be set forth in the contract or in a
28 separate writing:

29
30 The property being purchased may be subject to coastal
31 erosion and to federal, state, or local regulations that
32 govern coastal property, including the delineation of the
33 coastal construction control line, rigid coastal protection
34 structures, beach nourishment, and protection of marine
35 turtles. Additional information can be obtained from the
36 Florida Department of Environmental Protection, including
37 whether there are significant erosion conditions associated
38 with the shoreline of the property being purchased.
39
40 (3) ~~(2)~~ Unless otherwise waived in writing by the
41 purchaser, at or prior to the closing of any transaction where
42 an interest in real property located either partially or totally
43 seaward of the coastal construction control line as defined in
44 s. 161.053 is being transferred, the seller shall provide to the
45 purchaser an affidavit, or a survey meeting the requirements of
46 chapter 472, delineating the location of the coastal
47 construction control line on the property being transferred.
48 (4) A seller's failure to deliver the disclosure,
49 affidavit, or survey required by this section shall not impair
50 the enforceability of the sale and purchase contract by either
51 party, create any right of rescission by the purchaser, or
52 impair the title to any such real property conveyed by the
53 seller to the purchaser.
54 Section 2. This act shall take effect October 1, 2006.

HB 7099

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 PCB JU 06-04 Land Trusts
SPONSOR(S): Judiciary Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
1) Civil Justice Committee		Shaddock	Bond
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The essential purpose of a land trust is to provide a flexible method for the acquisition, financing, and disposition of real property. The land trust is a modified form of conventional trust agreement that is limited to an arrangement where the trustee holds title to the real property; however, all the active managerial and administrative powers are reserved to the beneficiaries.

The bill codifies existing practice and case law in the area of land trusts. It revises the current statute relating to land trusts by providing definitions of the terms "beneficial interest," "beneficiary," "land trust," "holders of the power of direction," and "trustee." It removes an obsolete provision referring to claims arising out of dower or curtesy. It creates provisions relating to land trust beneficiaries, successor trustees, and land trustees as creditors. Finally, it provides that the provisions of the bill are intended to clarify the existing law relating to land trusts and that the bill applies to all land trusts, whether the land trust was created before, on, or after the effective date of the bill.

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

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:

Present Situation

Land Trusts in General

The essential purpose of a land trust is to provide a flexible and practical method for the acquisition, financing, and disposition of real estate. Illinois appears to have been the first state to recognize the land trust, and for that reason, the land trust is often referred to as the "Illinois Land Trust."[1] The land trust is a modified form of a conventional trust agreement; however, it is limited to an arrangement where the trustee holds title to the real property but all the active managerial and administrative powers are reserved to the beneficiaries. In a land trust, the trustee receives the legal title to the real property, but the usual attributes of real estate fee ownership are retained by the beneficiary. The beneficiary retains only a personal property interest.

The land trust has been equated to the Massachusetts business trust from which the land trust undoubtedly evolved.[2] However, unlike a Massachusetts business trust, a land trust is generally viewed as a vehicle for holding title to real property rather than as an operating business entity. The land trust is created through the use of two instruments: 1) a deed in trust, where the real property is conveyed to the trustee, and 2) a trust agreement under which the trustee acts. Land trusts have been found to have several advantages:

- Interests in land trusts cannot be partitioned, and transferring beneficial interests is relatively easy.
- Interests of beneficiaries cannot be disclosed without a court order.
- Judgments against the beneficiaries do not affect legal title of the real property.
- The beneficial interest in the land trust is personal property. Since it is personal property, non-residents of Florida can avoid ancillary administration.
- The death of a beneficiary does not terminate the trust, and testamentary dispositions can be made in the trust agreement.

The trustee to a land trust is the party designated in the trust agreement to hold legal and equitable title to the land trust property. The beneficiary is the party designated in the trust agreement as having the power to direct the trustee with regard to the trust property, as well as, the control of the management, operation, rental and sale of the trust property and the right to the earnings and proceeds of the trust property. The power of direction is the right to control the trustee's disposition of title to the real property and the execution of trust documents.

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[1] *Hart v. Seymour*, 147 Ill. 598 (Ill. 1893).
[2] *Schumann-Henk v. Folson*, 159 N.E. 250 (Ill. 1927).

Situations Where a Land Trust May Be Beneficial

A land trust may be useful in situations where multiple owners hold title to real property. In such cases, the potential exists for judgments, divorce, death, bankruptcy or incompetency of a single beneficiary to cloud the title to all or a part of the real property. The use of the land trust prevents the possibility of clouds on the title in these situations.

Where real estate projects are spread across multiple investors, the use of a land trust can reduce delays where signatures must be obtained from remote locations and can facilitate the many conveyances necessary in subdivisions and condominiums.

A key feature of the land trust is that interests of beneficiaries may not be disclosed without a court order. There are situations where purchasers of real estate may wish not to publicize their ownership of that real property. The land trust permits such individuals to keep their names from the public record.

Judgments against the beneficiaries do not affect the legal title to the real property held in a land trust. The title to the real property held in a land trust can be conveyed free and clear of any judgment liens against a beneficiary. Judgments can, however, be enforced against an individual's beneficial interest in a land trust.

The beneficial interest in the land trust is personal property. Non-residents of Florida, by placing title to their real estate in a land trust, may be able to avoid ancillary probate administration in the event of death.

Use of the land trust as a vehicle for holding title to real property permits the preservation of tax benefits under the Internal Revenue Code. All of the tax advantages of individual ownership may be retained when a land trust is properly used to hold title to real property. The deduction for expenses flows directly through the beneficial owners, assuming that all of the criteria to prevent the land trust from becoming an entity taxable as a corporation are met.

Land Trusts in Florida

In Florida, land trusts are presently a creature of statute rather than case law. In 1963, the Florida Legislature created s. 689.071, F.S., which statutorily recognized the Florida Land Trust. Section 689.071(1), F.S., provides that the land trustee receives legal and equitable title to the real property. The deed must be recorded and must give to the trustee full power and authority either to protect, conserve and to sell or to lease, or to encumber or otherwise to manage and dispose of the real property described in the deed. The trustee can only deal with the property within the power and authority granted in the recorded deed.

Section 689.071(2), F.S., states that any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases from a trustee holding title to real property in trust under a recorded trust deed that meets the requirements of s. 689.071, F.S., does not have to inquire into the identification or status of any named or unnamed beneficiary, their heirs or assigns or to the authority of the trustee to act within the powers granted in the recorded deed, nor is there any requirement to inquire into the provisions of an unrecorded trust document whether such document is referenced in the deed or not.

Section 689.071(3), F.S., provides that all persons dealing with the trustee under any recorded instrument that has been prepared in accordance with the section takes free and clear of the claims of all named or unnamed beneficiaries of the trust and of any unrecorded declarations or agreements collateral to the trust, whether they are referred to in the agreement or not. This subsection further

provides that anyone claiming under the beneficiaries, including claims arising out of any dower[3] or curtesy[4] interest of the spouse of a beneficiary, does not have a claim against the grantee if all of the provisions of this section have been met.[5]

Section 689.071(4), F.S., states that in all cases where the recorded instrument contains a provision declaring the interest of the beneficiary to be personal property only, that provision shall be controlling for all purposes where such determination becomes an issue under the laws or in the courts of Florida. This provision makes it possible for a beneficiary to convey his or her interest in the real property by assignment of beneficial interest rather than by the execution and recording of a deed.

Courts have held that the statutory land trust is not an ordinary inter vivos trust that is administered under Florida's trust administration laws in ch. 737, F.S.[6] Florida courts have held that a grantee from a land trustee need not look beyond the trustee's deed in trust to determine his or her powers.[7] Courts have held that s. 689.071, F.S., is a codification of land trust case law and is an adoption of the Illinois land trust.[8]

Statute of Uses

In the Middle Ages, the features of feudal tenure, primogeniture and forfeiture often resulted in transfers of land to others for the benefit of the grantor. The Statute of Uses, adopted at the time of Henry VIII, was created in order to have these transfers become complete transfers in fee. The result of the execution of a trust under the Statute of Uses was to vest the holder of the "use" with the actual legal estate. However, in spite of the enactment of the Statute of Uses, English courts found that it was inapplicable to active trusts and the concept of trusts remains part of present day law. The Statute of Uses continues as part of the common law of the United States. Florida's Statute of Uses is codified in s, 689.09, F.S.

Homestead Exemption

Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property. In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership.[9]

The beneficiary of a passive trust or active trust has equitable title to real property if he is entitled to the use and occupancy of the property under the terms of the trust, and thus is eligible for the homestead exemption.[10] However, the homestead tax exemption may not be based upon residence of a beneficiary under a trust instrument which vests no present possessory right in such beneficiary.[11]

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[3] "Dower" is a common law concept that entitles a widow to a life-estate in a third of any real property of her deceased husband for her support and the support of her children, if any. BLACK'S LAW DICTIONARY (8th ed. 1999).
[4] "Curtesy" is a common law concept that entitles a widower to a life-estate in any real property of his deceased wife for his support, assuming that a child was born alive to the couple. BLACK'S LAW DICTIONARY (8th ed. 1999).
[5] Section 732.111, F.S., created in 1974 by s. 1 of ch. 74-106, L.O.F., abolished dower and curtesy in Florida.
[6] *Taylor v. Richmond's New Approach Association, Inc.*, 351 So.2d 1094 (Fla. 2d DCA 1977).
[7] *Gramer v. Roman*, 174 So.2d 443 (Fla. 1965).
[8] *Ferraro v. Parker*, 229 So.2d 621 (Fla. 2d DCA 1969).
[9] Fla. Const. art. VII, s. 4(c)(3).
[10] Fla Admin Code Rule 12D-7.011.
[11] Id.

Effect of Proposed Changes

The bill amends s. 689.071, F.S., to codify existing practice and case law in the area of land trusts as follows:

SHORT TITLE - renames the section the "Florida Land Trust Act."

DEFINITIONS - provides definitions of the terms "beneficial interest," "beneficiary," "land trust," "holders of the power of direction," and "trustee."

BENEFICIARY CLAIMS - removes a provision that refers to claims arising out of dower or curtesy.

LAND TRUST BENEFICIARIES - creates provisions relating to land trust beneficiaries to provide that:

- Beneficiaries are not liable, solely by reason of being a beneficiary, for a debt, obligation, or liability of the land trust.
- Beneficiaries acting under a land trust agreement are not liable to the trustee or to any other beneficiary for good-faith reliance on the provisions of the trust agreement.
- Chapter 679, F.S., relating to secured transactions under the Uniform Commercial Code applies to the perfection of any security interest in a beneficial interest in a land trust and that the perfection of a security interest in a beneficial interest in a land trust does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.
- A beneficiary's duties and liabilities may be expanded or restricted in a trust agreement or a beneficiary agreement.
- Any subsequent document appearing of record in which a beneficiary transfers or encumbers the beneficial interest in the trust does not diminish or impair the authority of the trustee under the terms of the recorded instrument and that parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.
- An unrecorded trust agreement underlying a recorded instrument may provide that one or more persons or entities have the power to direct the trustee to convey, execute a mortgage, distribute proceeds of sale or financing, and execute documents incidental to the land trust.
- The power of direction, unless provided otherwise in the land trust agreement, is conferred upon the holders of the power of direction for the use and benefit of all of the beneficiaries.
- In the absence of a provision in the land trust agreement to the contrary, the power of direction must be in accordance with the percentage of individual ownership.
- In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all beneficiaries, unless it is otherwise provided in the land trust agreement.
- The beneficial interest is indefeasible[12] and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest.

[12] "That which cannot be defeated, revoked, or made void." BLACK'S LAW DICTIONARY (8th ed. 1999).

- A trust relating to real estate does not fail, and any use relating to real estate may not be defeated, because beneficiaries are not specified by name in the recorded deed of conveyance to the trustee or because duties are not imposed upon the trustee.

- The power conferred by any recorded deed of conveyance on a trustee to sell, lease, encumber, or otherwise dispose of property is effective and a person dealing with the trustee is not required to inquire any further into the right of the trustee to act or as to the disposition of any proceeds.

- The principal residence of a beneficiary may be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust.

SUCCESSOR TRUSTEE - creates provisions relating to a successor trustee to provide that:

- The provisions of s. 737.309, F.S., regarding the resignation of a trustee, do not apply to the appointment of a successor trustee of a land trust.

- If both the recorded instrument and the unrecorded land trust agreement are silent as to the appointment of a successor trustee, then one or more persons or entities having the power of direction of the land trust may appoint a successor or successors by filing a declaration of appointment of a successor trustee. Such a declaration must be signed, acknowledged, and must contain the legal description of the trust property; the name and address of the former trustee; the name and address of the successor trustee; and a statement that the successor trustee has been appointed by one or more persons or entities having the power of direction of the land trust, together with an acceptance of appointment by the successor trustee.

- If the recorded instrument is silent as to the appointment of a successor trustee but an unrecorded land trust agreement provides for the appointment of a successor trustee, then upon the appointment of a successor trustee pursuant to the terms of the unrecorded land trust agreement, the successor trustee shall file a declaration of appointment of a successor trustee.

- If the appointment of the successor trustee is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

- If the recorded instrument provides for the appointment of a successor trustee and a successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of a successor trustee are required under this section.

- Each successor land trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor land trustee, except that the successor land trustee is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with the successor trustee pursuant to a declaration is not obligated to inquire into or ascertain the authority of the successor trustee to act within and exercise the powers granted under the recorded instruments or any unrecorded declarations or agreements.

- A land trust agreement may provide that the trustee, when directed to do so by the beneficiaries of the land trust or their legal representatives, may convey the trust property directly to another trustee on behalf of the beneficiaries or others named by the beneficiaries.

TRUSTEE AS CREDITOR - creates provisions relating to a land trustee as a creditor to provide that:

- If a debt is secured by a security interest in a beneficial interest in a land trust or by a mortgage on land trust property, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person or entity, and the creditor may extend credit, obtain such security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

- A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it may not be deemed evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries, for a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

RETROACTIVTY – section 3 of the bill provides that it is intended to clarify the existing law relating to land trusts and that the bill applies to all land trusts, whether the land trust was created before, on, or after the effective date of the bill, which is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 689.071, F.S., relating to land trusts.

Section 2 amends s. 201.02, F.S., relating to tax on deeds to correct a cross-reference.

Section 3 provides that the act is intended to clarify existing law and applies to all land trusts, whether created before, on, or after October 1, 2006.

Section 4 provides that the bill becomes effective on 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:

The bill does not appear to have any significant economic impact on the private sector. It is intended to clarify and codify existing law relating to land trusts. In that vein, it may provide consistency and predictability to this area of law and benefit those who use and administer land trusts.

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:

Retroactivity

Unless the Legislature states otherwise, legislation is presumed to operate prospectively only, especially when retrospective operation would impair existing rights.[13] Common law provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[14] Courts have used a weighing process to decide whether to sustain the retroactive application of a statute that has three considerations: the strength of the public interest served by the statute, the extent to which the right affected is abrogated, and the nature of the right affected.[15] It does not appear that the provisions of this bill will affect any vested substantive rights since it is intended to clarify and codify existing law relating to land trusts and is remedial in nature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

An amendment was adopted to this PCB in the Judiciary Committee on March 8, 2006. The amendment added the word "written" in the definition of "land trust." This analysis is drawn to the amended PCB.

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[13] *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

[14] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998); *Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981); and *Village of El Portal v. City of Miami Shores*, 362 So. 2d 275, 277 (Fla. 1978), citing *McCord v. Smith*, 43 So. 2d 704, 708-709 (Fla. 1949).

[15] Supra *Knowles* at 1158.

1 A bill to be entitled
2 An act relating to land trusts; amending s. 689.071, F.S.;
3 providing a short title; providing definitions; revising
4 provisions relating to land trust transfers of real
5 property and vesting of ownership in a trustee; deleting a
6 requirement that a trustee be qualified to act as a
7 fiduciary; deleting obsolete references to "dower" and
8 "curtesy"; specifying rights, liabilities, and duties of
9 land trust beneficiaries; providing that the principal
10 residence of a beneficiary which is held in a land trust
11 may be entitled to the homestead tax exemption; providing
12 for the appointment of successor trustees; providing
13 requirements for declarations of appointment; providing
14 that a trustee of a land trust may be a creditor of the
15 trust or of a trust beneficiary; amending s. 201.02, F.S.;
16 conforming a cross-reference; providing application;
17 providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 689.071, Florida Statutes, is amended
22 to read:
23 689.071 Florida Land Trust Act ~~trusts transferring~~
24 ~~interests in real estate; ownership vests in trustee~~.--
25 (1) SHORT TITLE.--This section may be cited as the
26 "Florida Land Trust Act."
27 (2) DEFINITIONS.--As used in this section, the term:
28 (a) "Beneficial interest" means any interest, vested or

29 contingent and regardless of how small or minimal such interest
30 may be, in a land trust which is held by a beneficiary.
31 (b) "Beneficiary" means any person or entity having a
32 beneficial interest in a land trust. A trustee may be a
33 beneficiary of the land trust for which such trustee serves as
34 trustee.
35 (c) "Holder of the power of direction" means any person or
36 entity having the authority to direct the trustee to convey
37 property or interests, execute a mortgage, distribute proceeds
38 of a sale or financing, and execute documents incidental to the
39 administration of a land trust.
40 (d) "Land trust" is not the creation of an entity, but
41 means any express written agreement or arrangement by which a
42 use, confidence, or trust is declared of any land, or of any
43 charge upon land, for the use or benefit of any beneficiary,
44 under which the title to real property, both legal and
45 equitable, is held by a trustee, subject only to the execution
46 of the trust, which may be enforced by the beneficiaries.
47 (e) "Trustee" means the person or entity designated in a
48 trust instrument to hold legal and equitable title to property
49 of a land trust.
50 (3) ~~(1)~~ OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
51 deed, mortgage, lease assignment, or other instrument heretofore
52 or hereafter made, hereinafter referred to as "the recorded
53 instrument," transferring any interest in real property in this
54 state, including, but not limited to, a leasehold or mortgagee
55 interest, to any person or any~~,~~ corporation, bank, trust
56 company, or other entity duly formed under the laws of its state

57 of qualification ~~qualified to act as a fiduciary in this state~~,
58 in which recorded instrument the person, corporation, bank,
59 trust company, or other entity is designated "trustee," or "as
60 trustee," without therein naming the beneficiaries of such
61 trust, whether or not reference is made in the recorded
62 instrument to any separate collateral unrecorded declarations or
63 agreements, is effective to vest, and is hereby declared to have
64 vested, in such trustee full rights of ownership over the real
65 property or interest therein, with full power and authority as
66 granted and provided in the recorded instrument to deal in and
67 with the property or interest therein or any part thereof;
68 provided, the recorded instrument confers on the trustee the
69 power and authority either to protect, conserve and to sell, or
70 to lease, or to encumber, or otherwise to manage and dispose of
71 the real property described in the recorded instrument.
72 (4) ~~(2)~~ NO DUTY TO INQUIRE.--Any grantee, mortgagee,
73 lessee, transferee, assignee, or person obtaining satisfactions
74 or releases or otherwise in any way dealing with the trustee
75 with respect to the real property or any interest in such
76 property ~~properties~~ held in trust under the recorded instrument,
77 as hereinabove provided for, is not obligated to inquire into
78 the identification or status of any named or unnamed
79 beneficiaries, or their heirs or assigns to whom a trustee may
80 be accountable under the terms of the recorded instrument, or
81 under any unrecorded separate declarations or agreements
82 collateral to the recorded instrument, whether or not such
83 declarations or agreements are referred to therein; or to
84 inquire into or ascertain the authority of such trustee to act

85 within and exercise the powers granted under the recorded
86 instrument; or to inquire into the adequacy or disposition of
87 any consideration, if any is paid or delivered to such trustee
88 in connection with any interest so acquired from such trustee;
89 or to inquire into any of the provisions of any such unrecorded
90 declarations or agreements.
91 (5) ~~(3)~~ BENEFICIARY CLAIMS.--All persons dealing with the
92 trustee under the recorded instrument as hereinabove provided
93 take any interest transferred by the trustee thereunder, within
94 the power and authority as granted and provided therein, free
95 and clear of the claims of all the named or unnamed
96 beneficiaries of such trust, and of any unrecorded declarations
97 or agreements collateral thereto whether referred to in the
98 recorded instrument or not, and of anyone claiming by, through,
99 or under such beneficiaries. However, this section does not
100 prevent ~~including, and without limiting the foregoing to, any~~
101 ~~claim arising out of any dower or curtesy interest of the spouse~~
102 ~~of any beneficiary thereof; provided, nothing herein contained~~
103 ~~prevents~~ a beneficiary of any such unrecorded collateral
104 declarations or agreements from enforcing the terms thereof
105 against the trustee.
106 (6) ~~(4)~~ PERSONAL PROPERTY.--In all cases in which the
107 recorded instrument, as hereinabove provided, contains a
108 provision defining and declaring the interests of beneficiaries
109 thereunder to be personal property only, such provision shall be
110 controlling for all purposes when such determination becomes an
111 issue under the laws or in the courts of this state.

112 (7) ~~(5)~~ TRUSTEE LIABILITY.--In addition to any other
113 limitation on personal liability existing pursuant to statute or
114 otherwise, the provisions of s. 737.306 apply to the trustee of
115 a land trust created pursuant to this section.
116 (8) LAND TRUST BENEFICIARIES.--
117 (a) Except as provided in this section, the beneficiaries
118 of a land trust are not liable, solely by being a beneficiary,
119 under a judgment, decree, or order of court or in any other
120 manner for a debt, obligation, or liability of the land trust.
121 (b) Any beneficiary acting under the trust agreement of a
122 land trust is not liable to the land trust's trustee or to any
123 other beneficiary for the beneficiary's good faith reliance on
124 the provisions of the trust agreement.
125 (c) Chapter 679 applies to the perfection of any security
126 interest in a beneficial interest in a land trust. The
127 perfection of a security interest in a beneficial interest in a
128 land trust does not impair or diminish the authority of the
129 trustee under the recorded instrument, and parties dealing with
130 the trustee are not required to inquire into the terms of the
131 unrecorded trust agreement.
132 (d) A beneficiary's duties and liabilities may be expanded
133 or restricted in a trust agreement or beneficiary agreement.
134 (e) Any subsequent document appearing of record in which a
135 beneficiary of a trust transfers or encumbers the beneficial
136 interest in the trust does not diminish or impair the authority
137 of the trustee under the terms of the recorded instrument.
138 Parties dealing with the trustee are not required to inquire
139 into the terms of the unrecorded trust agreement.

140 (f) An unrecorded trust agreement giving rise to a
141 recorded instrument for a land trust may provide that one or
142 more persons or entities have the power to direct the trustee to
143 convey property or interests, execute a mortgage, distribute
144 proceeds of a sale or financing, and execute documents
145 incidental to administration of the land trust. The power of
146 direction, unless provided otherwise in the land trust
147 agreement, is conferred upon the holders of the power for the
148 use and benefit of all holders of any beneficial interest in the
149 land trust. In the absence of a provision in the land trust
150 agreement to the contrary, the power of direction shall be in
151 accordance with the percentage of individual ownership. In
152 exercising the power of direction, the holders of the power of
153 direction are presumed to act in a fiduciary capacity for the
154 benefit of all holders of any beneficial interest in the trust,
155 unless otherwise provided in the land trust agreement. A
156 beneficial interest is indefeasible, and the power of direction
157 may not be exercised so as to alter, amend, revoke, terminate,
158 defeat, or otherwise affect or change the enjoyment of any
159 beneficial interest.
160 (g) A trust relating to real estate does not fail, and any
161 use relating to real estate may not be defeated, because
162 beneficiaries are not specified by name in the recorded deed of
163 conveyance to the trustee or because duties are not imposed upon
164 the trustee. The power conferred by any recorded deed of
165 conveyance on a trustee to sell, lease, encumber, or otherwise
166 dispose of property described in the deed is effective, and a
167 person dealing with the trustee is not required to inquire any

168 further into the right of the trustee to act or the disposition
169 of any proceeds.
170 (h) The principal residence of a beneficiary may be
171 entitled to the homestead tax exemption even if the homestead is
172 held by a trustee in a land trust.
173 (9) SUCCESSOR TRUSTEE.--
174 (a) The provisions of s. 737.309 relating to the
175 resignation of a trustee do not apply to the appointment of a
176 successor trustee under this section.
177 (b) If the recorded instrument and the unrecorded land
178 trust agreement are silent as to the appointment of a successor
179 trustee in the event of the death, incapacity, resignation, or
180 termination due to dissolution of a land trustee or if a land
181 trustee is unable to serve as trustee, one or more persons or
182 entities having the power of direction of the land trust
183 agreement may appoint a successor trustee or trustees of the
184 land trust by filing a declaration of appointment of a successor
185 trustee or trustees in the office of the recorder of deeds in
186 the county in which the trust property is located. The
187 declaration must be signed by a beneficiary or beneficiaries of
188 the trust and by each successor trustee, must be acknowledged in
189 the manner provided for acknowledgment of deeds, and must
190 contain:
191 1. The legal description of the trust property.
192 2. The name and address of the former trustee.
193 3. The name and address of each successor trustee.
194 4. A statement that each successor trustee has been
195 appointed by one or more persons or entities having the power of

196 direction of the land trust, together with an acceptance of
197 appointment by each successor trustee.
198 (c) If the recorded instrument is silent as to the
199 appointment of a successor trustee or trustees but an unrecorded
200 land trust agreement provides for the appointment of a successor
201 trustee or trustees in the event of the death, incapacity,
202 resignation, or termination due to dissolution of the land
203 trustee, upon the appointment of any successor trustee pursuant
204 to the terms of the unrecorded land trust agreement, each
205 successor trustee shall file a declaration of appointment of a
206 successor trustee in the office of the recorder of deeds in the
207 county in which the trust property is located. The declaration
208 must be signed by both the former trustee and each successor
209 trustee, must be acknowledged in the manner provided for
210 acknowledgment of deeds, and must contain:
211 1. The legal description of the trust property.
212 2. The name and address of the former trustee.
213 3. The name and address of the successor trustee.
214 4. A statement of resignation by the former trustee and a
215 statement of acceptance of appointment by each successor
216 trustee.
217 5. A statement that each successor trustee was duly
218 appointed under the terms of the unrecorded land trust
219 agreement.
220
221 If the appointment of any successor trustee is due to the death
222 or incapacity of the former trustee, the declaration need not be
223 signed by the former trustee and a copy of the death certificate

224 or a statement that the former trustee is incapacitated or
225 unable to serve must be attached to or included in the
226 declaration, as applicable.
227 (d) If the recorded instrument provides for the
228 appointment of any successor trustee and any successor trustee
229 is appointed in accordance with the recorded instrument, no
230 additional declarations of appointment of any successor trustee
231 are required under this section.
232 (e) Each successor land trustee appointed is fully vested
233 with all the estate, properties, rights, powers, trusts, duties,
234 and obligations of the predecessor land trustee, except that any
235 successor land trustee is not under any duty to inquire into the
236 acts or omissions of a predecessor trustee and is not liable for
237 any act or failure to act of a predecessor trustee. A person
238 dealing with any successor trustee pursuant to a declaration
239 filed under this section is not obligated to inquire into or
240 ascertain the authority of the successor trustee to act within
241 or exercise the powers granted under the recorded instruments or
242 any unrecorded declarations or agreements.
243 (f) A land trust agreement may provide that the trustee,
244 when directed to do so by the beneficiaries of the land trust or
245 legal representatives of the beneficiaries, may convey the trust
246 property directly to another trustee on behalf of the
247 beneficiaries or others named by the beneficiaries.
248 (10) TRUSTEE AS CREDITOR.--
249 (a) If a debt is secured by a security interest in a
250 beneficial interest in a land trust or by a mortgage on land
251 trust property, the validity or enforceability of the debt,

252 security interest, or mortgage and the rights, remedies, powers,
253 and duties of the creditor with respect to the debt or the
254 security are not affected by the fact that the creditor and the
255 trustee are the same person or entity, and the creditor may
256 extend credit, obtain any necessary security interest or
257 mortgage, and acquire and deal with the property comprising the
258 security as though the creditor were not the trustee.
259 (b) A trustee of a land trust does not breach a fiduciary
260 duty to the beneficiaries, and it is not evidence of a breach of
261 any fiduciary duty owed by the trustee to the beneficiaries for
262 a trustee to be or become a secured or unsecured creditor of the
263 land trust, the beneficiary of the land trust, or a third party
264 whose debt to such creditor is guaranteed by a beneficiary of
265 the land trust.
266 (11) ~~(6)~~ REMEDIAL ACT.--This act is remedial in nature and
267 shall be given a liberal interpretation to effectuate the intent
268 and purposes hereinabove expressed.
269 (12) ~~(7)~~ EXCLUSION.--This act does not apply to any deed,
270 mortgage, or other instrument to which s. 689.07 applies.
271 Section 2. Subsection (4) of section 201.02, Florida
272 Statutes, is amended to read:
273 201.02 Tax on deeds and other instruments relating to real
274 property or interests in real property.--
275 (4) The tax imposed by subsection (1) shall also be
276 payable upon documents which convey or transfer, pursuant to s.
277 689.071, any beneficial interest in lands, tenements, or other
278 real property, or any interest therein, even though such
279 interest may be designated as personal property, notwithstanding

280 the provisions of s. 689.071(6) ~~(4)~~. The tax shall be paid upon
281 execution of any such document.
282 Section 3. This act is intended to clarify existing law
283 and applies to all land trusts whether created before, on, or
284 after October 1, 2006.
285 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7111 PCB GO 06-22 OGSR Interference with Custody
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: HB 7113 **IDEN./SIM. BILLS:** CS/SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) Civil Justice Committee		Bond	Bond
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

During the 2005 Regular Session, the Legislature reenacted and saved from repeal the public records exemption that accompanies the interference with custody statute. Because the statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.

The bill revises the interference with custody statute. It broadens an existing exception to the statute making the exception available to any person having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

The bill also revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the child or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill clarifies existing language to specify that the exception to prosecution applies to the specific offenses of interference with custody.

The interference with custody statute will repeal on October 2, 2006, if this bill does not become law.

The bill does not appear to create, modify, or eliminate rulemaking authority.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception is applicable not only to the taking of a child but also to the taking of an incompetent person.

Empower Families – The bill broadens the exception to the interference with custody statute making it available to *any person* having a legal right to custody of a minor, rather than simply to spouses. The exception also applies to the taking of an incompetent person.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- It is a third-degree felony for any person, without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- It is a third-degree felony, in the absence of a court order determining custody or visitation rights, for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

There are three statutory defenses to the offense of interference with custody:

- The defendant reasonably believes that his or her action was necessary to protect the child or incompetent person from danger to his or her welfare.
- The defendant was the victim of an act of domestic violence or had reasonable cause to believe that his or her action was necessary to protect himself or herself from an act of domestic violence.
- The child or incompetent person was taken at his or her own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.[3]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[4]

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

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[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(4)(a)-(c), F.S.
[4] Section 787.03(6)(a), F.S.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[5] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[6]

Public Records Exemption

The name of the person taking the child and the current address and telephone number of that person and the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt from public records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005, because of the Open Government Sunset Review Act. During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[8]

Effect of Bill

The bill revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor and reports their whereabouts to the sheriff or state attorney. The bill broadens the exception by making it available to *any person* having a legal right to custody of a minor, rather than simply to a spouse. The exception is applicable not only to the taking of a minor but also to the taking of an incompetent person.

The bill revises an existing defense under the statute. In order to utilize a defense based on being a victim of domestic violence, a defendant must establish that he or she reasonably believed the action of taking the minor or incompetent person was necessary in order to escape from the violence or preserve the minor or incompetent person from exposure to the violence. It revises a second defense, to require that, in order to utilize the defense that the minor or incompetent person instigated his or her own taking, a defendant must establish that it was reasonable to rely on the instigating actions of the minor or incompetent person.

The bill makes the offense of interference with custody applicable to the taking of a minor, replacing the term "child 17 years of age of under" with the term "minor," in order to avoid ambiguity over whether the law covers the taking of a child in the months between his or her 17th and 18th birthdays.

The bill clarifies existing language in s. 787.03(6)(a), F.S., to specify that the exception to prosecution provided in the statute applies to the specific offenses of interference with custody. As currently worded, the statute provides that "this section does not apply" in certain circumstances, which creates ambiguity about the effect of this provision on the application of related provisions in s. 787.03, F.S., such as the public records exemption.

C. SECTION DIRECTORY:

Section 1 amends s. 787.03, F.S., regarding the interference with custody.

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

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[5] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[6] Section 787.03(6)(b), F.S.
[7] Section 787.03(6)(c), F.S.
[8] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a local expenditure.

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 does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 7113 addresses the public records exemption that accompanies the interference with custody statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the offense of interference
4 with custody; amending s. 787.03, F.S.; specifying that
5 the offense of interference with custody applies to the
6 taking of a minor; providing a penalty; revising a defense
7 to the offense of interference with custody for a
8 defendant who is a victim of actual or imminent domestic
9 violence to provide that the defendant's reasonable belief
10 that the interference was necessary to escape from, or
11 protect himself or herself from, domestic violence or to
12 preserve a minor or incompetent person from exposure to
13 domestic violence constitutes a defense; revising a
14 defense to the offense of interference with custody when a
15 minor or incompetent person instigates his or her own
16 taking to require a showing that it was reasonable for the
17 defendant to rely upon the instigating acts; broadening an
18 exception to the offense of interference with custody;
19 specifying that the offense is inapplicable to cases
20 involving certain persons who have a legal right to
21 custody of a minor or an incompetent person who take the
22 minor or incompetent person and follow prescribed
23 procedures; including the taking of an incompetent person
24 within provisions governing the exception to the offense;
25 making editorial changes; reenacting s. 61.45(6)(b), F.S.,
26 relating to a court order of visitation or custody, and s.
27 933.18(7)(a), F.S., relating to instances in which a
28 warrant may be issued for search of private dwelling, for

29 the purpose of incorporating the amendment to s. 787.03,
30 F.S., in references thereto; reenacting and amending s.
31 921.0022(3)(d), F.S.; revising a reference to the offense
32 of interference with custody within the offense severity
33 ranking chart of the Criminal Punishment Code to conform;
34 providing an effective date.
35
36 Be It Enacted by the Legislature of the State of Florida:
37
38 Section 1. Subsections (1), (2), (4), and (5) and
39 paragraphs (a) and (b) of subsection (6) of section 787.03,
40 Florida Statutes, are amended to read:
41 787.03 Interference with custody.--
42 (1) Whoever, without lawful authority, knowingly or
43 recklessly takes or entices, or aids, abets, hires, or otherwise
44 procures another to take or entice, any minor ~~child 17 years of~~
45 ~~age or under~~ or any incompetent person from the custody of the
46 minor's ~~child~~ or incompetent person's parent, his or her
47 guardian, a public agency having the lawful charge of the minor
48 ~~child~~ or incompetent person, or any other lawful custodian
49 commits the offense of interference with custody and commits a
50 felony of the third degree, punishable as provided in s.
51 775.082, s. 775.083, or s. 775.084.
52 (2) In the absence of a court order determining rights to
53 custody or visitation with any minor ~~child 17 years of age or~~
54 ~~under~~ or with any incompetent person, any parent of the minor
55 ~~child~~ or incompetent person, whether natural or adoptive,
56 stepparent, legal guardian, or relative of the minor ~~such child~~

57 or incompetent person who has custody thereof and who takes,
58 detains, conceals, or entices away that minor ~~child~~ or
59 incompetent person within or without the state~~,~~ with malicious
60 intent to deprive another person of his or her right to custody
61 of the minor ~~child~~ or incompetent person~~,~~ commits a felony of
62 the third degree, punishable as provided in s. 775.082, s.
63 775.083, or s. 775.084.
64 (4) It is a defense that:
65 (a) The defendant had reasonable cause to believe
66 ~~reasonably believes~~ that his or her action was necessary to
67 preserve the minor ~~child~~ or the incompetent person from danger
68 to his or her welfare.
69 (b) The defendant was the victim of an act of domestic
70 violence or had reasonable cause to believe that he or she was
71 about to become the victim of ~~his or her action was necessary to~~
72 ~~protect himself or herself from~~ an act of domestic violence as
73 defined in s. 741.28, and the defendant had reasonable cause to
74 believe that the action was necessary in order for the defendant
75 to escape from, or protect himself or herself from, the domestic
76 violence or to preserve the minor or incompetent person from
77 exposure to the domestic violence.
78 (c) The minor ~~child~~ or incompetent person was taken away
79 at his or her own instigation without enticement and without
80 purpose to commit a criminal offense with or against the minor
81 ~~child~~ or incompetent person, and the defendant establishes that
82 it was reasonable to rely on the instigating acts of the minor
83 or incompetent person.
84 (5) Proof that a person has not attained the age of 18

85 years ~~child was 17 years of age or under~~ creates the presumption
86 that the defendant knew the minor's ~~child's~~ age or acted in
87 reckless disregard thereof.
88 (6)(a) The offenses prescribed in subsections (1) and
89 (2) do ~~This section does~~ not apply in cases in which ~~where~~ a
90 person having a legal right to custody of a minor or incompetent
91 person ~~spouse who~~ is the victim of any act of domestic violence,
92 ~~or who~~ has reasonable cause to believe he or she is about to
93 become the victim of any act of domestic violence, as defined in
94 s. 741.28, or believes that his or her action was necessary to
95 preserve the minor ~~child~~ or the incompetent person from danger
96 to his or her welfare and seeks shelter from such acts or
97 possible acts and takes with him or her the minor or incompetent
98 person ~~any child 17 years of age or younger~~.
99 (b) In order to gain the exception ~~exemption~~ conferred by
100 paragraph (a), a person who takes a minor or incompetent person
101 under ~~child pursuant to~~ this subsection must:
102 1. Within 10 days after taking the minor or incompetent
103 person ~~child~~, make a report to the sheriff's office or state
104 attorney's office for the county in which the minor or
105 incompetent person ~~child~~ resided at the time he or she was
106 taken, which report must include the name of the person taking
107 the minor or incompetent person ~~child~~, the current address and
108 telephone number of the person and minor or incompetent person
109 ~~child~~, and the reasons the minor or incompetent person ~~child~~ was
110 taken.
111 2. Within a reasonable time after taking a minor or
112 incompetent person ~~the child~~, commence a custody proceeding that

113 is consistent with the federal Parental Kidnapping Prevention
114 Act, 28 U.S.C. s. 1738A, or the Uniform Child Custody
115 Jurisdiction and Enforcement Act, ss. 61.501-61.542.
116 3. Inform the sheriff's office or state attorney's office
117 for the county in which the minor or incompetent person ~~child~~
118 resided at the time he or she was taken of any change of address
119 or telephone number of the person and the minor or incompetent
120 person ~~child~~.
121 Section 2. For the purpose of incorporating the amendment
122 made by this act to section 787.03, Florida Statutes, in a
123 reference thereto, paragraph (b) of subsection (6) of section
124 61.45, Florida Statutes, is reenacted to read:
125 61.45 Court order of visitation or custody; risk of
126 violation; bond.--
127 (6)
128 (b) This section, including the requirement to post a bond
129 or other security, does not apply to a parent who, in a
130 proceeding to order or modify child custody or visitation, the
131 court determines is a victim of an act of domestic violence or
132 has reasonable cause to believe he or she is about to become the
133 victim of an act of domestic violence, as defined in s. 741.28.
134 An injunction for protection against domestic violence issued
135 pursuant to s. 741.30 for a parent as the petitioner which is in
136 effect at the time of the court proceeding shall be one means of
137 demonstrating sufficient evidence that the parent is a victim of
138 domestic violence or is about to become the victim of an act of
139 domestic violence, as defined in s. 741.28, and shall exempt the
140 parent from this section, including the requirement to post a

141 bond or other security. A parent who is determined by the court
142 to be exempt from the requirements of this section must meet the
143 requirements of s. 787.03(6) if an offense of interference with
144 custody is committed.
145 Section 3. For the purpose of incorporating the amendment
146 made by this act to section 787.03, Florida Statutes, in a
147 reference thereto, paragraph (a) of subsection (7) of section
148 933.18, Florida Statutes, is reenacted to read:
149 933.18 When warrant may be issued for search of private
150 dwelling.--No search warrant shall issue under this chapter or
151 under any other law of this state to search any private dwelling
152 occupied as such unless:
153 (7) One or more of the following misdemeanor child abuse
154 offenses is being committed there:
155 (a) Interference with custody, in violation of s. 787.03.
156
157 If, during a search pursuant to a warrant issued under this
158 section, a child is discovered and appears to be in imminent
159 danger, the law enforcement officer conducting such search may
160 remove the child from the private dwelling and take the child
161 into protective custody pursuant to chapter 39. The term
162 "private dwelling" shall be construed to include the room or
163 rooms used and occupied, not transiently but solely as a
164 residence, in an apartment house, hotel, boardinghouse, or
165 lodginghouse. No warrant shall be issued for the search of any
166 private dwelling under any of the conditions hereinabove
167 mentioned except on sworn proof by affidavit of some creditable
168 witness that he or she has reason to believe that one of said

169 conditions exists, which affidavit shall set forth the facts on
170 which such reason for belief is based.
171 Section 4. Paragraph (d) of subsection (3) of section
172 921.0022, Florida Statutes, is reenacted and amended to read:
173 921.0022 Criminal Punishment Code; offense severity
174 ranking chart.--
175 (3) OFFENSE SEVERITY RANKING CHART
176

Florida Statute	Felony Degree	Description
177		(d) LEVEL 4
178 316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
179 499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
180 499.0051(2)	3rd	Failure to authenticate pedigree papers.
181 499.0051(6)	2nd	Sale or delivery, or possession with intent to sell, contraband legend drugs.

182

	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, intake officer, etc.
183	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
184	784.075	3rd	Battery on detention or commitment facility staff.
185	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
186	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
187	784.081(3)	3rd	Battery on specified official or employee.
188	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
189	784.083(3)	3rd	Battery on code inspector.
190	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
191	787.03(1)	3rd	Interference with custody; wrongly takes minor ~~child~~ from appointed

			guardian.
192	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
193	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
194	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
195	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
196	790.115(2)(c)	3rd	Possessing firearm on school property.
197	800.04(7)(d)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
198	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
199	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no

			assault or battery.
200	810.06	3rd	Burglary; possession of tools.
201	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
202	812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
203	812.014(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
204	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
205	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
206	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
207	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
208	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability

			to any registered horse or cattle.
209	837.02(1)	3rd	Perjury in official proceedings.
210	837.021(1)	3rd	Make contradictory statements in official proceedings.
211	838.022	3rd	Official misconduct.
212	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
213	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
214	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
215	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
216	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
217	874.05(1)	3rd	Encouraging or recruiting another to join a criminal street gang.
218			

893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

Section 5. This act shall take effect October 1, 2006.

HB 7113

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7113 PCB GO 06-23 OGSR Public Records Exemption/Interference with Custody
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: HB 7111 **IDEN./SIM. BILLS:** CS/SB 710

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) Civil Justice Committee		Bond	Bond
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a third-degree felony for the offense of "interference with custody"; however, a spouse who flees with a child because he or she is the victim of domestic violence or believes the welfare of the child is in danger does not commit a felony of the third degree. The fleeing spouse must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. The report must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.

In order to conform to changes proposed in HB 7111, this bill reenacts and expands the public records exemption for the current address and telephone number of the person fleeing with a child and of the child. The bill expands the exemption to include the current address and telephone number of the person fleeing with an incompetent person and of the incompetent person.

The bill provides for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution, and provides a contingent effective date.

The bill may have a minimal non-recurring fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the public records exemption that accompanies the interference with custody statute thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense:

- It is a third-degree felony for any person, without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.[1]
- It is a third-degree felony, in the absence of a court order determining custody or visitation rights, for a parent, stepparent, guardian, or relative who has custody of a child or incompetent person to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.[2]

The statute does not apply if a spouse flees with a child or incompetent person because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child or incompetent person is in danger.[3]

This exception to the statute does not apply to a person fleeing with an incompetent person for the aforementioned reasons.

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken. Within 10 days of taking the child, the report must be filed and must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.[4] Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.[5]

Public Records Exemption

The current address and telephone number of the person taking the child and of the child, which are contained in the report made to the sheriff or state attorney, are confidential and exempt[6] from public records requirements.[7] The public records exemption was scheduled for repeal on October 2, 2005,

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[1] Section 787.03(1), F.S.
[2] Section 787.03(2), F.S.
[3] Section 787.03(6)(a), F.S.
[4] The sheriff or state attorney must be informed of any change of address or telephone number. Section 787.03(6)(b)3., F.S.
[5] Section 787.03(6)(b), F.S.

because of the Open Government Sunset Review Act.[8] During the 2005 Regular Session, the Legislature reenacted the public records exemption and saved it from repeal. Because the interference with custody statute contained substantive language inconsistencies, the repeal date was extended from October 2, 2005, to October 2, 2006, in order to trigger an additional review of the substantive language.[9] As a result, the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

HB 7113

This bill revises the interference with custody statute to broaden an existing exception for a spouse who takes a minor during the course of fleeing domestic violence or protecting the welfare of the minor, and reports their whereabouts to the sheriff or state attorney. It provides that the exception is applicable not only to the taking of a minor but also to the taking of an incompetent person. As such, it is recommended that the public records exemption be amended to reflect this change.

Effect of Bill

The bill reenacts and expands the public records exemption to conform to the recommended changes to the interference with custody statute made in HB 7111. The bill expands the exemption to include the current address and telephone number of the person fleeing with an incompetent person and of the incompetent person. The sheriff or state attorney may allow an agency, as defined in the Public Records Act, to inspect and copy such records in the furtherance of that agency's duties and responsibilities.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution, and provides a contingent effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 787.03, F.S., to reenact and expand the public records exemption regarding the interference with custody.

Section 2 provides a public necessity statement.

Section 3 provides an October 1, 2006, effective date contingent upon the passage of additional legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

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[6] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[7] Section 787.03(6)(c), F.S.

[8] Section 119.15, F.S.

[9] House of Representatives Staff Analysis of HB 1699, March 11, 2005, at 3.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the public records exemption
4 for the interference with custody statute; amending s.
5 787.03, F.S.; expanding the public records exemption for
6 specified information contained in a report made to a
7 sheriff or state attorney as part of a statutory exception
8 to the offense of interference with custody; providing
9 that the address and telephone number of a minor or
10 incompetent person contained in such report is
11 confidential and exempt from public records requirements;
12 providing an exception to the exemption; providing for
13 review and repeal; providing a statement of public
14 necessity; providing a contingent effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Paragraph (c) of subsection (6) and subsection
19 (7) of section 787.03, Florida Statutes, are amended to read:
20 787.03 Interference with custody.--
21 (6)
22 (c)1. ~~The name of the person taking the child and~~ The
23 current address and telephone number of the person and the minor
24 or incompetent person which are ~~child that are~~ contained in the
25 report made to a sheriff or state attorney under paragraph (b)
26 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
27 I of the State Constitution.
28 2. A sheriff or state attorney may allow an agency, as

29 defined in s. 119.011, to inspect and copy records made
30 confidential and exempt under this paragraph in the furtherance
31 of that agency's duties and responsibilities.
32 3. ~~(7)(a)~~ This paragraph ~~section~~ is subject to the Open
33 Government Sunset Review Act ~~of 1995~~ in accordance with s.
34 119.15 and is repealed on October 2, 2011 ~~2006~~, unless reviewed
35 and saved from repeal through reenactment by the Legislature.
36 ~~(b) Pursuant to s. 119.15, the Division of Statutory~~
37 ~~Revision is directed to certify this section, in its entirety,~~
38 ~~in the list of Open Government Sunset Review exemptions to be~~
39 ~~certified by June 1, 2005.~~
40 Section 2. The Legislature finds that it is a public
41 necessity to expand the public records exemption for certain
42 information contained in a report to a sheriff or state attorney
43 made by a person who takes a minor in order to escape domestic
44 violence, avoid domestic violence, or preserve the welfare of
45 the minor. If an alleged perpetrator of domestic violence were
46 able to obtain the address and telephone information contained
47 in a report to the sheriff or state attorney under s. 787.03,
48 Florida Statutes, he or she could locate or contact the minor
49 and the person who removes the minor from a situation of actual
50 or imminent domestic violence or jeopardized welfare, thus
51 exposing them to potential additional harm. Keeping the address
52 and telephone number of that person and the minor confidential
53 and exempt protects their safety. For the same reasons, the
54 Legislature finds that it is a public necessity to expand this
55 public records exemption to include the taking of an incompetent
56 person within the coverage of the exemption. The underlying

57 offense of interference with custody applies to the taking of an
58 incompetent person as well as to the taking of a person younger
59 than 18 years of age. In addition, the safety of an incompetent
60 person and the person seeking shelter with an incompetent person
61 is as vital as the safety of a minor and a person seeking
62 shelter with a minor. The underlying offense of interference
63 with custody envisions that an incompetent person is as
64 vulnerable as a minor. Therefore, the Legislature finds that the
65 public records exemption should apply to the address and
66 telephone number of the incompetent person and the person who
67 removes the incompetent person from a situation of actual or
68 imminent domestic violence or jeopardized welfare contained in a
69 report submitted to a sheriff or state attorney as prescribed in
70 s. 787.03, Florida Statutes. If persons seeking shelter with
71 minors or incompetent persons to escape domestic violence knew
72 that their addresses or telephone numbers could be obtained
73 through the reports to the sheriff or state attorney, they would
74 fear for their safety and would most likely refrain from making
75 the required reports, thereby thwarting the public policy of
76 encouraging the resolution of allegations of interference with
77 custody while also protecting individuals from harm. The public
78 records exemption, therefore, principally protects the safety of
79 individuals but also promotes the effective and efficient
80 administration of the interference with custody statute.
81 Section 3. This act shall take effect October 1, 2006, if
82 House Bill 7111 or similar legislation amending section 787.03,
83 Florida Statutes, is adopted in the same legislative session or
84 an extension thereof and becomes law.

HB 7123

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 (PCB FFF 06-03) Child Protective Services
SPONSOR(S): Future of Florida's Families Committee and Rep. Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	6 Y, 0 N	Preston	Collins
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends chapter 39, Florida Statutes, relating to child protection, to conform to provisions of the federal Adoption and Safe Families Act (ASFA) in three major areas. These areas are reasonable efforts, case planning, and permanency.

With regard to **reasonable efforts**, the bill amends current law to:

- Describe when reasonable efforts are required; and
- Clarify the nature of reasonable efforts required regarding both parental and relative placements at each stage of dependency proceedings.

With regard to **case planning**, the bill amends current law to:

- Provide that agreeing to a case plan does not constitute an admission of wrongdoing or consent to a finding of dependency;
- Recognize the role of mediation and family conferencing in the development of case plans;
- Define "concurrent case planning" and provide direction for its use;
- Replace pre-ASFA language relating to "extending the case plan" with clear direction as to the time frames and requirements for permanency hearings;
- Clarify options available to the court when it becomes clear that a case plan cannot be completed within the first 12 months that a child is in care;
- Provide new emphasis on current language that "time is of the essence" in case planning by placing that language more prominently in the statute; and
- Clarify the considerations and the process to be used in amending a case plan.

With regard to **permanency**, the bill amends current law to:

- Define "permanency hearings," "permanency plan," and "permanency goal," and
- Conform the permanency options under Florida law to those contained in federal law.

There is no anticipated fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

Empower families – The bill will reduce delays in achieving permanency for children and includes families to a greater degree in the case planning process.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida laws relating to child welfare issues were enacted long before federal intervention. The responsibility and authority to intervene in situations where a child is or appears to be in need of protection as a result of child abuse or neglect has traditionally been at the state rather than federal level.[1] However, beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, Congress has enacted a number of laws having a significant effect on state child protection and child welfare services.[2]

The major federal laws impacting Florida's child protection system, listed in order of original enactment, are: CAPTA,[3] the Indian Child Welfare Act (ICWA),[4] the Adoption Assistance and Child Welfare Act,[5] the Family Preservation and Family Support Services Program (established as part of the Omnibus Reconciliation Act of 1993),[6] the Multi-Ethnic Placement Act (MEPA),[7] the Adoption and Safe Families Act (ASFA),[8] the Foster Care Independence Act,[9] the Child Abuse Prevention and Enforcement Act,[10] the Intercountry Adoption Act,[11] the Promoting Safe and Stable Families Amendments,[12] and the Keeping Children and Families Safe Act.[13]

The Adoption and Safe Families Act of 1997, which amends the 1980 Child Welfare Act, was signed into law on November 19, 1997. This law clarifies that the health and safety of children served by child welfare agencies must be the paramount concern of those agencies. It emphasizes moving children in foster care more quickly into permanent homes.[14] Its implementing regulations[15] became effective on March 27, 2000. These regulations incorporate provisions of ASFA and MEPA and amend pre-existing

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[1] National Clearinghouse on Child Abuse and Neglect Information, http://nccanch.acf.hhs.gov (August 1, 2005).
[2] Id.
[3] P.L. 93-247, amended P.L. 95-266, 98-257, 100-294, 102-295, 104-235.
[4] P.L. 95-608.
[5] P.L. 98-272.
[6] P.L. 103-66.
[7] P.L. 103-382, amended P.L. 104-188.
[8] P.L. 105-89.
[9] P.L. 106-169.
[10] P.L. 106-177.
[11] P.L. 106-279.
[12] P.L. 107-133.
[13] P.L. 108-36.
[14] *Adoption and Safe Families Act of 1997 (H.R. 867)* National Association of Social Workers (December 1997), found at http://www.naswdc.org/archives/advocacy/updates/1997/safeadop.htm.
[15] 45 CFR ss. 1355, 1356, 1357; see also the introductory materials and comments, found at 65 FR 4020-4075.

regulations by adding new requirements for state compliance with Titles IV-B and IV-E of the Social Security Act.[16]

State and local child protection agencies that accept federal funds pursuant to Titles IV-B and IV-E of the Social Security Act are required to follow ASFA and its regulations. In FY 2004-2005, the last year for which figures are available, Florida received $29,873,959 in federal funds pursuant to Title IV-B and $190,309,299 in federal funds pursuant to Title IV-E of the Social Security Act. In that year, these sums amounted to 23.61 percent of the total budget for Florida's child welfare programs, a percentage which remains fairly consistent.[17]

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were required to amend state legislation to bring it into compliance with ASFA. However, the short deadlines for compliance[18] required states to draft legislation quickly, increasing the likelihood that inconsistencies would remain between state law and ASFA requirements. Further, since the required date for drafting statutory changes was earlier than the date of the issuance of the final ASFA regulations (January 25, 2000), the likelihood of inconsistencies between state and federal law was increased even further.

During the 1998 session, the Florida Legislature enacted significant changes to Florida's child protection statute, in part with the goal of bringing state law into compliance with ASFA.[19] The ASFA-related changes included:

- Recognizing the parents' right to counsel at the shelter and subsequent hearings and the right, if indigent, to appointed counsel;
- Providing for access by the Department of Children and Families (DCF or the department) to federal and state parent locator services for diligent search activities;
- Increasing requirements for documentation in cases where the case plan goal is not reunification;
- Reducing the time period from 18 to 12 months for judicial review of permanency options for a child;
- Requiring judicial reviews for all children in out-of-home care every six months; and
- Authorizing but not requiring the use of concurrent case planning. Concurrent case planning is the practice of establishing a permanency goal in a case plan which uses reasonable efforts to reunify the child with the parent, while at the same time establishing an alternative or back-up permanency plan to be implemented if children cannot safely return to their biological parents.[20] If concurrent case planning is not used, the alternative goal is explored only after the court determines that reunification is no longer a viable permanency option for the child, a process that almost inevitably significantly delays permanence for the child.

The remaining major provisions of ASFA which must be reflected in state law may be described as:

- "Reasonable efforts" – ASFA redefines "reasonable efforts" to emphasize children's health and safety. It describes at least three circumstances when "reasonable efforts" are required by the state agency in child welfare cases: to prevent foster care placement, to finalize a permanency plan for each child, and to reunify families if such placement has occurred. It also describes situations when reasonable efforts to preserve families are not required;
- Case plan and review requirements – ASFA requires that the case plan and associated reviews specifically address child safety and permanency; and

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[16] *Making Sense of the ASFA Regulations*, Baker, Debra Ratterman et al, American Bar Association (2001), p. 4.
[17] Information obtained from O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.
[18] P.L. 105-89, s. 103(a)(3).
[19] Ch. 98-403, L.O.F.
[20] *Tools for Permanency: Tool #1: Concurrent Permanency Planning*, National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work of the City University of New York, found at www.hunter.curry.edu/socwork/nrcfcpp (July 2005).

- Increased emphasis on timely permanency decision making, including shorter time periods (shortened from 18 months to 12 months) to finalize a permanency plan, a new requirement for permanency hearings, and a limitation on the time period for reunification services to families.[21]

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. As a result, Florida law on these issues contains pre-ASFA provisions which are not consistent with current federal law.

Occurring simultaneously with the implementation of the ASFA-related changes, Florida's child welfare system has undertaken the transition from a traditional agency-driven structure to one in which child welfare services are delivered by community-based care lead agencies. These community-based care lead agencies are independent, non-profit organizations under contract with DCF to provide child welfare services. There are currently 22 lead agencies, each with several subcontracting agencies. This decentralization of service delivery has created additional opportunities for confusion related to the requirements of federal and state law in this area.

When state and federal laws are not consistent, the Supremacy Clause of the U.S. Constitution requires state courts to apply federal law.[22] However, since most practitioners and decision makers in the Florida child welfare system are more familiar with Florida law than with federal law, the inconsistencies may not be recognized at the court or agency level and may result in failure to comply with federal laws that are detected when state practices are reviewed as part of the federal Child and Family Services Review (CFSR) process. Such failures may lead to the loss of significant federal financial support for Florida's child welfare program.

PCB FFF 06-03

The proposed committee bill does the following:

- Creates new definitions of the terms "concurrent planning," "family team conference," "permanency goal," "permanency plan," "permanent guardian," and "permanent guardianship of a dependent child." Current definitions are also amended and or deleted to reflect provisions of the bill.

- Removes current provisions relating to time limitations in dependency cases and creates a new section that provides for added emphasis on that fact that time is of the essence for establishing permanency for a child in the dependency system and outlines the time limitations applicable to dependency cases.

- Clarifies that the provisions of chapter 39, F.S., do not supersede the requirements of the federal Indian Child Welfare Act, the Multi-Ethnic Placement Act of 1994, or their implementing regulations and encourages DCF to enter into agreements with recognized American Indian tribes.

- Provides background screening requirements for the out-of-home placement of children and the process for seeking an exemption from disqualification for placement.

- Clarifies the duty to report to the central abuse hotline the reasonable suspicion that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care and clarifies the authority of the hotline to accept such reports. Adds a child who is known or suspected to be a victim of human trafficking to the list of offenses defined as "criminal conduct."

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[21] See *Congress Passes Major new Adoption/Foster Care Reform Law*, ABA Center on Children and the Law, found at http://www.abanet.org/child/adofost.html.

[22] *Hilton v. South Carolina Public Railways Commission*, 502 U.S. 197(1991); *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354 (1988); *Kalb v. Feuerstein*, 308 U.S. 433 (1940).

- Allows previous reports of child abuse, neglect, or abandonment to be considered in determining whether a child is safe as well as the existing risk to a child at any stage of a child protection proceeding; requires parents or legal custodians to notify the protective investigator of any change in the location or residence of a child while an investigation is open and clarifies that this notification can serve as the basis for a missing child report to law enforcement.

- Authorizes child protection teams within the Department of Health to provide assessment and support in any report alleging sexual abuse of a child.

- Requires that the order at the shelter hearing include a description of the specific services which could prevent or eliminate the need for the removal of a child and the date the services are expected to become available or an explanation of why the services are not available. The bill requires that the order contain a notice to all parties of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. It also requires the court to inquire, and the parents to provide, the names and location information of all relatives whom they wish to be considered for placement of the child. It requires the court to advise the parents that their parental rights may be terminated if the child is not returned to their custody within 12 months.

- Clarifies that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.

- Requires that the court consider the continuity of the child's placement in the same out-of-home residence as a factor in determining the best interests of a child when a petition is filed to change the custody of a child in an out-of-home placement.

- Creates new sections of chapter 39, F.S., describing the procedural and other requirements for developing a case plan, describing the tasks and services that must be addressed in a case plan and describing the process and grounds for case plan amendments.

- Clarifies that time is of the essence for permanency of children in the dependency system and provides direction to the court in conducting permanency hearings for children.

- Specifies the provisions of the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement, which conforms the permanency options for dependent children with the options described in federal law.

- Requires that judicial review social studies reports provided periodically to the court include copies of the child's current health and education records as identified in s. 39.6012, F.S., requires that the child's permanency goal be reviewed at the judicial review held no later than six months after the child is placed in shelter care, and requires an evaluation at that time of the need for concurrent planning for the child.

- Clarifies the circumstances under which DCF is required to file or be excused from filing a termination of parental rights petition at the time of the 12-month judicial review and provides authority for any party to seek judicial review of DCF's decision not to file this petition based on the enumerated grounds.

- Clarifies that a material breach of the case plan is grounds for filing a termination of parental rights petition before the expiration of the time period for compliance with the case plan if the court finds by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before the time expires to comply with it.

- Provides that, in determining the manifest best interests of a child in the context of a termination of parental rights proceeding, the availability of a non-adoptive relative placement may not be considered as a factor weighing against the termination of parental rights and that, if a child has been in a stable or pre-adoptive placement for not less than six months, the availability of a different placement, including a placement with relative, may not be considered as a ground to deny the petition for termination of parental rights.

- Repeals sections 39.601, 39.622, 39.623, 39.624, and 435.045, Florida Statutes. These sections are related to case planning when parents do not participate and the child is in out-of-home care, long-term custody, long-term licensed custody, independent living, and employment screening requirements for placement of dependent children, respectively.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 39.0121, F.S., relating to rulemaking authority.

Section 3. Amends s. 39.013, F.S., related to procedures and right to counsel for parents in dependency proceedings.

Section 4. Creates s. 39.0136, F.S., relating to time limitations and continuances.

Section 5. Creates s. 39.0137, F.S., relating to federal law and rulemaking authority.

Section 6. Creates s. 39.0138, F.S., relating to requirements for placement of children and exemptions from disqualification.

Section 7. Amends s. 39.201, F.S., relating to the central abuse hotline and mandatory reports of abuse, neglect, abandonment, and death.

Section 8. Amends s. 39.301, F.S., relating to child protective investigations.

Section 9. Amends s. 39.303, F.S., relating to child protection teams.

Section 10. Amends s. 39.402, F.S., relating to placement in a shelter.

Section 11. Amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 12. Amends s. 39.5085, F.S., relating to the Relative Caregiver Program.

Section 13. Amends s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 14. Amends s. 39.522, F.S., relating to postdisposition change of custody.

Section 15. Creates s. 39.6011, F.S., relating to case plan development.

Section 16. Creates s. 39.6012, F.S., relating to case plan tasks and services to be provided.

Section 17. Creates s. 39.6013, F.S., relating to amendments to a case plan.

Section 18. Amends s. 39.603, F.S., relating to court approval of case planning.

Section 19. Amends s. 39.621, F.S., relating to permanency determinations by the court.

Section 20. Creates s. 39.6221, F.S., relating to the permanent guardianship of a child.

Section 21. Creates s. 39.6231, F.S., relating to permanent placement of a child with a fit and willing relative.

Section 22. Creates s. 39.6241, F.S., relating to another planned permanent living arrangement.

Section 23. Amends s. 39.701, F.S., relating to judicial review.

Section 24. Amends s. 39.703, F.S., relating to the initiation of termination of parental rights proceedings and judicial review.

Section 25. Amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 26. Amends s. 39.810, F.S., relating to manifest best interest of the child.

Section 27. Amends s. 39.811, F.S., relating to powers and orders of disposition.

Section 28. Amends s. 39.0015, F.S., relating to child abuse prevention training in the district school system.

Section 29. Amends 39.205, F.S., relating to penalties relating to the reporting of abuse, abandonment, or neglect.

Section 30. Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 31. Amends s. 39.802, F.S., relating to petitions for termination of parental rights.

Section 32. Amends s. 39.828, relating to the appointment of a guardian advocate for drug dependent newborns.

Section 33. Amends s. 63.092, F.S., relating to reports to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.

Section 34. Amends s. 409.165, F.S., relating to alternative care for children.

Section 35. Amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 36. Repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.

Section 37. 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:

   The bill removes areas of confusion that have led to delay in permanency for children. As a result, more children should achieve permanency at an earlier time, reducing the need for foster care services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The clarifications contained in the bill will facilitate compliance with federal law and consequent funding of programs in the community-based care agencies.

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:

The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

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 child protective services; amending s.
3 39.01, F.S.; revising definitions relating to child
4 protective services; amending s. 39.0121, F.S.; providing
5 rulemaking authority to the Department of Children and
6 Family Services to provide certain information in a
7 child's case plan to physical custodians and family
8 services counselors under certain circumstances; amending
9 s. 39.013, F.S.; removing provisions relating to
10 continuances; creating s. 39.0136, F.S.; providing for
11 time limitations and circumstances under which a
12 continuance may be granted in child protective cases;
13 providing exceptions; creating s. 39.0137, F.S.; providing
14 that state laws do not supersede certain federal laws;
15 requiring the Department of Children and Family Services
16 to adopt rules; creating s. 39.0138, F.S.; authorizing the
17 department to conduct criminal records checks of persons
18 being considered as prospective foster parents; providing
19 that a court may review the granting or denial of an
20 exemption from disqualification to care for a dependent
21 child; providing that a person seeking placement of a
22 child who is disqualified bears the burden of providing
23 evidence of rehabilitation; amending s. 39.201, F.S.;
24 requiring that any person who knows or suspects that a
25 child is in need of supervision and care and has no
26 parent, legal custodian, or responsible adult relative
27 immediately known and available to provide supervision and
28 care must report this information to the central abuse

29 hotline of the Department of Children and Family Services;
30 amending s. 39.301, F.S.; redefining the term "criminal
31 conduct" to include a child who is known or suspected to
32 be a victim of human trafficking; requiring each child
33 protective investigator to inform the person who is the
34 subject of a child protective investigation that he or she
35 has a duty to report any change in the residence or
36 location of the child to the investigator and that the
37 duty to report continues until the investigation is
38 closed; providing that the department may rely upon a
39 previous report to indicate that child abuse has occurred;
40 providing that if the child has moved to a different
41 residence or location, a report may be filed with a law
42 enforcement agency under certain circumstances; amending
43 39.303, F.S.; conforming provisions to changes made by the
44 act; amending s. 39.402, F.S.; requiring that a shelter
45 hearing order contain specified information relating to
46 the availability of services to prevent removal from the
47 home; requiring notification of certain parties regarding
48 case plan or family team conferences or mediation;
49 providing a timeframe for the conference or mediation;
50 requiring a parent to provide certain information
51 regarding relatives with whom a child may be placed under
52 certain circumstances; providing circumstances under which
53 parental rights may be terminated and the child's out-of-
54 home placement may become permanent; amending s. 39.507,
55 F.S.; requiring the court to inquire of the parents
56 whether the parents have relatives who might be considered

57 as a placement for the child; directing the court to
58 advise the parents that, if the child is not returned to
59 their custody within 12 months, their parental rights may
60 be terminated and the child's out-of-home placement may
61 become permanent; amending s. 39.5085, F.S.; conforming
62 provisions to changes made by the act; correcting cross-
63 references; amending s. 39.521, F.S.; revising the content
64 of an order of disposition issued by the court; amending
65 s. 39.522, F.S.; requiring the court to consider the
66 continuity of the child's placement in the same out-of-
67 home residence as a factor when determining the best
68 interest of the child in a postdisposition proceeding to
69 modify custody; creating s. 39.6011, F.S.; providing
70 procedures for drafting and implementing a case plan;
71 requiring certain face-to-face meetings; specifying
72 contents of a case plan; requiring the department to
73 prepare a case plan for each child receiving services from
74 the department; requiring all parties, except the child
75 under certain circumstances, to sign the case plan;
76 requiring the case plan to provide certain documentation
77 when the permanency goal for the child is adoption;
78 requiring the department to follow certain procedures;
79 requiring the case plan to be filed with the court and
80 copies to be provided to all parties; requiring certain
81 information to follow a child until permanency is
82 achieved; creating s. 39.6012, F.S.; providing for case
83 plan tasks and services; requiring a parent to complete
84 certain tasks in order to receive certain services;

85 providing for the content of case plans; creating s.
86 39.6013, F.S.; providing for amendments to a case plan;
87 describing the circumstances under which a case plan may
88 be modified; requiring certain information to be included
89 in amendments to a case plan; requiring copies to be
90 distributed to specified parties; amending s. 39.603,
91 F.S.; requiring that case plans and amendments be approved
92 by the court and that copies of the amended plan be
93 provided to certain parties; amending s. 39.621, F.S.;
94 providing a legislative finding; requiring a permanency
95 hearing to be held within a specified timeframe;
96 specifying permanency goals; providing prehearing
97 procedures; directing the court to make certain findings
98 at the permanency hearing; requiring certain factors to be
99 considered by the court in determining the permanency goal
100 for the child; permitting parents to make a motion for
101 reunification or increased contact under certain
102 circumstances; creating s. 39.6221, F.S.; providing for
103 the permanent guardianship for a dependent child;
104 authorizing the court to consider a permanent guardian as
105 a long-term option for a dependent child; requiring a
106 written order; providing for the contents of the permanent
107 guardianship order; exempting the permanent guardianship
108 of a child from the requirements of ch. 744, F.S., under
109 certain circumstances; providing for the court to retain
110 jurisdiction; providing that placement in permanent
111 guardianship does not terminate the relationship between
112 the parent and the child; creating s. 39.6231, F.S.;

113 providing circumstances for placement of a child with a
114 fit and willing relative; requiring the court to specify
115 the reasons to place a child with a relative; requiring
116 the court to establish the relative's authority to care
117 for the child; providing for the department to supervise
118 the placement for a specified time period; requiring the
119 court to continue to conduct permanency hearings; creating
120 s. 39.6241, F.S.; authorizing the court to place a child
121 in another planned permanent living arrangement under
122 certain circumstances; requiring the department and
123 guardian ad litem to provide the court with certain
124 information regarding the needs of the child; amending s.
125 39.701, F.S.; requiring that a child's current health,
126 mental health, and education records be included in the
127 documentation for the judicial review report; authorizing
128 the court and citizen review panel to make certain
129 determinations; providing for amendments to a case plan;
130 removing a provision relating to the extension of a time
131 limitation or the modification of terms of a case plan;
132 requiring the court to conduct a judicial review 6 months
133 after the child is placed in shelter care; amending s.
134 39.703, F.S.; providing when the department may file a
135 petition for termination of parental rights; providing
136 circumstances under which the department may choose not to
137 file a petition; providing for court review of a
138 determination by the department not to file a petition;
139 amending s. 39.806, F.S.; authorizing a material breach of
140 the case plan as a ground to terminate parental rights;

141 requiring that the department show, and the court find,
142 the material breach by clear and convincing evidence;
143 amending s. 39.810, F.S.; providing certain factors for
144 the court to consider for the best interest of the child;
145 amending ss. 39.811 and 409.165, F.S.; conforming
146 provisions to changes made by the act; amending ss.
147 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001,
148 F.S.; correcting cross-references; reenacting s.
149 39.802(5), F.S., relating to the filing of a petition to
150 terminate parental rights, to incorporate the amendments
151 made to s. 39.806, F.S., in a reference thereto; repealing
152 ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.,
153 relating to case plan requirements, long-term custody of a
154 dependent child, long-term licensed custody of a dependent
155 child, independent living, and background screening of
156 certain persons before a dependent child is placed in
157 their home; providing an effective date.
158
159 Be It Enacted by the Legislature of the State of Florida:
160
161 Section 1. Section 39.01, Florida Statutes, is amended to
162 read:
163 39.01 Definitions.--When used in this chapter, unless the
164 context otherwise requires:
165 (1) "Abandoned" means a situation in which the parent or
166 legal custodian of a child or, in the absence of a parent or
167 legal custodian, the caregiver responsible for the child's
168 welfare, while being able, makes no provision for the child's

169 support and makes no effort to communicate with the child, which
170 situation is sufficient to evince a willful rejection of
171 parental obligations. If the efforts of the ~~such~~ parent or legal
172 custodian, or caregiver primarily responsible for the child's
173 welfare, to support and communicate with the child are, in the
174 opinion of the court, only marginal efforts that do not evince a
175 settled purpose to assume all parental duties, the court may
176 declare the child to be abandoned. The term "abandoned" does not
177 include an abandoned newborn infant as described in s. 383.50, a
178 "child in need of services" as defined in chapter 984, or a
179 "family in need of services" as defined in chapter 984. The
180 incarceration of a parent, legal custodian, or caregiver
181 responsible for a child's welfare may support a finding of
182 abandonment.
183 (2) "Abuse" means any willful act or threatened act that
184 results in any physical, mental, or sexual injury or harm that
185 causes or is likely to cause the child's physical, mental, or
186 emotional health to be significantly impaired. Abuse of a child
187 includes acts or omissions. Corporal discipline of a child by a
188 parent or legal custodian for disciplinary purposes does not in
189 itself constitute abuse when it does not result in harm to the
190 child.
191 (3) "Addictions receiving facility" means a substance
192 abuse service provider as defined in chapter 397.
193 (4) "Adjudicatory hearing" means a hearing for the court
194 to determine whether or not the facts support the allegations
195 stated in the petition in dependency cases or in termination of
196 parental rights cases.

197 (5) "Adult" means any natural person other than a child.
198 (6) "Adoption" means the act of creating the legal
199 relationship between parent and child where it did not exist,
200 thereby declaring the child to be legally the child of the
201 adoptive parents and their heir at law, and entitled to all the
202 rights and privileges and subject to all the obligations of a
203 child born to the ~~such~~ adoptive parents in lawful wedlock.
204 (7) "Alleged juvenile sexual offender" means:
205 (a) A child 12 years of age or younger who is alleged to
206 have committed a violation of chapter 794, chapter 796, chapter
207 800, s. 827.071, or s. 847.0133; or
208 (b) A child who is alleged to have committed any violation
209 of law or delinquent act involving juvenile sexual abuse.
210 "Juvenile sexual abuse" means any sexual behavior which occurs
211 without consent, without equality, or as a result of coercion.
212 For purposes of this paragraph, the following definitions apply:
213 1. "Coercion" means the exploitation of authority or the
214 use of bribes, threats of force, or intimidation to gain
215 cooperation or compliance.
216 2. "Equality" means two participants operating with the
217 same level of power in a relationship, neither being controlled
218 nor coerced by the other.
219 3. "Consent" means an agreement, including all of the
220 following:
221 a. Understanding what is proposed based on age, maturity,
222 developmental level, functioning, and experience.
223 b. Knowledge of societal standards for what is being
224 proposed.

225 c. Awareness of potential consequences and alternatives.
226 d. Assumption that agreement or disagreement will be
227 accepted equally.
228 e. Voluntary decision.
229 f. Mental competence.
230
231 Juvenile sexual offender behavior ranges from noncontact sexual
232 behavior such as making obscene phone calls, exhibitionism,
233 voyeurism, and the showing or taking of lewd photographs to
234 varying degrees of direct sexual contact, such as frottage,
235 fondling, digital penetration, rape, fellatio, sodomy, and
236 various other sexually aggressive acts.
237 (8) "Arbitration" means a process whereby a neutral third
238 person or panel, called an arbitrator or an arbitration panel,
239 considers the facts and arguments presented by the parties and
240 renders a decision which may be binding or nonbinding.
241 (9) "Authorized agent" or "designee" of the department
242 means an employee, volunteer, or other person or agency
243 determined by the state to be eligible for state-funded risk
244 management coverage, which ~~that~~ is assigned or designated by the
245 department to perform duties or exercise powers under ~~pursuant~~
246 ~~to~~ this chapter.
247 (10) "Caregiver" means the parent, legal custodian,
248 permanent guardian, adult household member, or other person
249 responsible for a child's welfare as defined in subsection (46)
250 ~~(47)~~.
251 (11) "Case plan" ~~or "plan"~~ means a document, as described
252 in s. 39.6011 ~~s. 39.601~~, prepared by the department with input

253 from all parties. The case plan follows the child from the
254 provision of voluntary services through any dependency, foster
255 care, or termination of parental rights proceeding or related
256 activity or process.
257 (12) "Child" or "youth" means any unmarried person under
258 the age of 18 years who has not been emancipated by order of the
259 court.
260 (13) "Child protection team" means a team of professionals
261 established by the Department of Health to receive referrals
262 from the protective investigators and protective supervision
263 staff of the department and to provide specialized and
264 supportive services to the program in processing child abuse,
265 abandonment, or neglect cases. A child protection team shall
266 provide consultation to other programs of the department and
267 other persons regarding child abuse, abandonment, or neglect
268 cases.
269 (14) "Child who is found to be dependent" means a child
270 who, pursuant to this chapter, is found by the court:
271 (a) To have been abandoned, abused, or neglected by the
272 child's parent or parents or legal custodians;
273 (b) To have been surrendered to the department, the former
274 Department of Health and Rehabilitative Services, or a licensed
275 child-placing agency for purpose of adoption;
276 (c) To have been voluntarily placed with a licensed child-
277 caring agency, a licensed child-placing agency, an adult
278 relative, the department, or the former Department of Health and
279 Rehabilitative Services, after which placement, under the
280 requirements of this chapter, a case plan has expired and the

281 parent or parents or legal custodians have failed to
282 substantially comply with the requirements of the plan;
283 (d) To have been voluntarily placed with a licensed child-
284 placing agency for the purposes of subsequent adoption, and a
285 parent or parents have signed a consent pursuant to the Florida
286 Rules of Juvenile Procedure;
287 (e) To have no parent or legal custodians capable of
288 providing supervision and care; or
289 (f) To be at substantial risk of imminent abuse,
290 abandonment, or neglect by the parent or parents or legal
291 custodians.
292 (15) "Child support" means a court-ordered obligation,
293 enforced under chapter 61 and ss. 409.2551-409.2597, for
294 monetary support for the care, maintenance, training, and
295 education of a child.
296 (16) "Circuit" means any of the 20 judicial circuits as
297 set forth in s. 26.021.
298 (17) "Comprehensive assessment" or "assessment" means the
299 gathering of information for the evaluation of a child's and
300 caregiver's physical, psychiatric, psychological or mental
301 health, educational, vocational, and social condition and family
302 environment as they relate to the child's and caregiver's need
303 for rehabilitative and treatment services, including substance
304 abuse treatment services, mental health services, developmental
305 services, literacy services, medical services, family services,
306 and other specialized services, as appropriate.
307 (18) "Concurrent planning" means establishing a permanency
308 goal in a case plan that uses reasonable efforts to reunify the

309 child with the parent, while at the same time establishing
310 another goal that must be one of the following options:
311 (a) Adoption when a petition for termination of parental
312 rights has been filed or will be filed;
313 (b) Permanent guardianship of a dependent child under s.
314 39.6221;
315 (c) Permanent placement with a fit and willing relative
316 under s. 39.6231; or
317 (d) Placement in another planned permanent living
318 arrangement under s. 39.6241.
319 (19) ~~(18)~~ "Court," unless otherwise expressly stated, means
320 the circuit court assigned to exercise jurisdiction under this
321 chapter.
322 (20) ~~(19)~~ "Department" means the Department of Children and
323 Family Services.
324 (21) ~~(20)~~ "Diligent efforts by a parent" means a course of
325 conduct which results in a reduction in risk to the child in the
326 child's home that would allow the child to be safely placed
327 permanently back in the home as set forth in the case plan.
328 (22) ~~(21)~~ "Diligent efforts of social service agency" means
329 reasonable efforts to provide social services or reunification
330 services made by any social service agency that is a party to a
331 case plan.
332 (23) ~~(22)~~ "Diligent search" means the efforts of a social
333 service agency to locate a parent or prospective parent whose
334 identity or location is unknown, initiated as soon as the social
335 service agency is made aware of the existence of such parent,
336 with the search progress reported at each court hearing until

337 the parent is either identified and located or the court excuses
338 further search.
339 (24) ~~(23)~~ "Disposition hearing" means a hearing in which
340 the court determines the most appropriate protections, services,
341 and placement for the child in dependency cases.
342 (25) ~~(24)~~ "District" means any one of the 15 service
343 districts of the department established pursuant to s. 20.19.
344 (26) ~~(25)~~ "District administrator" means the chief
345 operating officer of each service district of the department as
346 defined in s. 20.19(5) and, where appropriate, includes any
347 district administrator whose service district falls within the
348 boundaries of a judicial circuit.
349 (27) ~~(26)~~ "Expedited termination of parental rights" means
350 proceedings wherein a case plan with the goal of reunification
351 is not being offered.
352 (28) ~~(27)~~ "False report" means a report of abuse, neglect,
353 or abandonment of a child to the central abuse hotline, which
354 report is maliciously made for the purpose of:
355 (a) Harassing, embarrassing, or harming another person;
356 (b) Personal financial gain for the reporting person;
357 (c) Acquiring custody of a child; or
358 (d) Personal benefit for the reporting person in any other
359 private dispute involving a child.
360
361 The term "false report" does not include a report of abuse,
362 neglect, or abandonment of a child made in good faith to the
363 central abuse hotline.
364 (29) ~~(28)~~ "Family" means a collective body of persons,

365 consisting of a child and a parent, legal custodian, or adult
366 relative, in which:
367 (a) The persons reside in the same house or living unit;
368 or
369 (b) The parent, legal custodian, or adult relative has a
370 legal responsibility by blood, marriage, or court order to
371 support or care for the child.
372 (30) "Family team conference" means a process for family-
373 focused intervention facilitated by professional staff which is
374 designed to develop a plan for the care, safety, and well-being
375 of a child and the child's family.
376 (31) ~~(29)~~ "Foster care" means care provided a child in a
377 foster family or boarding home, group home, agency boarding
378 home, child care institution, or any combination thereof.
379 (32) ~~(30)~~ "Harm" to a child's health or welfare can occur
380 when any person:
381 (a) Inflicts or allows to be inflicted upon the child
382 physical, mental, or emotional injury. In determining whether
383 harm has occurred, the following factors must be considered in
384 evaluating any physical, mental, or emotional injury to a child:
385 the age of the child; any prior history of injuries to the
386 child; the location of the injury on the body of the child; the
387 multiplicity of the injury; and the type of trauma inflicted.
388 Such injury includes, but is not limited to:
389 1. Willful acts that produce the following specific
390 injuries:
391 a. Sprains, dislocations, or cartilage damage.
392 b. Bone or skull fractures.

393 c. Brain or spinal cord damage.
394 d. Intracranial hemorrhage or injury to other internal
395 organs.
396 e. Asphyxiation, suffocation, or drowning.
397 f. Injury resulting from the use of a deadly weapon.
398 g. Burns or scalding.
399 h. Cuts, lacerations, punctures, or bites.
400 i. Permanent or temporary disfigurement.
401 j. Permanent or temporary loss or impairment of a body
402 part or function.
403
404 As used in this subparagraph, the term "willful" refers to the
405 intent to perform an action, not to the intent to achieve a
406 result or to cause an injury.
407 2. Purposely giving a child poison, alcohol, drugs, or
408 other substances that substantially affect the child's behavior,
409 motor coordination, or judgment or that result in sickness or
410 internal injury. For the purposes of this subparagraph, the term
411 "drugs" means prescription drugs not prescribed for the child or
412 not administered as prescribed, and controlled substances as
413 outlined in Schedule I or Schedule II of s. 893.03.
414 3. Leaving a child without adult supervision or
415 arrangement appropriate for the child's age or mental or
416 physical condition, so that the child is unable to care for the
417 child's own needs or another's basic needs or is unable to
418 exercise good judgment in responding to any kind of physical or
419 emotional crisis.
420 4. Inappropriate or excessively harsh disciplinary action

421 that is likely to result in physical injury, mental injury as
422 defined in this section, or emotional injury. The significance
423 of any injury must be evaluated in light of the following
424 factors: the age of the child; any prior history of injuries to
425 the child; the location of the injury on the body of the child;
426 the multiplicity of the injury; and the type of trauma
427 inflicted. Corporal discipline may be considered excessive or
428 abusive when it results in any of the following or other similar
429 injuries:
430 a. Sprains, dislocations, or cartilage damage.
431 b. Bone or skull fractures.
432 c. Brain or spinal cord damage.
433 d. Intracranial hemorrhage or injury to other internal
434 organs.
435 e. Asphyxiation, suffocation, or drowning.
436 f. Injury resulting from the use of a deadly weapon.
437 g. Burns or scalding.
438 h. Cuts, lacerations, punctures, or bites.
439 i. Permanent or temporary disfigurement.
440 j. Permanent or temporary loss or impairment of a body
441 part or function.
442 k. Significant bruises or welts.
443 (b) Commits, or allows to be committed, sexual battery, as
444 defined in chapter 794, or lewd or lascivious acts, as defined
445 in chapter 800, against the child.
446 (c) Allows, encourages, or forces the sexual exploitation
447 of a child, which includes allowing, encouraging, or forcing a
448 child to:

449 1. Solicit for or engage in prostitution; or
450 2. Engage in a sexual performance, as defined by chapter
451 827.
452 (d) Exploits a child, or allows a child to be exploited,
453 as provided in s. 450.151.
454 (e) Abandons the child. Within the context of the
455 definition of "harm," the term "abandons the child" means that
456 the parent or legal custodian of a child or, in the absence of a
457 parent or legal custodian, the person responsible for the
458 child's welfare, while being able, makes no provision for the
459 child's support and makes no effort to communicate with the
460 child, which situation is sufficient to evince a willful
461 rejection of parental obligation. If the efforts of the ~~such a~~
462 parent or legal custodian or person primarily responsible for
463 the child's welfare to support and communicate with the child
464 are only marginal efforts that do not evince a settled purpose
465 to assume all parental duties, the child may be determined to
466 have been abandoned. The term "abandoned" does not include an
467 abandoned newborn infant as described in s. 383.50.
468 (f) Neglects the child. Within the context of the
469 definition of "harm," the term "neglects the child" means that
470 the parent or other person responsible for the child's welfare
471 fails to supply the child with adequate food, clothing, shelter,
472 or health care, although financially able to do so or although
473 offered financial or other means to do so. However, a parent or
474 legal custodian who, by reason of the legitimate practice of
475 religious beliefs, does not provide specified medical treatment
476 for a child may not be considered abusive or neglectful for that

477 reason alone, but such an exception does not:
478 1. Eliminate the requirement that such a case be reported
479 to the department;
480 2. Prevent the department from investigating such a case;
481 or
482 3. Preclude a court from ordering, when the health of the
483 child requires it, the provision of medical services by a
484 physician, as defined in this section, or treatment by a duly
485 accredited practitioner who relies solely on spiritual means for
486 healing in accordance with the tenets and practices of a well-
487 recognized church or religious organization.
488 (g) Exposes a child to a controlled substance or alcohol.
489 Exposure to a controlled substance or alcohol is established by:
490 1. Use by the mother of a controlled substance or alcohol
491 during pregnancy when the child, at birth, is demonstrably
492 adversely affected by such usage; or
493 2. Continued chronic and severe use of a controlled
494 substance or alcohol by a parent when the child is demonstrably
495 adversely affected by such usage.
496
497 As used in this paragraph, the term "controlled substance" means
498 prescription drugs not prescribed for the parent or not
499 administered as prescribed and controlled substances as outlined
500 in Schedule I or Schedule II of s. 893.03.
501 (h) Uses mechanical devices, unreasonable restraints, or
502 extended periods of isolation to control a child.
503 (i) Engages in violent behavior that demonstrates a wanton
504 disregard for the presence of a child and could reasonably

505 result in serious injury to the child.
506 (j) Negligently fails to protect a child in his or her
507 care from inflicted physical, mental, or sexual injury caused by
508 the acts of another.
509 (k) Has allowed a child's sibling to die as a result of
510 abuse, abandonment, or neglect.
511 (l) Makes the child unavailable for the purpose of
512 impeding or avoiding a protective investigation unless the court
513 determines that the parent, legal custodian, or caregiver was
514 fleeing from a situation involving domestic violence.
515 (33) ~~(31)~~ "Institutional child abuse or neglect" means
516 situations of known or suspected child abuse or neglect in which
517 the person allegedly perpetrating the child abuse or neglect is
518 an employee of a private school, public or private day care
519 center, residential home, institution, facility, or agency or
520 any other person at such institution responsible for the child's
521 care.
522 (34) ~~(32)~~ "Judge" means the circuit judge exercising
523 jurisdiction pursuant to this chapter.
524 (35) ~~(33)~~ "Legal custody" means a legal status created by a
525 court ~~order or letter of guardianship~~ which vests in a custodian
526 of the person or guardian, whether an agency or an individual,
527 the right to have physical custody of the child and the right
528 and duty to protect, nurture, guide ~~train~~, and discipline the
529 child and to provide him or her with food, shelter, education,
530 and ordinary medical, dental, psychiatric, and psychological
531 care. ~~The legal custodian is the person or entity in whom the~~
532 ~~legal right to custody is vested. For purposes of this chapter~~

533 ~~only, when the phrase "parent or legal custodian" is used, it~~
534 ~~refers to rights or responsibilities of the parent and, only if~~
535 ~~there is no living parent with intact parental rights, to the~~
536 ~~rights or responsibilities of the legal custodian who has~~
537 ~~assumed the role of the parent.~~
538 ~~(34) "Legal guardianship" means a judicially created~~
539 ~~relationship between the child and caregiver which is intended~~
540 ~~to be permanent and self-sustaining and is provided pursuant to~~
541 ~~the procedures in chapter 744.~~
542 (36) ~~(35)~~ "Licensed child-caring agency" means a person,
543 society, association, or agency licensed by the department to
544 care for, receive, and board children.
545 (37) ~~(36)~~ "Licensed child-placing agency" means a person,
546 society, association, or institution licensed by the department
547 to care for, receive, or board children and to place children in
548 a licensed child-caring institution or a foster or adoptive
549 home.
550 (38) ~~(37)~~ "Licensed health care professional" means a
551 physician licensed under chapter 458, an osteopathic physician
552 licensed under chapter 459, a nurse licensed under part I of
553 chapter 464, a physician assistant licensed under chapter 458 or
554 chapter 459, or a dentist licensed under chapter 466.
555 (39) ~~(38)~~ "Likely to injure oneself" means that, as
556 evidenced by violent or other actively self-destructive
557 behavior, it is more likely than not that within a 24-hour
558 period the child will attempt to commit suicide or inflict
559 serious bodily harm on himself or herself.
560 (40) ~~(39)~~ "Likely to injure others" means that it is more

561 likely than not that within a 24-hour period the child will
562 inflict serious and unjustified bodily harm on another person.
563 ~~(40) "Long-term relative custodian" means an adult~~
564 ~~relative who is a party to a long-term custodial relationship~~
565 ~~created by a court order pursuant to this chapter.~~
566 ~~(41) "Long-term custody" or "long-term custodial~~
567 ~~relationship" means the relationship that a juvenile court order~~
568 ~~creates between a child and an adult relative of the child or~~
569 ~~other legal custodian approved by the court when the child~~
570 ~~cannot be placed in the custody of a parent and adoption is not~~
571 ~~deemed to be in the best interest of the child. Long-term~~
572 ~~custody confers upon the relative or other legal custodian,~~
573 ~~other than the department, the right to physical custody of the~~
574 ~~child, a right which will not be disturbed by the court except~~
575 ~~upon request of the legal custodian or upon a showing that the~~
576 ~~best interest of the child necessitates a change of custody for~~
577 ~~the child. A relative or other legal custodian who has been~~
578 ~~designated as a long-term custodian shall have all of the rights~~
579 ~~and duties of a parent, including, but not limited to, the right~~
580 ~~and duty to protect, train, and discipline the child and to~~
581 ~~provide the child with food, shelter, and education, and~~
582 ~~ordinary medical, dental, psychiatric, and psychological care,~~
583 ~~unless these rights and duties are otherwise enlarged or limited~~
584 ~~by the court order establishing the long-term custodial~~
585 ~~relationship.~~
586 (41) ~~(42)~~ "Mediation" means a process whereby a neutral
587 third person called a mediator acts to encourage and facilitate
588 the resolution of a dispute between two or more parties. It is

589 an informal and nonadversarial process with the objective of
590 helping the disputing parties reach a mutually acceptable and
591 voluntary agreement. The role of the mediator includes, but is
592 not limited to, assisting the parties in identifying issues,
593 fostering joint problem solving, and exploring settlement
594 alternatives.
595 (42) ~~(43)~~ "Mental injury" means an injury to the
596 intellectual or psychological capacity of a child as evidenced
597 by a discernible and substantial impairment in the ability to
598 function within the normal range of performance and behavior.
599 (43) ~~(44)~~ "Necessary medical treatment" means care which is
600 necessary within a reasonable degree of medical certainty to
601 prevent the deterioration of a child's condition or to alleviate
602 immediate pain of a child.
603 (44) ~~(45)~~ "Neglect" occurs when a child is deprived of, or
604 is allowed to be deprived of, necessary food, clothing, shelter,
605 or medical treatment or a child is permitted to live in an
606 environment when such deprivation or environment causes the
607 child's physical, mental, or emotional health to be
608 significantly impaired or to be in danger of being significantly
609 impaired. The foregoing circumstances shall not be considered
610 neglect if caused primarily by financial inability unless actual
611 services for relief have been offered to and rejected by such
612 person. A parent or legal custodian legitimately practicing
613 religious beliefs in accordance with a recognized church or
614 religious organization who thereby does not provide specific
615 medical treatment for a child may ~~shall~~ not, for that reason
616 alone, be considered a negligent parent or legal custodian;

617 however, such an exception does not preclude a court from
618 ordering the following services to be provided, when the health
619 of the child so requires:
620 (a) Medical services from a licensed physician, dentist,
621 optometrist, podiatric physician, or other qualified health care
622 provider; or
623 (b) Treatment by a duly accredited practitioner who relies
624 solely on spiritual means for healing in accordance with the
625 tenets and practices of a well-recognized church or religious
626 organization.
627
628 Neglect of a child includes acts or omissions.
629 (45) ~~(46)~~ "Next of kin" means an adult relative of a child
630 who is the child's brother, sister, grandparent, aunt, uncle, or
631 first cousin.
632 (46) ~~(47)~~ "Other person responsible for a child's welfare"
633 includes the child's legal guardian~~, legal custodian,~~ or foster
634 parent; an employee of a private school, public or private child
635 day care center, residential home, institution, facility, or
636 agency; or any other person legally responsible for the child's
637 welfare in a residential setting; and also includes an adult
638 sitter or relative entrusted with a child's care. For the
639 purpose of departmental investigative jurisdiction, this
640 definition does not include law enforcement officers, or
641 employees of municipal or county detention facilities or the
642 Department of Corrections, while acting in an official capacity.
643 (47) ~~(48)~~ "Out-of-home" means a placement outside of the
644 home of the parents or a parent.

645 (48) ~~(49)~~ "Parent" means a woman who gives birth to a child
646 and a man who was married to the mother at the time the child
647 was conceived or born, who has been determined by a court to be
648 the father of the child, who has filed an affidavit of paternity
649 under s. 382.013(2), or who has claimed to be the father of the
650 child and has provided, or has attempted to provide, the child,
651 or the mother during her pregnancy, with support in a
652 repetitive, customary manner ~~whose consent to the adoption of~~
653 ~~the child would be required under s. 63.062(1)~~. If a child has
654 been legally adopted, the term "parent" means the adoptive
655 mother or father of the child. The term does not include an
656 individual whose parental relationship to the child has been
657 legally terminated, or an alleged or prospective parent, unless
658 the parental status falls within the terms of s. 39.503(1) or
659 this subsection ~~s. 63.062(1)~~. For purposes of this chapter only,
660 when the phrase "parent or legal custodian" is used, it refers
661 to rights or responsibilities of the parent and, only if there
662 is no living parent with intact parental rights, to the rights
663 or responsibilities of the legal custodian who has assumed the
664 role of the parent.
665 (49) ~~(50)~~ "Participant," for purposes of a shelter
666 proceeding, dependency proceeding, or termination of parental
667 rights proceeding, means any person who is not a party but who
668 should receive notice of hearings involving the child, including
669 the actual custodian of the child, the foster parents or the
670 legal custodian of the child, identified prospective parents,
671 ~~grandparents entitled to priority for adoption consideration~~
672 ~~under s. 63.0425, actual custodians of the child,~~ and any other

673 person whose participation may be in the best interest of the
674 child. A community-based agency under contract with the
675 department to provide protective services may be designated as a
676 participant at the discretion of the court. Participants may be
677 granted leave by the court to be heard without the necessity of
678 filing a motion to intervene.
679 (50) ~~(51)~~ "Party" means the parent or parents of the child,
680 the petitioner, the department, the guardian ad litem or the
681 representative of the guardian ad litem program when the program
682 has been appointed, and the child. The presence of the child may
683 be excused by order of the court when presence would not be in
684 the child's best interest. Notice to the child may be excused by
685 order of the court when the age, capacity, or other condition of
686 the child is such that the notice would be meaningless or
687 detrimental to the child.
688 (51) "Permanency goal" means the living arrangement
689 identified for the child to return to or identified as the
690 permanent living arrangement of the child. Permanency goals
691 applicable under this chapter are:
692 (a) Reunification;
693 (b) Adoption when a petition for termination of parental
694 rights has been or will be filed;
695 (c) Permanent guardianship of a dependent child under s.
696 39.6221;
697 (d) Permanent placement with a fit and willing relative
698 under s. 39.6231; or
699 (e) Placement in another planned permanent living
700 arrangement under s. 39.6241.

701
702 The permanency goal is also the case plan goal. If concurrent
703 case planning is being used, reunification may be pursued at the
704 same time that another permanency goal is pursued.
705 (52) "Permanency plan" means the plan that establishes the
706 placement intended to serve as the child's permanent home.
707 (53) "Permanent guardian" means the relative or other
708 adult in a permanent guardianship of a dependent child under s.
709 39.6221.
710 (54) "Permanent guardianship of a dependent child" means a
711 legal relationship that a court creates under s. 39.6221 between
712 a child and a relative or other adult approved by the court
713 which is intended to be permanent and self-sustaining through
714 the transfer of parental rights with respect to the child
715 relating to protection, education, care, and control of the
716 child, custody of the child, and decisionmaking on behalf of the
717 child.
718 (55) ~~(52)~~ "Physical injury" means death, permanent or
719 temporary disfigurement, or impairment of any bodily part.
720 (56) ~~(53)~~ "Physician" means any licensed physician,
721 dentist, podiatric physician, or optometrist and includes any
722 intern or resident.
723 (57) ~~(54)~~ "Preliminary screening" means the gathering of
724 preliminary information to be used in determining a child's need
725 for further evaluation or assessment or for referral for other
726 substance abuse services through means such as psychosocial
727 interviews; urine and breathalyzer screenings; and reviews of
728 available educational, delinquency, and dependency records of

729 the child.
730 (58) ~~(55)~~ "Preventive services" means social services and
731 other supportive and rehabilitative services provided to the
732 parent or legal custodian of the child and to the child for the
733 purpose of averting the removal of the child from the home or
734 disruption of a family which will or could result in the
735 placement of a child in foster care. Social services and other
736 supportive and rehabilitative services shall promote the child's
737 need for physical, mental, and emotional health and a safe,
738 stable, living environment, shall promote family autonomy, and
739 shall strengthen family life, whenever possible.
740 (59) ~~(56)~~ "Prospective parent" means a person who claims to
741 be, or has been identified as, a person who may be a mother or a
742 father of a child.
743 (60) ~~(57)~~ "Protective investigation" means the acceptance
744 of a report alleging child abuse, abandonment, or neglect, as
745 defined in this chapter, by the central abuse hotline or the
746 acceptance of a report of other dependency by the department;
747 the investigation of each report; the determination of whether
748 action by the court is warranted; the determination of the
749 disposition of each report without court or public agency action
750 when appropriate; and the referral of a child to another public
751 or private agency when appropriate.
752 (61) ~~(58)~~ "Protective investigator" means an authorized
753 agent of the department who receives and investigates reports of
754 child abuse, abandonment, or neglect; who, as a result of the
755 investigation, may recommend that a dependency petition be filed
756 for the child; and who performs other duties necessary to carry

757 out the required actions of the protective investigation
758 function.
759 (62) ~~(59)~~ "Protective supervision" means a legal status in
760 dependency cases which permits the child to remain safely in his
761 or her own home or other nonlicensed placement under the
762 supervision of an agent of the department and which must be
763 reviewed by the court during the period of supervision.
764 (63) ~~(60)~~ "Relative" means a grandparent, great-
765 grandparent, sibling, first cousin, aunt, uncle, great-aunt,
766 great-uncle, niece, or nephew, whether related by the whole or
767 half blood, by affinity, or by adoption. The term does not
768 include a stepparent.
769 (64) ~~(61)~~ "Reunification services" means social services
770 and other supportive and rehabilitative services provided to the
771 parent of the child, to the child, and, where appropriate, to
772 the relative placement, nonrelative placement, or foster parents
773 of the child, for the purpose of enabling a child who has been
774 placed in out-of-home care to safely return to his or her parent
775 at the earliest possible time. The health and safety of the
776 child shall be the paramount goal of social services and other
777 supportive and rehabilitative services. The ~~Such~~ services shall
778 promote the child's need for physical, mental, and emotional
779 health and a safe, stable, living environment, shall promote
780 family autonomy, and shall strengthen family life, whenever
781 possible.
782 (65) ~~(62)~~ "Secretary" means the Secretary of Children and
783 Family Services.
784 (66) ~~(63)~~ "Sexual abuse of a child" means one or more of

785 the following acts:
786 (a) Any penetration, however slight, of the vagina or anal
787 opening of one person by the penis of another person, whether or
788 not there is the emission of semen.
789 (b) Any sexual contact between the genitals or anal
790 opening of one person and the mouth or tongue of another person.
791 (c) Any intrusion by one person into the genitals or anal
792 opening of another person, including the use of any object for
793 this purpose, except that this does not include any act intended
794 for a valid medical purpose.
795 (d) The intentional touching of the genitals or intimate
796 parts, including the breasts, genital area, groin, inner thighs,
797 and buttocks, or the clothing covering them, of either the child
798 or the perpetrator, except that this does not include:
799 1. Any act which may reasonably be construed to be a
800 normal caregiver responsibility, any interaction with, or
801 affection for a child; or
802 2. Any act intended for a valid medical purpose.
803 (e) The intentional masturbation of the perpetrator's
804 genitals in the presence of a child.
805 (f) The intentional exposure of the perpetrator's genitals
806 in the presence of a child, or any other sexual act
807 intentionally perpetrated in the presence of a child, if such
808 exposure or sexual act is for the purpose of sexual arousal or
809 gratification, aggression, degradation, or other similar
810 purpose.
811 (g) The sexual exploitation of a child, which includes
812 allowing, encouraging, or forcing a child to:

813 1. Solicit for or engage in prostitution; or
814 2. Engage in a sexual performance, as defined by chapter
815 827.
816 (67) ~~(64)~~ "Shelter" means a placement with a relative or a
817 nonrelative, or in a licensed home or facility, for the
818 temporary care of a child who is alleged to be or who has been
819 found to be dependent, pending court disposition before or after
820 adjudication.
821 (68) ~~(65)~~ "Shelter hearing" means a hearing in which the
822 court determines whether probable cause exists to keep a child
823 in shelter status pending further investigation of the case.
824 (69) ~~(66)~~ "Social service agency" means the department, a
825 licensed child-caring agency, or a licensed child-placing
826 agency.
827 (70) ~~(67)~~ "Substance abuse" means using, without medical
828 reason, any psychoactive or mood-altering drug, including
829 alcohol, in such a manner as to induce impairment resulting in
830 dysfunctional social behavior.
831 (71) ~~(68)~~ "Substantial compliance" means that the
832 circumstances which caused the creation of the case plan have
833 been significantly remedied to the extent that the well-being
834 and safety of the child will not be endangered upon the child's
835 remaining with or being returned to the child's parent.
836 (72) ~~(69)~~ "Taken into custody" means the status of a child
837 immediately when temporary physical control over the child is
838 attained by a person authorized by law, pending the child's
839 release or placement.
840 (73) ~~(70)~~ "Temporary legal custody" means the relationship

841 that a ~~juvenile~~ court creates between a child and an adult
842 relative of the child, legal custodian, agency, or other person
843 approved by the court until a more permanent arrangement is
844 ordered. Temporary legal custody confers upon the custodian the
845 right to have temporary physical custody of the child and the
846 right and duty to protect, nurture, guide ~~train~~, and discipline
847 the child and to provide the child with food, shelter, and
848 education, and ordinary medical, dental, psychiatric, and
849 psychological care, unless these rights and duties are otherwise
850 enlarged or limited by the court order establishing the
851 temporary legal custody relationship.
852 (74) ~~(71)~~ "Victim" means any child who has sustained or is
853 threatened with physical, mental, or emotional injury identified
854 in a report involving child abuse, neglect, or abandonment, or
855 child-on-child sexual abuse.
856 ~~(72) "Long-term licensed custody" means the relationship~~
857 ~~that a juvenile court order creates between a child and a~~
858 ~~placement licensed by the state to provide residential care for~~
859 ~~dependent children, if the licensed placement is willing and~~
860 ~~able to continue to care for the child until the child reaches~~
861 ~~the age of majority.~~
862 Section 2. Subsection (15) is added to section 39.0121,
863 Florida Statutes, to read:
864 39.0121 Specific rulemaking authority.--Pursuant to the
865 requirements of s. 120.536, the department is specifically
866 authorized to adopt, amend, and repeal administrative rules
867 which implement or interpret law or policy, or describe the
868 procedure and practice requirements necessary to implement this

869 chapter, including, but not limited to, the following:
870 (15) Provision for making available to all physical
871 custodians and family services counselors the information
872 required by s. 39.6012(2) and for ensuring that this information
873 follows the child until permanency has been achieved.
874 Section 3. Section 39.013, Florida Statutes, is amended to
875 read:
876 39.013 Procedures and jurisdiction; right to counsel.--
877 (1) All procedures, including petitions, pleadings,
878 subpoenas, summonses, and hearings, in this chapter shall be
879 conducted according to the Florida Rules of Juvenile Procedure
880 unless otherwise provided by law. Parents must be informed by
881 the court of their right to counsel in dependency proceedings at
882 each stage of the dependency proceedings. Parents who are unable
883 to afford counsel must be appointed counsel.
884 (2) The circuit court has ~~shall have~~ exclusive original
885 jurisdiction of all proceedings under this chapter, of a child
886 voluntarily placed with a licensed child-caring agency, a
887 licensed child-placing agency, or the department, and of the
888 adoption of children whose parental rights have been terminated
889 under this chapter. Jurisdiction attaches when the initial
890 shelter petition, dependency petition, or termination of
891 parental rights petition is filed or when a child is taken into
892 the custody of the department. The circuit court may assume
893 jurisdiction over any such proceeding regardless of whether the
894 child was in the physical custody of both parents, was in the
895 sole legal or physical custody of only one parent, caregiver, or
896 some other person, or was in the physical or legal custody of no

897 person when the event or condition occurred that brought the
898 child to the attention of the court. When the court obtains
899 jurisdiction of any child who has been found to be dependent,
900 the court shall retain jurisdiction, unless relinquished by its
901 order, until the child reaches 18 years of age. However, if a
902 youth petitions the court at any time before his or her 19th
903 birthday requesting the court's continued jurisdiction, the
904 juvenile court may retain jurisdiction under this chapter for a
905 period not to exceed 1 year following the youth's 18th birthday
906 for the purpose of determining whether appropriate aftercare
907 support, Road-to-Independence Scholarship, transitional support,
908 mental health, and developmental disability services, to the
909 extent otherwise authorized by law, have been provided to the
910 formerly dependent child who was in the legal custody of the
911 department immediately before his or her 18th birthday. If a
912 petition for special immigrant juvenile status and an
913 application for adjustment of status have been filed on behalf
914 of a foster child and the petition and application have not been
915 granted by the time the child reaches 18 years of age, the court
916 may retain jurisdiction over the dependency case solely for the
917 purpose of allowing the continued consideration of the petition
918 and application by federal authorities. Review hearings for the
919 child shall be set solely for the purpose of determining the
920 status of the petition and application. The court's jurisdiction
921 terminates upon the final decision of the federal authorities.
922 Retention of jurisdiction in this instance does not affect the
923 services available to a young adult under s. 409.1451. The court
924 may not retain jurisdiction of the case after the immigrant

925 child's 22nd birthday.
926 (3) When a child is under the jurisdiction of the circuit
927 court pursuant to ~~the provisions of~~ this chapter, the circuit
928 court assigned to handle dependency matters may exercise the
929 general and equitable jurisdiction over guardianship proceedings
930 under ~~pursuant to the provisions of~~ chapter 744 and proceedings
931 for temporary custody of minor children by extended family under
932 ~~pursuant to the provisions of~~ chapter 751.
933 (4) Orders entered pursuant to this chapter which affect
934 the placement of, access to, parental time with, adoption of, or
935 parental rights and responsibilities for a minor child shall
936 take precedence over other orders entered in civil actions or
937 proceedings. However, if the court has terminated jurisdiction,
938 the ~~such~~ order may be subsequently modified by a court of
939 competent jurisdiction in any other civil action or proceeding
940 affecting placement of, access to, parental time with, adoption
941 of, or parental rights and responsibilities for the same minor
942 child.
943 (5) The court shall expedite the resolution of the
944 placement issue in cases involving a child who has been removed
945 from the parent and placed in an out-of-home placement.
946 (6) The court shall expedite the judicial handling of all
947 cases when the child has been removed from the parent and placed
948 in an out-of-home placement.
949 (7) Children removed from their homes shall be provided
950 equal treatment with respect to goals, objectives, services, and
951 case plans, without regard to the location of their placement.
952 (8) For any child who remains in the custody of the

953 department, the court shall, within the month which constitutes
954 the beginning of the 6-month period before the child's 18th
955 birthday, hold a hearing to review the progress of the child
956 while in the custody of the department.
957 (9)(a) At each stage of the proceedings under this
958 chapter, the court shall advise the parents of the right to
959 counsel. The court shall appoint counsel for indigent parents.
960 The court shall ascertain whether the right to counsel is
961 understood. When right to counsel is waived, the court shall
962 determine whether the waiver is knowing and intelligent. The
963 court shall enter its findings in writing with respect to the
964 appointment or waiver of counsel for indigent parents or the
965 waiver of counsel by nonindigent parents.
966 (b) Once counsel has entered an appearance or been
967 appointed by the court to represent the parent of the child, the
968 attorney shall continue to represent the parent throughout the
969 proceedings. If the attorney-client relationship is
970 discontinued, the court shall advise the parent of the right to
971 have new counsel retained or appointed for the remainder of the
972 proceedings.
973 (c)1. A ~~No~~ waiver of counsel may not be accepted if it
974 appears that the parent is unable to make an intelligent and
975 understanding choice because of mental condition, age,
976 education, experience, the nature or complexity of the case, or
977 other factors.
978 2. A waiver of counsel made in court must be of record.
979 3. If a waiver of counsel is accepted at any hearing or
980 proceeding, the offer of assistance of counsel must be renewed

981 by the court at each subsequent stage of the proceedings at
982 which the parent appears without counsel.
983 (d) This subsection does not apply to any parent who has
984 voluntarily executed a written surrender of the child and
985 consents to the entry of a court order terminating parental
986 rights.
987 ~~(10) The time limitations in this chapter do not include:~~
988 ~~(a) Periods of delay resulting from a continuance granted~~
989 ~~at the request or with the consent of the child's counsel or the~~
990 ~~child's guardian ad litem, if one has been appointed by the~~
991 ~~court, or, if the child is of sufficient capacity to express~~
992 ~~reasonable consent, at the request or with the consent of the~~
993 ~~child.~~
994 ~~(b) Periods of delay resulting from a continuance granted~~
995 ~~at the request of any party, if the continuance is granted:~~
996 ~~1. Because of an unavailability of evidence material to~~
997 ~~the case when the requesting party has exercised due diligence~~
998 ~~to obtain such evidence and there are substantial grounds to~~
999 ~~believe that such evidence will be available within 30 days.~~
1000 ~~However, if the requesting party is not prepared to proceed~~
1001 ~~within 30 days, any other party, inclusive of the parent or~~
1002 ~~legal custodian, may move for issuance of an order to show cause~~
1003 ~~or the court on its own motion may impose appropriate sanctions,~~
1004 ~~which may include dismissal of the petition.~~
1005 ~~2. To allow the requesting party additional time to~~
1006 ~~prepare the case and additional time is justified because of an~~
1007 ~~exceptional circumstance.~~
1008 ~~(c) Reasonable periods of delay necessary to accomplish~~

1009 ~~notice of the hearing to the child's parent or legal custodian;~~
1010 ~~however, the petitioner shall continue regular efforts to~~
1011 ~~provide notice to the parents during such periods of delay.~~
1012 ~~(d) Reasonable periods of delay resulting from a~~
1013 ~~continuance granted at the request of the parent or legal~~
1014 ~~custodian of a subject child.~~
1015 ~~(e) Notwithstanding the foregoing, continuances and~~
1016 ~~extensions of time are limited to the number of days absolutely~~
1017 ~~necessary to complete a necessary task in order to preserve the~~
1018 ~~rights of a party or the best interests of a child. Time is of~~
1019 ~~the essence for the best interests of dependent children in~~
1020 ~~conducting dependency proceedings in accordance with the time~~
1021 ~~limitations set forth in this chapter. Time limitations are a~~
1022 ~~right of the child which may not be waived, extended, or~~
1023 ~~continued at the request of any party in advance of the~~
1024 ~~particular circumstances or need arising upon which delay of the~~
1025 ~~proceedings may be warranted.~~
1026 ~~(f) Continuances or extensions of time may not total more~~
1027 ~~than 60 days for all parties within any 12-month period during~~
1028 ~~proceedings under this chapter. A continuance or extension of~~
1029 ~~time beyond the 60 days may be granted only for extraordinary~~
1030 ~~circumstances necessary to preserve the constitutional rights of~~
1031 ~~a party or when substantial evidence demonstrates that the~~
1032 ~~child's best interests will be affirmatively harmed without the~~
1033 ~~granting of a continuance or extension of time.~~
1034 (10) ~~(11)~~ Court-appointed counsel representing indigent
1035 parents at shelter hearings shall be paid from state funds
1036 appropriated by general law.

1037 (11) ~~(12)~~ The court shall encourage the Statewide Guardian
1038 Ad Litem Office to provide greater representation to those
1039 children who are within 1 year of transferring out of foster
1040 care.
1041 Section 4. Section 39.0136, Florida Statutes, is created
1042 to read:
1043 39.0136 Time limitations; continuances.--
1044 (1) The Legislature finds that time is of the essence for
1045 establishing permanency for a child in the dependency system.
1046 Time limitations are a right of the child which may not be
1047 waived, extended, or continued at the request of any party
1048 except as provided in this section.
1049 (2) The time limitations in this chapter do not include:
1050 (a) Periods of delay resulting from a continuance granted
1051 at the request of the child's counsel or the child's guardian ad
1052 litem or, if the child is of sufficient capacity to express
1053 reasonable consent, at the request or with the consent of the
1054 child. The court must consider the best interest of the child
1055 when determining periods of delay under this section.
1056 (b) Periods of delay resulting from a continuance granted
1057 at the request of any party if the continuance is granted:
1058 1. Because of an unavailability of evidence that is
1059 material to the case if the requesting party has exercised due
1060 diligence to obtain evidence and there are substantial grounds
1061 to believe that the evidence will be available within 30 days.
1062 However, if the requesting party is not prepared to proceed
1063 within 30 days, any other party may move for issuance of an
1064 order to show cause or the court, on its own motion, may impose

1065 appropriate sanctions, which may include dismissal of the
1066 petition.
1067 2. To allow the requesting party additional time to
1068 prepare the case and additional time is justified because of an
1069 exceptional circumstance.
1070 (c) Reasonable periods of delay necessary to accomplish
1071 notice of the hearing to the child's parent or legal custodian;
1072 however, the petitioner shall continue regular efforts to
1073 provide notice to the parents during the periods of delay.
1074 (3) Notwithstanding subsection (2), in order to expedite
1075 permanency for a child, the total time allowed for continuances
1076 or extensions of time may not exceed 60 days within any 12-month
1077 period for proceedings conducted under this chapter. A
1078 continuance or extension of time may be granted only for
1079 extraordinary circumstances in which it is necessary to preserve
1080 the constitutional rights of a party or if substantial evidence
1081 exists to demonstrate that without granting a continuance or
1082 extension of time the child's best interest will be harmed.
1083 (4) Notwithstanding subsection (2), a continuance or an
1084 extension of time is limited to the number of days absolutely
1085 necessary to complete a necessary task in order to preserve the
1086 rights of a party or the best interest of a child.
1087 Section 5. Section 39.0137, Florida Statutes, is created
1088 to read:
1089 39.0137 Federal law; rulemaking authority.--
1090 (1) This chapter does not supersede the requirements of
1091 the Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., or the
1092 Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as

1093 amended, or the implementing regulations.
1094 (2) The department shall adopt rules no later than July 1,
1095 2007, to ensure that the provisions of these federal laws are
1096 enforced in this state. The department is encouraged to enter
1097 into agreements with recognized American Indian tribes in order
1098 to facilitate the implementation of the Indian Child Welfare
1099 Act.
1100 Section 6. Section 39.0138, Florida Statutes, is created
1101 to read:
1102 39.0138 Requirements for placement of children; exemptions
1103 from disqualification.--
1104 (1)(a) The department may conduct criminal records checks
1105 equivalent to the level 2 screening required in s. 435.04 for
1106 any person being considered by the department for approval for
1107 placement of a child subject to a placement decision under this
1108 chapter. Approval for placement with any person other than a
1109 parent may not be granted in any case in which a criminal
1110 records check reveals a felony conviction in a court of
1111 competent jurisdiction for:
1112 1. Child abuse, abandonment, or neglect; spousal abuse; a
1113 crime against children, including child pornography, or a crime
1114 involving violence, including sexual battery, sexual assault, or
1115 homicide, but not including other physical assault or battery,
1116 if the felony was committed at any time; or
1117 2. Physical assault, battery, or a drug-related offense if
1118 the felony was committed within the past 5 years.
1119 (b) Notwithstanding paragraph (a), the department may
1120 place a child in a home that otherwise meets placement

1121 requirements if state and local criminal records checks do not
1122 disqualify the applicant and if the department has submitted
1123 fingerprint information to the Department of Law Enforcement for
1124 forwarding to the Federal Bureau of Investigation and is
1125 awaiting the results of the federal criminal records check.
1126 (c) Persons with whom placement of a child is being
1127 considered or approved must disclose to the department any prior
1128 or pending local, state, or federal criminal proceedings in
1129 which they are or have been involved.
1130 (d) The results of any criminal records check of a parent
1131 conducted under this section must be considered in determining
1132 whether placement with the parent will jeopardize the safety of
1133 the child being placed.
1134 (2)(a) The court may review the decision of the department
1135 to grant or deny an exemption upon the motion of any party, the
1136 request of any person who has been denied an exemption by the
1137 department, or on its own motion. The court shall prepare
1138 written findings to support its decision in this matter.
1139 (b) A person seeking placement of a child when the
1140 department has denied the placement based on a disqualifying
1141 criminal offense has the burden of setting forth sufficient
1142 evidence of rehabilitation, including, but not limited to, the
1143 circumstances surrounding the incident for which an exemption
1144 from disqualification is sought, the time period that has
1145 elapsed since the incident, the nature of the harm caused to the
1146 victim, the history of the person since the incident, and any
1147 other evidence or circumstances indicating that the person will
1148 not present a danger if the placement of the child is allowed.

1149 Section 7. Paragraph (a) of subsection (1), paragraph (a)
1150 of subsection (2), and subsection (5) of section 39.201, Florida
1151 Statutes, are amended to read:
1152 39.201 Mandatory reports of child abuse, abandonment, or
1153 neglect; mandatory reports of death; central abuse hotline.--
1154 (1)(a) Any person who knows, or has reasonable cause to
1155 suspect, that a child is abused, abandoned, or neglected by a
1156 parent, legal custodian, caregiver, or other person responsible
1157 for the child's welfare, as defined in this chapter, <u>or that a</u>
1158 <u>child is in need of supervision and care and has no parent,</u>
1159 <u>legal custodian, or responsible adult relative immediately known</u>
1160 <u>and available to provide supervision and care</u> shall report such
1161 knowledge or suspicion to the department in the manner
1162 prescribed in subsection (2).
1163 (2)(a) Each report of known or suspected child abuse,
1164 abandonment, or neglect by a parent, legal custodian, caregiver,
1165 or other person responsible for the child's welfare as defined
1166 in this chapter, except those solely under s. 827.04(3), <u>and</u>
1167 <u>each report that a child is in need of supervision and care and</u>
1168 <u>has no parent, legal custodian, or responsible adult relative</u>
1169 <u>immediately known and available to provide supervision and care</u>
1170 shall be made immediately to the department's central abuse
1171 hotline on the single statewide toll-free telephone number.
1172 Personnel at the department's central abuse hotline shall
1173 determine if the report received meets the statutory definition
1174 of child abuse, abandonment, or neglect. Any report meeting one
1175 of these definitions shall be accepted for the protective
1176 investigation pursuant to part III of this chapter.

1177 (5) The department shall be capable of receiving and
1178 investigating, 24 hours a day, 7 days a week, reports of known
1179 or suspected child abuse, abandonment, or neglect and reports
1180 that a child is in need of supervision and care and has no
1181 parent, legal custodian, or responsible adult relative
1182 immediately known and available to provide supervision and care
1183 ~~24 hours a day, 7 days a week~~. If it appears that the immediate
1184 safety or well-being of a child is endangered, that the family
1185 may flee or the child will be unavailable for purposes of
1186 conducting a child protective investigation, or that the facts
1187 otherwise so warrant, the department shall commence an
1188 investigation immediately, regardless of the time of day or
1189 night. In all other child abuse, abandonment, or neglect cases,
1190 a child protective investigation shall be commenced within 24
1191 hours after receipt of the report. In an institutional
1192 investigation, the alleged perpetrator may be represented by an
1193 attorney, at his or her own expense, or accompanied by another
1194 person, if the person or the attorney executes an affidavit of
1195 understanding with the department and agrees to comply with the
1196 confidentiality provisions of s. 39.202. The absence of an
1197 attorney or other person does not prevent the department from
1198 proceeding with other aspects of the investigation, including
1199 interviews with other persons. In institutional child abuse
1200 cases when the institution is not operating and the child cannot
1201 otherwise be located, the investigation shall commence
1202 immediately upon the resumption of operation. If requested by a
1203 state attorney or local law enforcement agency, the department
1204 shall furnish all investigative reports to that agency.

1205 Section 8. Subsections (1), (2), (5), and (22) of section
1206 39.301, Florida Statutes, are amended, and subsection (23) is
1207 added to that section, to read:
1208 39.301 Initiation of protective investigations.--
1209 (1) Upon receiving an oral or written report of known or
1210 suspected child abuse, abandonment, or neglect, or that a child
1211 is in need of supervision and care and has no parent, legal
1212 custodian, or responsible adult relative immediately known and
1213 available to provide supervision and care, the central abuse
1214 hotline shall determine if the report requires an immediate
1215 onsite protective investigation. For reports requiring an
1216 immediate onsite protective investigation, the central abuse
1217 hotline shall immediately notify the department's designated
1218 children and families district staff responsible for protective
1219 investigations to ensure that an onsite investigation is
1220 promptly initiated. For reports not requiring an immediate
1221 onsite protective investigation, the central abuse hotline shall
1222 notify the department's designated children and families
1223 district staff responsible for protective investigations in
1224 sufficient time to allow for an investigation. At the time of
1225 notification of district staff with respect to the report, the
1226 central abuse hotline shall also provide information on any
1227 previous report concerning a subject of the present report or
1228 any pertinent information relative to the present report or any
1229 noted earlier reports.
1230 (2)(a) The department shall immediately forward
1231 allegations of criminal conduct to the municipal or county law
1232 enforcement agency of the municipality or county in which the

1233 alleged conduct has occurred.
1234 (b) As used in this subsection, the term "criminal
1235 conduct" means:
1236 1. A child is known or suspected to be the victim of child
1237 abuse, as defined in s. 827.03, or of neglect of a child, as
1238 defined in s. 827.03.
1239 2. A child is known or suspected to have died as a result
1240 of abuse or neglect.
1241 3. A child is known or suspected to be the victim of
1242 aggravated child abuse, as defined in s. 827.03.
1243 4. A child is known or suspected to be the victim of
1244 sexual battery, as defined in s. 827.071, or of sexual abuse, as
1245 defined in s. 39.01.
1246 5. A child is known or suspected to be the victim of
1247 institutional child abuse or neglect, as defined in s. 39.01,
1248 and as provided for in s. 39.302(1).
1249 6. A child is known or suspected to be a victim of human
1250 trafficking, as provided in s. 787.06.
1251 (c) Upon receiving a written report of an allegation of
1252 criminal conduct from the department, the law enforcement agency
1253 shall review the information in the written report to determine
1254 whether a criminal investigation is warranted. If the law
1255 enforcement agency accepts the case for criminal investigation,
1256 it shall coordinate its investigative activities with the
1257 department, whenever feasible. If the law enforcement agency
1258 does not accept the case for criminal investigation, the agency
1259 shall notify the department in writing.
1260 (d) The local law enforcement agreement required in s.

1261 39.306 shall describe the specific local protocols for
1262 implementing this section.
1263 (5)(a) Upon commencing an investigation under this part,
1264 the child protective investigator shall inform any subject of
1265 the investigation of the following:
1266 1. The names of the investigators and identifying
1267 credentials from the department.
1268 2. The purpose of the investigation.
1269 3. The right to obtain his or her own attorney and ways
1270 that the information provided by the subject may be used.
1271 4. The possible outcomes and services of the department's
1272 response, which shall be explained to the parent or legal
1273 custodian.
1274 5. The right of the parent or legal custodian to be
1275 involved to the fullest extent possible in determining the
1276 nature of the allegation and the nature of any identified
1277 problem.
1278 6. The duty of the parent or legal custodian to report any
1279 change in the residence or location of the child to the
1280 investigator and that the duty to report continues until the
1281 investigation is closed.
1282 (b) The department's training program shall ensure that
1283 protective investigators know how to fully inform parents or
1284 legal custodians of their rights and options, including
1285 opportunities for audio or video recording of investigators'
1286 interviews with parents or legal custodians or children.
1287 (22) When an investigation is closed and a person is not
1288 identified as a caregiver responsible for the abuse, neglect, or

1289 abandonment alleged in the report, the fact that the person is
1290 named in some capacity in the report may not be used in any way
1291 to adversely affect the interests of that person. This
1292 prohibition applies to any use of the information in employment
1293 screening, licensing, child placement, adoption, or any other
1294 decisions by a private adoption agency or a state agency or its
1295 contracted providers, except that a previous report may be used
1296 to determine whether a child is safe and what the known risk is
1297 to the child at any stage of a child protection proceeding.
1298 (23) If, after having been notified of the requirement to
1299 report a change in residence or location of the child to the
1300 protective investigator, a parent or legal custodian causes the
1301 child to move, or allows the child to be moved, to a different
1302 residence or location, or if the child leaves the residence on
1303 his or her own accord and the parent or legal custodian does not
1304 notify the protective investigator of the move within 2 business
1305 days, the child may be considered to be a missing child for the
1306 purposes of filing a report with a law enforcement agency under
1307 s. 937.021.
1308 Section 9. Subsection (2) of section 39.303, Florida
1309 Statutes, is amended to read:
1310 39.303 Child protection teams; services; eligible
1311 cases.--The Children's Medical Services Program in the
1312 Department of Health shall develop, maintain, and coordinate the
1313 services of one or more multidisciplinary child protection teams
1314 in each of the service districts of the Department of Children
1315 and Family Services. Such teams may be composed of appropriate
1316 representatives of school districts and appropriate health,

1317 mental health, social service, legal service, and law
1318 enforcement agencies. The Legislature finds that optimal
1319 coordination of child protection teams and sexual abuse
1320 treatment programs requires collaboration between the Department
1321 of Health and the Department of Children and Family Services.
1322 The two departments shall maintain an interagency agreement that
1323 establishes protocols for oversight and operations of child
1324 protection teams and sexual abuse treatment programs. The
1325 Secretary of Health and the Deputy Secretary for Children's
1326 Medical Services, in consultation with the Secretary of Children
1327 and Family Services, shall maintain the responsibility for the
1328 screening, employment, and, if necessary, the termination of
1329 child protection team medical directors, at headquarters and in
1330 the 15 districts. Child protection team medical directors shall
1331 be responsible for oversight of the teams in the districts.
1332 (2) The child abuse, abandonment, and neglect reports that
1333 must be referred by the department ~~of Children and Family~~
1334 ~~Services~~ to child protection teams of the Department of Health
1335 for an assessment and other appropriate available support
1336 services as set forth in subsection (1) must include cases
1337 involving:
1338 (a) Injuries to the head, bruises to the neck or head,
1339 burns, or fractures in a child of any age.
1340 (b) Bruises anywhere on a child 5 years of age or under.
1341 (c) Any report alleging sexual abuse of a child ~~in which~~
1342 ~~vaginal or anal penetration is alleged or in which other~~
1343 ~~unlawful sexual conduct has been determined to have occurred~~.
1344 (d) Any sexually transmitted disease in a prepubescent

1345 child.
1346 (e) Reported malnutrition of a child and failure of a
1347 child to thrive.
1348 (f) Reported medical neglect of a child.
1349 (g) Any family in which one or more children have been
1350 pronounced dead on arrival at a hospital or other health care
1351 facility, or have been injured and later died, as a result of
1352 suspected abuse, abandonment, or neglect, when any sibling or
1353 other child remains in the home.
1354 (h) Symptoms of serious emotional problems in a child when
1355 emotional or other abuse, abandonment, or neglect is suspected.
1356 Section 10. Subsections (10) and (16) of section 39.402,
1357 Florida Statutes, are amended, and subsections (17) and (18) are
1358 added to that section, to read:
1359 39.402 Placement in a shelter.--
1360 (10)(a) The shelter hearing order shall contain a written
1361 determination as to whether the department has made a reasonable
1362 effort to prevent or eliminate the need for removal or continued
1363 removal of the child from the home. This determination must
1364 include a description of which specific services, if available,
1365 could prevent or eliminate the need for removal or continued
1366 removal from the home and the date by which the services are
1367 expected to become available.
1368 (b) If services are not available to prevent or eliminate
1369 the need for removal or continued removal of the child from the
1370 home, the written determination must also contain a explanation
1371 describing why the services are not available for the child.
1372 (c) If the department has not made ~~such~~ an effort to

1373 prevent or eliminate the need for removal, the court shall order
1374 the department to provide appropriate and available services to
1375 ensure the protection of the child in the home when the ~~such~~
1376 services are necessary for the child's health and safety.
1377 (16) At the conclusion of a shelter hearing, the court
1378 shall:
1379 (a) Notify all parties in writing of the next scheduled
1380 hearing to review the shelter placement. The ~~Such~~ hearing shall
1381 be held no later than 30 days after placement of the child in
1382 shelter status, in conjunction with the arraignment hearing, and
1383 at such times as are otherwise provided by law or determined by
1384 the court to be necessary; and~~.~~
1385 (b) Notify all parties in writing of the date, time, and
1386 place of the case plan conference, family team conference, or
1387 mediation that will be used to develop the case plan. The case
1388 plan conference, family team conference, or mediation must take
1389 place no later than 30 days after placing the child in shelter
1390 status.
1391 (17) At the shelter hearing, the court shall inquire of
1392 the parent whether the parent has relatives who might be
1393 considered as a placement for the child. The parent shall
1394 provide to the court and all parties identification and location
1395 information regarding the relatives. The court shall advise the
1396 parent that the parent has a continuing duty to inform the
1397 department of any relative who should be considered as a
1398 placement for the child.
1399 (18) The court shall advise the parents that, if the
1400 parents fail to substantially comply with the case plan, their

1401 parental rights may be terminated and that the child's out-of-
1402 home placement may become permanent.
1403 Section 11. Present subsections (7) and (8) of section
1404 39.507, Florida Statutes, are redesignated as subsections (8)
1405 and (9), respectively, and a new subsection (7) is added to that
1406 section, to read:
1407 39.507 Adjudicatory hearings; orders of adjudication.--
1408 (7) If a court adjudicates a child dependent and the child
1409 is in out-of-home care, the court shall inquire of the parent or
1410 parents whether the parents have relatives who might be
1411 considered as a placement for the child. The court shall advise
1412 the parents that, if the parents fail to substantially comply
1413 with the case plan, their parental rights may be terminated and
1414 that the child's out-of-home placement may become permanent. The
1415 parent or parents shall provide to the court and all parties
1416 identification and location information of the relatives.
1417 Section 12. Paragraph (c) of subsection (1) and paragraph
1418 (a) of subsection (2) of section 39.5085, Florida Statutes, are
1419 amended to read:
1420 39.5085 Relative Caregiver Program.--
1421 (1) It is the intent of the Legislature in enacting this
1422 section to:
1423 (c) Recognize that permanency in the best interests of the
1424 child can be achieved through a variety of permanency options,
1425 including permanent guardianship under s. 39.6221 if the
1426 guardian is a relative, permanent placement with a fit and
1427 willing relative ~~long-term relative custody~~, guardianship under
1428 chapter 744, or adoption, by providing additional placement

1429 options and incentives that will achieve permanency and
1430 stability for many children who are otherwise at risk of foster
1431 care placement because of abuse, abandonment, or neglect, but
1432 who may successfully be able to be placed by the dependency
1433 court in the care of such relatives.
1434 (2)(a) The Department of Children and Family Services
1435 shall establish and operate the Relative Caregiver Program under
1436 ~~pursuant to~~ eligibility guidelines established in this section
1437 as further implemented by rule of the department. The Relative
1438 Caregiver Program shall, within the limits of available funding,
1439 provide financial assistance to:
1440 1. Relatives who are within the fifth degree by blood or
1441 marriage to the parent or stepparent of a child and who are
1442 caring full-time for that dependent child in the role of
1443 substitute parent as a result of a court's determination of
1444 child abuse, neglect, or abandonment and subsequent placement
1445 with the relative under ~~pursuant to~~ this chapter.
1446 2. Relatives who are within the fifth degree by blood or
1447 marriage to the parent or stepparent of a child and who are
1448 caring full-time for that dependent child, and a dependent half-
1449 brother or half-sister of that dependent child, in the role of
1450 substitute parent as a result of a court's determination of
1451 child abuse, neglect, or abandonment and subsequent placement
1452 with the relative under ~~pursuant to~~ this chapter.
1453
1454 The ~~Such~~ placement may be either court-ordered temporary legal
1455 custody to the relative under protective supervision of the
1456 department under ~~pursuant to~~ s. 39.521(1)(b)3., or court-ordered

1457 placement in the home of a relative as a permanency option under
1458 s. 39.6221 or s. 39.6231, or under former ~~pursuant to~~ s. 39.622.
1459 The Relative Caregiver Program shall offer financial assistance
1460 to caregivers who are relatives and who would be unable to serve
1461 in that capacity without the relative caregiver payment because
1462 of financial burden, thus exposing the child to the trauma of
1463 placement in a shelter or in foster care.
1464 Section 13. Paragraph (d) of subsection (1) of section
1465 39.521, Florida Statutes, is amended to read:
1466 39.521 Disposition hearings; powers of disposition.--
1467 (1) A disposition hearing shall be conducted by the court,
1468 if the court finds that the facts alleged in the petition for
1469 dependency were proven in the adjudicatory hearing, or if the
1470 parents or legal custodians have consented to the finding of
1471 dependency or admitted the allegations in the petition, have
1472 failed to appear for the arraignment hearing after proper
1473 notice, or have not been located despite a diligent search
1474 having been conducted.
1475 (d) The court shall, in its written order of disposition,
1476 include all of the following:
1477 1. The placement or custody of the child.
1478 2. Special conditions of placement and visitation.
1479 3. Evaluation, counseling, treatment activities, and other
1480 actions to be taken by the parties, if ordered.
1481 4. The persons or entities responsible for supervising or
1482 monitoring services to the child and parent.
1483 5. Continuation or discharge of the guardian ad litem, as
1484 appropriate.

1485 6. The date, time, and location of the next scheduled
1486 review hearing, which must occur within the earlier of:
1487 a. Ninety days after the disposition hearing;
1488 b. Ninety days after the court accepts the case plan;
1489 c. Six months after the date of the last review hearing;
1490 or
1491 d. Six months after the date of the child's removal from
1492 his or her home, if no review hearing has been held since the
1493 child's removal from the home.
1494 7. If the child is in an out-of-home placement, child
1495 support to be paid by the parents, or the guardian of the
1496 child's estate if possessed of assets which under law may be
1497 disbursed for the care, support, and maintenance of the child.
1498 The court may exercise jurisdiction over all child support
1499 matters, shall adjudicate the financial obligation, including
1500 health insurance, of the child's parents or guardian, and shall
1501 enforce the financial obligation as provided in chapter 61. The
1502 state's child support enforcement agency shall enforce child
1503 support orders under this section in the same manner as child
1504 support orders under chapter 61. Placement of the child shall
1505 not be contingent upon issuance of a support order.
1506 8.a. If the court does not commit the child to the
1507 temporary legal custody of an adult relative, legal custodian,
1508 or other adult approved by the court, the disposition order
1509 shall include the reasons for such a decision and shall include
1510 a determination as to whether diligent efforts were made by the
1511 department to locate an adult relative, legal custodian, or
1512 other adult willing to care for the child in order to present

1513 that placement option to the court instead of placement with the
1514 department.
1515 b. If ~~diligent efforts are made to locate an adult~~
1516 ~~relative willing and able to care for the child but, because~~ no
1517 suitable relative is found and~~,~~ the child is placed with the
1518 department or a legal custodian or other adult approved by the
1519 court, both the department and the court shall consider
1520 transferring temporary legal custody to an adult relative
1521 approved by the court at a later date, but neither the
1522 department nor the court is obligated to so place the child if
1523 it is in the child's best interest to remain in the current
1524 placement.
1525
1526 For the purposes of this subparagraph, "diligent efforts to
1527 locate an adult relative" means a search similar to the diligent
1528 search for a parent, but without the continuing obligation to
1529 search after an initial adequate search is completed.
1530 9. Other requirements necessary to protect the health,
1531 safety, and well-being of the child, to preserve the stability
1532 of the child's educational placement, and to promote family
1533 preservation or reunification whenever possible.
1534 Section 14. Subsection (1) of section 39.522, Florida
1535 Statutes, is amended to read:
1536 39.522 Postdisposition change of custody.--The court may
1537 change the temporary legal custody or the conditions of
1538 protective supervision at a postdisposition hearing, without the
1539 necessity of another adjudicatory hearing.
1540 (1) A child who has been placed in the child's own home

1541 under the protective supervision of an authorized agent of the
1542 department, in the home of a relative, in the home of a legal
1543 custodian, or in some other place may be brought before the
1544 court by the department or by any other interested person, upon
1545 the filing of a petition alleging a need for a change in the
1546 conditions of protective supervision or the placement. If the
1547 parents or other legal custodians deny the need for a change,
1548 the court shall hear all parties in person or by counsel, or
1549 both. Upon the admission of a need for a change or after such
1550 hearing, the court shall enter an order changing the placement,
1551 modifying the conditions of protective supervision, or
1552 continuing the conditions of protective supervision as ordered.
1553 The standard for changing custody of the child shall be the best
1554 interest of the child. When applying this standard, the court
1555 shall consider the continuity of the child's placement in the
1556 same out-of-home residence as a factor when determining the best
1557 interest of the child. If the child is not placed in foster
1558 care, then the new placement for the child must meet the home
1559 study criteria and court approval pursuant to this chapter.
1560 Section 15. Section 39.6011, Florida Statutes, is created
1561 to read:
1562 39.6011 Case plan development.--
1563 (1) The department shall prepare a draft of the case plan
1564 for each child receiving services under this chapter. A parent
1565 of a child may not be threatened or coerced with the loss of
1566 custody or parental rights for failing to admit in the case plan
1567 to abusing, neglecting, or abandoning a child. Participating in
1568 the development of a case plan is not an admission to any

1569 allegation of abuse, abandonment, or neglect, and it is not a
1570 consent to a finding of dependency or termination of parental
1571 rights. The case plan shall be developed subject to the
1572 following requirements:
1573 (a) The case plan must be developed in a face-to-face
1574 conference with the parent of the child, any court-appointed
1575 guardian ad litem, and, if appropriate, the child and the
1576 temporary custodian of the child. The conference to prepare a
1577 case plan must be scheduled under s. 39.402(16)(b) and must be
1578 conducted according to one of the following procedures:
1579 1. A case plan conference that is a meeting among the
1580 parties described in this subsection.
1581 2. A mediation if dependency mediation services are
1582 available and appropriate and in the best interest of the child.
1583 3. A family team conference if a family team conference is
1584 available.
1585 (b) The parent may receive assistance from any person or
1586 social service agency in preparing the case plan. The social
1587 service agency, the department, and the court, when applicable,
1588 shall inform the parent of the right to receive such assistance,
1589 including the right to assistance of counsel.
1590 (c) If a parent is unwilling or unable to participate in
1591 developing a case plan, the department shall document that
1592 unwillingness or inability to participate. The documentation
1593 must be provided in writing to the parent when available for the
1594 court record, and the department shall prepare a case plan
1595 conforming as nearly as possible with the requirements set forth
1596 in this section. The unwillingness or inability of the parent to

1597 participate in developing a case plan does not preclude the
1598 filing of a petition for dependency or for termination of
1599 parental rights. The parent, if available, must be provided a
1600 copy of the case plan and be advised that he or she may, at any
1601 time before the filing of a petition for termination of parental
1602 rights, enter into a case plan and that he or she may request
1603 judicial review of any provision of the case plan with which he
1604 or she disagrees at any court hearing set for the child.
1605 (2) The case plan must be written simply and clearly in
1606 English and, if English is not the principal language of the
1607 child's parent, to the extent possible in the parent's principal
1608 language. Each case plan must contain:
1609 (a) A description of the identified problem being
1610 addressed, including the parent's behavior or acts resulting in
1611 risk to the child and the reason for the intervention by the
1612 department.
1613 (b) The permanency goal as defined in s. 39.01(51).
1614 (c) If concurrent planning is being used, a description of
1615 the permanency goal of reunification with the parent or legal
1616 custodian in addition to a description of one of the remaining
1617 permanency goals described in s. 39.01(51).
1618 (d) The date the compliance period expires. The case plan
1619 must be limited to as short a period as possible for
1620 accomplishing its provisions. The plan's compliance period
1621 expires no later than 12 months after the date the child was
1622 initially removed from the home or the date the case plan was
1623 accepted by the court, whichever occurs sooner.
1624 (e) A written notice to the parent that failure of the

1625 parent to substantially comply with the case plan may result in
1626 the termination of parental rights and that a material breach of
1627 the case plan may result in the filing of a petition for
1628 termination of parental rights sooner than the compliance period
1629 set forth in the case plan.
1630 (3) The case plan must be signed by all parties, except
1631 that the signature of a child may be waived if the child is not
1632 of an age or capacity to participate in the case planning
1633 process. Signing the case plan constitutes an acknowledgement
1634 that the case plan has been developed by the parties and that
1635 they are in agreement as to the terms and conditions contained
1636 in the case plan. The refusal of a parent to sign the case plan
1637 does not prevent the court from accepting the case plan if the
1638 case plan is otherwise acceptable to the court. Signing the case
1639 plan does not constitute an admission to any allegation of
1640 abuse, abandonment, or neglect and does not constitute consent
1641 to a finding of dependency or termination of parental rights.
1642 Before signing the case plan, the department shall explain the
1643 provisions of the plan to all persons involved in its
1644 implementation, including, when appropriate, the child.
1645 (4) The case plan must describe:
1646 (a) The role of the foster parents or legal custodians
1647 when developing the services that are to be provided to the
1648 child, foster parents, or legal custodians.
1649 (b) The minimum number of face-to-face meetings to be held
1650 each month between the parents and the department's family
1651 services counselors to review the progress of the plan, to
1652 eliminate barriers to progress, and to resolve conflicts or

1653 disagreements.
1654 (c) The parent's responsibility for financial support of
1655 the child, including, but not limited to, health insurance and
1656 child support. The case plan must list the costs associated with
1657 any services or treatment that the parent and child are expected
1658 to receive which are the financial responsibility of the parent.
1659 The determination of child support and other financial support
1660 shall be made independently of any determination of indigency
1661 under s. 39.013.
1662 (5) When the permanency goal for a child is adoption, the
1663 case plan must include documentation of the steps the agency is
1664 taking to find an adoptive family or other permanent living
1665 arrangement for the child. At a minimum, the documentation shall
1666 include recruitment efforts that are specific to the child, such
1667 as the use of state, regional, and national adoption exchanges,
1668 including electronic exchange systems.
1669 (6) After the case plan has been developed, the department
1670 shall adhere to the following procedural requirements:
1671 (a) If the parent's substantial compliance with the case
1672 plan requires the department to provide services to the parents
1673 or the child and the parents agree to begin compliance with the
1674 case plan before the case plan's acceptance by the court, the
1675 department shall make the appropriate referrals for services
1676 that will allow the parents to immediately begin the agreed upon
1677 tasks and services.
1678 (b) After the case plan has been agreed upon and signed by
1679 the parties, a copy of the plan must immediately be given to the
1680 parties, including the child, if appropriate, and to other

1681 persons as directed by the court.
1682 1. A case plan must be prepared, but need not be submitted
1683 to the court, for a child who will be in care no longer than 30
1684 days unless that child is placed in out-of-home care a second
1685 time within a 12-month period.
1686 2. In each case in which a child has been placed in out-
1687 of-home care, a case plan must be prepared within 60 days after
1688 the department removes the child from the home and shall be
1689 submitted to the court before the disposition hearing for the
1690 court to review and approve.
1691 3. After jurisdiction attaches, all case plans must be
1692 filed with the court and a copy provided to all the parties
1693 whose whereabouts are known not less than 3 business days before
1694 the disposition hearing. The department shall file with the
1695 court, and provide copies to the parties, all case plans
1696 prepared before jurisdiction of the court attached.
1697 (7) The case plan must be filed with the court and copies
1698 provided to all parties, including the child, if appropriate,
1699 not less than 3 business days before the disposition hearing.
1700 (8) The case plan must describe a process for making
1701 available to all physical custodians and family services
1702 counselors the information required by s. 39.6012(2) and for
1703 ensuring that this information follows the child until
1704 permanency has been achieved.
1705 Section 16. Section 39.6012, Florida Statutes, is created
1706 to read:
1707 39.6012 Case plan tasks; services.--
1708 (1) The services to be provided to the parent and the

1709 tasks that must be completed are subject to the following:
1710 (a) The services described in the case plan must be
1711 designed to improve the conditions in the home and aid in
1712 maintaining the child in the home, facilitate the child's safe
1713 return to the home, ensure proper care of the child, or
1714 facilitate the child's permanent placement. The services offered
1715 must be the least intrusive possible into the life of the parent
1716 and child, must focus on clearly defined objectives, and must
1717 provide the most efficient path to quick reunification or
1718 permanent placement given the circumstances of the case and the
1719 child's need for safe and proper care.
1720 (b) The case plan must describe each of the tasks with
1721 which the parent must comply and the services to be provided to
1722 the parent, specifically addressing the identified problem,
1723 including:
1724 1. The type of services or treatment.
1725 2. The date the department will provide each service or
1726 referral for the service if the service is being provided by the
1727 department or its agent.
1728 3. The date by which the parent must complete each task.
1729 4. The frequency of services or treatment provided. The
1730 frequency of the delivery of services or treatment provided
1731 shall be determined by the professionals providing the services
1732 or treatment on a case-by-case basis and adjusted according to
1733 their best professional judgment.
1734 5. The location of the delivery of the services.
1735 6. The staff of the department or service provider
1736 accountable for the services or treatment.

1737 7. A description of the measurable objectives, including
1738 the timeframes specified for achieving the objectives of the
1739 case plan and addressing the identified problem.
1740 (2) The case plan must include all available information
1741 relevant to the child's care, including, at a minimum:
1742 (a) A description of the identified needs of the child
1743 while in care.
1744 (b) A description of the plan for ensuring that the child
1745 receives safe and proper care and that services are provided to
1746 the child in order to address the child's needs. To the extent
1747 available and accessible, the following health, mental health,
1748 and education information and records of the child must be
1749 attached to the case plan and updated throughout the judicial
1750 review process:
1751 1. The names and addresses of the child's health, mental
1752 health, and education providers.
1753 2. The child's grade-level performance.
1754 3. The child's school record.
1755 4. Assurances that the child's placement takes into
1756 account proximity to the school in which the child is enrolled
1757 at the time of placement.
1758 5. A record of the child's immunizations.
1759 6. The child's known medical history, including any known
1760 problems.
1761 7. The child's medications, if any.
1762 8. Any other relevant health, mental health, and education
1763 information concerning the child.
1764 (3) In addition to any other requirement, if the child is

1765 in an out-of-home placement, the case plan must include:
1766 (a) A description of the type of placement in which the
1767 child is to be living.
1768 (b) A description of the parent's visitation rights and
1769 obligations and the plan for sibling visitation if the child has
1770 siblings and is separated from them.
1771 (c) When appropriate, for a child who is 13 years of age
1772 or older, a written description of the programs and services
1773 that will help the child prepare for the transition from foster
1774 care to independent living.
1775 (d) A discussion of the safety and the appropriateness of
1776 the child's placement, which placement is intended to be safe,
1777 the least restrictive and the most family-like setting available
1778 consistent with the best interest and special needs of the
1779 child, and in as close proximity as possible to the child's
1780 home.
1781 Section 17. Section 39.6013, Florida Statutes, is created
1782 to read:
1783 39.6013 Case plan amendments.--
1784 (1) After the case plan has been developed under s.
1785 39.6011, the tasks and services agreed upon in the plan may not
1786 be changed or altered in any way except as provided in this
1787 section.
1788 (2) The case plan may be amended at any time in order to
1789 change the goal of the plan, employ the use of concurrent
1790 planning, add or remove tasks the parent must complete to
1791 substantially comply with the plan, provide appropriate services
1792 for the child, and update the child's health, mental health, and

1793 education records required by s. 39.6012.
1794 (3) The case plan may be amended upon approval of the
1795 court if all parties are in agreement regarding the amendments
1796 to the plan and the amended plan is signed by all parties and
1797 submitted to the court with a memorandum of explanation.
1798 (4) The case plan may be amended by the court or upon
1799 motion of any party at any hearing to change the goal of the
1800 plan, employ the use of concurrent planning, or add or remove
1801 tasks the parent must complete in order to substantially comply
1802 with the plan if there is a preponderance of evidence
1803 demonstrating the need for the amendment. The need to amend the
1804 case plan may be based on information discovered or
1805 circumstances arising after the approval of the case plan for:
1806 (a) A previously unaddressed condition that, without
1807 services, may prevent the child from safely returning to the
1808 home or may prevent the child from safely remaining in the home;
1809 (b) The child's need for permanency, taking into
1810 consideration the child's age and developmental needs;
1811 (c) The failure of a party to substantially comply with a
1812 task in the original case plan, including the ineffectiveness of
1813 a previously offered service; or
1814 (d) An error or oversight in the case plan.
1815 (5) The case plan may be amended by the court or upon the
1816 motion of any party at any hearing to provide appropriate
1817 services to the child if there is competent evidence
1818 demonstrating the need for the amendment. The reason for
1819 amending the case plan may be based on information discovered or
1820 circumstances arising after the approval of the case plan

1821 regarding the provision of safe and proper care to the child.
1822 (6) The case plan is deemed amended as to the child's
1823 health, mental health, and education records required by s.
1824 39.6012 when the child's updated health, mental health, and
1825 education records are filed by the department under s.
1826 39.701(7)(a).
1827 (7) Amendments must include service interventions that are
1828 the least intrusive into the life of the parent and child, must
1829 focus on clearly defined objectives, and must provide the most
1830 efficient path to quick reunification or permanent placement
1831 given the circumstances of the case and the child's need for
1832 safe and proper care. A copy of the amended plan must
1833 immediately be given to the persons identified in s. 39.6011.
1834 Section 18. Subsections (1) and (2) of section 39.603,
1835 Florida Statutes, are amended to read:
1836 39.603 Court approvals of case planning.--
1837 (1) All case plans and amendments to case plans must be
1838 approved by the court. At the hearing on the case plan, which
1839 shall occur in conjunction with the disposition hearing unless
1840 otherwise directed by the court, the court shall determine:
1841 (a) All parties who were notified and are in attendance at
1842 the hearing, either in person or through a legal representative.
1843 The court may appoint a guardian ad litem under Rule 1.210,
1844 Florida Rules of Civil Procedure, to represent the interests of
1845 any parent, if the location of the parent is known but the
1846 parent is not present at the hearing and the development of the
1847 plan is based upon the physical, emotional, or mental condition
1848 or physical location of the parent.

1849 (b) If the plan is consistent with previous orders of the
1850 court placing the child in care.
1851 (c) If the plan is consistent with the requirements for
1852 the content of a plan as specified in this chapter.
1853 (d) In involuntary placements, whether each parent was
1854 notified of the right to counsel at each stage of the dependency
1855 proceedings, in accordance with the Florida Rules of Juvenile
1856 Procedure.
1857 (e) Whether each parent whose location was known was
1858 notified of the right to participate in the preparation of a
1859 case plan and of the right to receive assistance from any other
1860 person in the preparation of the case plan.
1861 (f) Whether the plan is meaningful and designed to address
1862 facts and circumstances upon which the court based the finding
1863 of dependency in involuntary placements or the plan is
1864 meaningful and designed to address facts and circumstances upon
1865 which the child was placed in out-of-home care voluntarily.
1866 (2) When the court determines that any of the elements
1867 considered at the hearing related to the plan have not been met,
1868 the court shall require the parties to make necessary amendments
1869 to the plan under s. 39.6013. The amended plan must be submitted
1870 to the court for review and approval within 30 days after the
1871 hearing. A copy of the amended plan must also be provided to
1872 each party, if the location of the party is known, at least 3
1873 business days before ~~72 hours prior to~~ filing with the court.
1874 Section 19. Section 39.621, Florida Statutes, is amended
1875 to read:
1876 39.621 Permanency determination by the court.--

1877 (1) The Legislature finds that time is of the essence for
1878 permanency of children in the dependency system. A permanency
1879 hearing must be held no later than 12 months after the date the
1880 child was removed from the home or no later than 30 days after a
1881 court determines that reasonable efforts to return a child to
1882 either parent are not required, whichever occurs first. The
1883 purpose of the permanency hearing is to determine when the child
1884 will achieve the permanency goal or whether modifying the
1885 current goal is in the best interest of the child. A permanency
1886 hearing must be held at least every 12 months for any child who
1887 continues to receive supervision from the department or awaits
1888 adoption. ~~When the court has determined that reunification with~~
1889 ~~either parent is not appropriate, then the court must make a~~
1890 ~~permanency determination for the child.~~
1891 (2) The permanency goals available under this chapter are:
1892 (a) Reunification;
1893 (b) Adoption, if a petition for termination of parental
1894 rights has been or will be filed;
1895 (c) Permanent guardianship of a dependent child under s.
1896 39.6221;
1897 (d) Permanent placement with a fit and willing relative
1898 under s. 39.6231; or
1899 (e) Placement in another planned permanent living
1900 arrangement under s. 39.6241.
1901 (3)(a) At least 3 business days before the permanency
1902 hearing, the department shall file its judicial review social
1903 services report with the court and provide copies of the report
1904 to all parties. The report must include a recommended permanency

1905 goal for the child, suggest changes to the case plan, if needed,
1906 and describe why the recommended goal is in the best interest of
1907 the child.
1908 (b) Before the permanency hearing, the department shall
1909 advise the child and the individuals with whom the child will be
1910 placed about the availability of more permanent and legally
1911 secure placements and what type of financial assistance is
1912 associated with each placement.
1913 (4) At the permanency hearing, the court shall determine:
1914 (a) Whether the current permanency goal for the child is
1915 appropriate or should be changed.
1916 (b) When the child will achieve one of the permanency
1917 goals.
1918 (c) Whether the department has made reasonable efforts to
1919 finalize the permanency plan currently in effect.
1920 (5) The best interest of the child is the primary
1921 consideration in determining the permanency goal for the child.
1922 The court must also consider:
1923 (a) The reasonable preference of the child if the court
1924 has found the child to be of sufficient intelligence,
1925 understanding, and experience to express a preference.
1926 (b) Any recommendation of the guardian ad litem.
1927 (6)(a) ~~(2)~~ If a child will not be reunited with a parent,
1928 adoption, under ~~pursuant to~~ chapter 63, is the primary
1929 permanency option ~~available to the court~~. If the child is placed
1930 with a relative or with a relative of the child's half-brother
1931 or half-sister as a permanency option, the court may ~~shall~~
1932 recognize the permanency of this placement without requiring the

1933 relative to adopt the child.
1934 (b) If the court approves a permanency goal of permanent
1935 guardianship of a dependent child, placement with a fit and
1936 willing relative, or another planned permanent living
1937 arrangement, the court shall make findings as to why this
1938 permanent placement is established without adoption of the child
1939 to follow. If the court approves a permanency goal of another
1940 planned permanent living arrangement, the court shall document
1941 the compelling reasons for choosing this goal.
1942 (7) The findings of the court regarding reasonable efforts
1943 to finalize the permanency plan must be explicitly documented,
1944 made on a case-by-case basis, and stated in the court order.
1945 (8) The case plan must list the tasks necessary to
1946 finalize the permanency placement and shall be updated at the
1947 permanency hearing if necessary. If a concurrent case plan is in
1948 place, the court may choose between the permanency goal options
1949 presented and shall approve the goal that is in the child's best
1950 interest.
1951 (9) The permanency placement is intended to continue until
1952 the child reaches the age of majority and may not be disturbed
1953 absent a finding by the court that the circumstances of the
1954 permanency placement are no longer in the best interest of the
1955 child. If a parent who has not had his or her parental rights
1956 terminated makes a motion for reunification or increased contact
1957 with the child, the court shall hold a hearing to determine
1958 whether the dependency case should be reopened and whether there
1959 should be a modification of the order. At the hearing, the
1960 parent must demonstrate that the safety, well-being, and

1961 physical, mental, and emotional health of the child is not
1962 endangered by the modification.
1963 (10) The court shall base its decision concerning any
1964 motion by a parent for reunification or increased contact with a
1965 child on the effect of the decision on the safety, well-being,
1966 and physical and emotional health of the child. Factors that
1967 must be considered and addressed in the findings of fact of the
1968 order on the motion must include:
1969 (a) The compliance or noncompliance of the parent with the
1970 case plan.
1971 (b) The circumstances which caused the child's dependency
1972 and whether those circumstances have been resolved.
1973 (c) The stability and longevity of the child's placement;
1974 (d) The preferences of the child, if the child is of
1975 sufficient age and understanding to express a preference;
1976 (e) The recommendation of the current custodian.
1977 (f) The recommendation of the guardian ad litem, if one
1978 has been appointed.
1979 ~~(3) The permanency options listed in the following~~
1980 ~~paragraphs shall only be considered by the court if adoption is~~
1981 ~~determined by the court to not be in the child's best interest,~~
1982 ~~except as otherwise provided in subsection (2):~~
1983 ~~(a) Guardianship pursuant to chapter 744.~~
1984 ~~(b) Long-term custody.~~
1985 ~~(c) Long-term licensed custody.~~
1986 ~~(d) Independent living.~~
1987
1988 ~~The permanency placement is intended to continue until the child~~

1989 ~~reaches the age of majority and shall not be disturbed absent a~~
1990 ~~finding by the court that the circumstances of the permanency~~
1991 ~~placement are no longer in the best interest of the child.~~
1992 Section 20. Section 39.6221, Florida Statutes, is created
1993 to read:
1994 39.6221 Permanent guardianship of a dependent child.--
1995 (1) If a court determines that reunification or adoption
1996 is not in the best interest of the child, the court may place
1997 the child in a permanent guardianship with a relative or other
1998 adult approved by the court if all of the following conditions
1999 are met:
2000 (a) The child has been in the placement for not less than
2001 the preceding 6 months.
2002 (b) The permanent guardian is suitable and able to provide
2003 a safe and permanent home for the child.
2004 (c) The court determines that the child and the relative
2005 or other adult are not likely to need supervision or services of
2006 the department to ensure the stability of the permanent
2007 guardianship.
2008 (d) The permanent guardian has made a commitment to
2009 provide for the child until the child reaches the age of
2010 majority and to prepare the child for adulthood and
2011 independence.
2012 (e) The permanent guardian agrees to give notice of any
2013 change in his or her residential address or the residence of the
2014 child by filing a written document in the dependency file of the
2015 child with the clerk of the court.
2016 (2) In its written order establishing a permanent

2017 guardianship, the court shall:
2018 (a) List the circumstances or reasons the child's parents
2019 are not fit to care for the child and why reunification is not
2020 possible by referring to specific findings of fact made in its
2021 order adjudicating the child dependent or by making separate
2022 findings of fact.
2023 (b) State the reasons a permanent guardianship is being
2024 established instead of adoption.
2025 (c) Specify the frequency and nature of visitation or
2026 contact between the child and his or her parents.
2027 (d) Specify the frequency and nature of visitation or
2028 contact between the child and his or her grandparents, under s.
2029 39.509.
2030 (e) Specify the frequency and nature of visitation or
2031 contact between the child and his or her siblings.
2032 (f) Require that the permanent guardian not return the
2033 child to the physical care and custody of the person from whom
2034 the child was removed without the approval of the court.
2035 (g) List the powers and duties of the permanent guardian
2036 which shall include the rights and duties of a parent,
2037 including, but not limited to:
2038 1. The right to physical and legal custody of the child.
2039 2. The right and duty to protect, nurture, guide, and
2040 discipline the child.
2041 3. The right and duty to provide the child with food,
2042 shelter, and education.
2043 4. The right and duty to provide the child with ordinary
2044 medical, dental, psychiatric, and psychological care, unless

2045 these rights and duties are otherwise enlarged or limited by
2046 court order.
2047 (3) The court shall give the permanent guardian a separate
2048 order establishing the authority of the permanent guardian to
2049 care for the child, specifying what powers and duties listed in
2050 paragraph (2)(g) belong to the permanent guardian, and providing
2051 any other information the court deems proper which can be
2052 provided to persons who are not parties to the proceeding as
2053 necessary, notwithstanding the confidentiality provisions of s.
2054 39.202.
2055 (4) A permanent guardianship of a dependent child
2056 established under this chapter is not a plenary guardianship and
2057 is not subject to the requirements of chapter 744.
2058 (5) The court shall retain jurisdiction over the case and
2059 the child shall remain in the custody of the permanent guardian
2060 unless the order creating the permanent guardianship is modified
2061 by the court. The court shall discontinue regular review
2062 hearings and relieve the department of the responsibility for
2063 supervising the placement of the child. Notwithstanding the
2064 retention of jurisdiction, the placement shall be considered
2065 permanency for the child.
2066 (6) Placement of a child in a permanent guardianship does
2067 not terminate the parent-child relationship, including:
2068 (a) The right of the child to inherit from his or her
2069 parents.
2070 (b) The parents' right to consent to the child's adoption.
2071 (c) The parents' responsibility to provide financial,
2072 medical, and other support for the child as ordered by the

2073 court.
2074 Section 21. Section 39.6231, Florida Statutes, is created
2075 to read:
2076 39.6231 Permanent placement with a fit and willing
2077 relative.--
2078 (1) If a court finds that reunification or adoption are
2079 not in the best interest of a child, the court may place the
2080 child with a fit and willing relative as a permanency option if:
2081 (a) The child has been in the placement for at least the
2082 preceding 6 months.
2083 (b) The relative has made a commitment to provide for the
2084 child until the child reaches the age of majority and to prepare
2085 the child for adulthood and independence.
2086 (c) The relative is suitable and able to provide a safe
2087 and permanent home for the child.
2088 (d) The relative agrees to give notice of any change in
2089 his or her residence or the residence of the child by filing a
2090 written document with the clerk of court.
2091 (2) The department and the guardian ad litem shall provide
2092 the court with a recommended list and description of services
2093 needed by the child and the family in order to ensure the
2094 permanency of the placement.
2095 (3) In its written order placing the child with a fit and
2096 willing relative, the court shall:
2097 (a) List the circumstances or reasons reunification is not
2098 possible by referring to specific findings of fact made in its
2099 order adjudicating the child dependent or by making separate
2100 findings of fact.

2101 (b) State the reasons permanent placement with a fit and
2102 willing relative is being established instead of adoption;
2103 (c) Specify the frequency and nature of visitation or
2104 contact between the child and his or her parents.
2105 (d) Specify the frequency and nature of visitation or
2106 contact between the child and his or her grandparents, under s.
2107 39.509.
2108 (e) Specify the frequency and nature of visitation or
2109 contact between the child and his or her siblings.
2110 (f) Require that the relative not return the child to the
2111 physical care and custody of the person from whom the child was
2112 removed without the approval of the court.
2113 (4) The court shall give the relative a separate order
2114 establishing his or her authority to care for the child and
2115 providing other information the court deems proper which can be
2116 provided to entities and individuals who are not parties to the
2117 proceeding as necessary, notwithstanding the confidentiality of
2118 s. 39.202.
2119 (5) The department shall continue to supervise the
2120 placement with the relative until further court order. The court
2121 shall continue to review the placement at least once every 6
2122 months.
2123 (6) Each party to the proceeding must be advised by the
2124 department and the court that placement with a fit and willing
2125 relative does not preclude the possibility of the child
2126 returning to the custody of the parent.
2127 (7) The court shall continue to conduct permanency
2128 hearings in order to reevaluate the possibility of adoption or

2129 permanent guardianship of the child.
2130 Section 22. Section 39.6241, Florida Statutes, is created
2131 to read:
2132 39.6241 Another planned permanent living arrangement.--
2133 (1) If a court finds that reunification is not in the best
2134 interest of a child, the court may approve placement of the
2135 child in another planned permanent living arrangement if:
2136 (a) The court finds a more permanent placement, such as
2137 adoption, permanent guardianship, or placement with a fit and
2138 willing relative, is not in the best interest of the child.
2139 (b) The department documents reasons the placement will
2140 endure and how the proposed arrangement will be more stable and
2141 secure than ordinary foster care.
2142 (c) The court finds that the health, safety, and well-
2143 being of the child will not be jeopardized by such an
2144 arrangement.
2145 (d) There are compelling reasons to show that another
2146 placement is the most appropriate permanency goal. Compelling
2147 reasons for another placement may include, but are not limited
2148 to:
2149 1. The case of a parent and child who have a significant
2150 bond but the parent is unable to care for the child because of
2151 an emotional or physical disability and the child's foster
2152 parents have committed to raising him or her to the age of
2153 majority and to facilitate visitation with the disabled parent;
2154 2. The case of a child for whom an Indian tribe has
2155 identified another planned permanent living arrangement for the
2156 child; or

2157 3. The case of a foster child who is 16 years of age or
2158 older who chooses to remain in foster care and the child's
2159 foster parents are willing to care for the child until the child
2160 reaches 18 years of age.
2161 (2) The department and the guardian ad litem must provide
2162 the court with a recommended list and description of services
2163 needed by the child, such as independent living services and
2164 medical, dental, educational, or psychological referrals, and a
2165 recommended list and description of services needed by his or
2166 her caregiver.
2167 Section 23. Paragraphs (a) and (c) of subsection (7),
2168 paragraph (g) of subsection (8), and subsection (9) of section
2169 39.701, Florida Statutes, are amended, and paragraph (k) is
2170 added to subsection (8) of that section, to read:
2171 39.701 Judicial review.--
2172 (7)(a) Before ~~Prior to~~ every judicial review hearing or
2173 citizen review panel hearing, the social service agency shall
2174 make an investigation and social study concerning all pertinent
2175 details relating to the child and shall furnish to the court or
2176 citizen review panel a written report that includes, but is not
2177 limited to:
2178 1. A description of the type of placement the child is in
2179 at the time of the hearing, including the safety of the child
2180 and the continuing necessity for and appropriateness of the
2181 placement.
2182 2. Documentation of the diligent efforts made by all
2183 parties to the case plan to comply with each applicable
2184 provision of the plan.

2185 3. The amount of fees assessed and collected during the
2186 period of time being reported.
2187 4. The services provided to the foster family or legal
2188 custodian in an effort to address the needs of the child as
2189 indicated in the case plan.
2190 5. A statement that either:
2191 a. The parent, though able to do so, did not comply
2192 substantially with the ~~provisions of the~~ case plan, and the
2193 agency recommendations;
2194 b. The parent did substantially comply with the ~~provisions~~
2195 ~~of the~~ case plan; or
2196 c. The parent has partially complied with the ~~provisions~~
2197 ~~of the~~ case plan, with a summary of additional progress needed
2198 and the agency recommendations.
2199 6. A statement from the foster parent or legal custodian
2200 providing any material evidence concerning the return of the
2201 child to the parent or parents.
2202 7. A statement concerning the frequency, duration, and
2203 results of the parent-child visitation, if any, and the agency
2204 recommendations for an expansion or restriction of future
2205 visitation.
2206 8. The number of times a child has been removed from his
2207 or her home and placed elsewhere, the number and types of
2208 placements that have occurred, and the reason for the changes in
2209 placement.
2210 9. The number of times a child's educational placement has
2211 been changed, the number and types of educational placements
2212 which have occurred, and the reason for any change in placement.

2213 10. If the child has reached 13 years of age but is not
2214 yet 18 years of age, the results of the preindependent living,
2215 life skills, or independent living assessment; the specific
2216 services needed; and the status of the delivery of the
2217 identified services.
2218 11. Copies of all medical, psychological, and educational
2219 records that support the terms of the case plan and that have
2220 been produced concerning the ~~child,~~ parents~~,~~ or any caregiver
2221 since the last judicial review hearing.
2222 12. Copies of the child's current health, mental health,
2223 and education records as identified in s. 39.6012.
2224 (c) In a case in which the child has been permanently
2225 placed with the social service agency, the agency shall furnish
2226 to the court a written report concerning the progress being made
2227 to place the child for adoption. If the child cannot be placed
2228 for adoption, a report on the progress made by the child towards
2229 alternative permanency goals or placements, including, but not
2230 limited to, guardianship, permanent guardianship under s.
2231 39.6221, permanent placement under s. 39.6231 ~~long-term custody,~~
2232 ~~long-term licensed custody~~, or independent living, must be
2233 submitted to the court. The report must be submitted to the
2234 court at least 72 hours before each scheduled judicial review.
2235 (8) The court and any citizen review panel shall take into
2236 consideration the information contained in the social services
2237 study and investigation and all medical, psychological, and
2238 educational records that support the terms of the case plan;
2239 testimony by the social services agency, the parent, the foster
2240 parent or legal custodian, the guardian ad litem if one has been

2241 appointed for the child, and any other person deemed
2242 appropriate; and any relevant and material evidence submitted to
2243 the court, including written and oral reports to the extent of
2244 their probative value. These reports and evidence may be
2245 received by the court in its effort to determine the action to
2246 be taken with regard to the child and may be relied upon to the
2247 extent of their probative value, even though not competent in an
2248 adjudicatory hearing. In its deliberations, the court and any
2249 citizen review panel shall seek to determine:
2250 (g) Whether the child is receiving safe and proper care
2251 according to s. 39.6012, including, but not limited to, the
2252 appropriateness of the child's current placement, including
2253 whether the child is in a setting that ~~which~~ is as family-like
2254 and as close to the parent's home as possible, consistent with
2255 the child's best interests and special needs, and including
2256 maintaining stability in the child's educational placement.
2257 (k) If amendments to the case plan are required.
2258 Amendments to the case plan must be made under s. 39.6013.
2259 (9)(a) Based upon the criteria set forth in subsection (8)
2260 and the recommended order of the citizen review panel, if any,
2261 the court shall determine whether or not the social service
2262 agency shall initiate proceedings to have a child declared a
2263 dependent child, return the child to the parent, continue the
2264 child in out-of-home care for a specified period of time, or
2265 initiate termination of parental rights proceedings for
2266 subsequent placement in an adoptive home. Amendments
2267 ~~Modifications~~ to the case plan must be prepared ~~handled~~ as
2268 prescribed in s. 39.6013 ~~s. 39.601~~. If the court finds that the

2269 prevention or reunification efforts of the department will allow
2270 the child to remain safely at home or be safely returned to the
2271 home, the court shall allow the child to remain in or return to
2272 the home after making a specific finding of fact that the
2273 reasons for the creation of the case plan have been remedied to
2274 the extent that the child's safety, well-being, and physical,
2275 mental, and emotional health will not be endangered.
2276 (b) The court shall return the child to the custody of the
2277 parents at any time it determines that they have substantially
2278 complied with the case plan, if the court is satisfied that
2279 reunification will not be detrimental to the child's safety,
2280 well-being, and physical, mental, and emotional health.
2281 (c) If, in the opinion of the court, the social service
2282 agency has not complied with its obligations as specified in the
2283 written case plan, the court may find the social service agency
2284 in contempt, shall order the social service agency to submit its
2285 plans for compliance with the agreement, and shall require the
2286 social service agency to show why the child could not safely be
2287 returned to the home of the parents.
2288 ~~(d) The court may extend the time limitation of the case~~
2289 ~~plan, or may modify the terms of the plan, based upon~~
2290 ~~information provided by the social service agency, and the~~
2291 ~~guardian ad litem, if one has been appointed, the parent or~~
2292 ~~parents, and the foster parents or legal custodian, and any~~
2293 ~~other competent information on record demonstrating the need for~~
2294 ~~the amendment. If the court extends the time limitation of the~~
2295 ~~case plan, the court must make specific findings concerning the~~
2296 ~~frequency of past parent-child visitation, if any, and the court~~

2297 ~~may authorize the expansion or restriction of future visitation.~~
2298 ~~Modifications to the plan must be handled as prescribed in s.~~
2299 ~~39.601. Any extension of a case plan must comply with the time~~
2300 ~~requirements and other requirements specified by this chapter.~~
2301 (d) ~~(e)~~ If, at any judicial review, the court finds that
2302 the parents have failed to substantially comply with the case
2303 plan to the degree that further reunification efforts are
2304 without merit and not in the best interest of the child, on its
2305 own motion, the court ~~it~~ may order ~~authorize~~ the filing of a
2306 petition for termination of parental rights, whether or not the
2307 time period as contained in the case plan for substantial
2308 compliance has expired ~~elapsed~~.
2309 (e) ~~(f)~~ No later than 6 ~~12~~ months after the date that the
2310 child was placed in shelter care, the court shall conduct a
2311 judicial review hearing to review ~~plan for~~ the child's
2312 permanency goal as identified in the case plan. At the hearing,
2313 the court shall make findings regarding the likelihood of the
2314 child's reunification with the parent or legal custodian within
2315 12 months after the removal of the child from the home. If, at
2316 this hearing, the court makes a written finding that it is not
2317 likely that the child will be reunified with the parent or legal
2318 custodian within 12 months after the child was removed from the
2319 home, the department must file with the court and serve on all
2320 parties a motion to amend the case plan under s. 39.6013 and
2321 declare that it will use concurrent planning for the case plan.
2322 The department must file the motion no later than 10 business
2323 days after receiving the written finding of the court. The
2324 department must attach the proposed amended case plan to the

2325 motion. If concurrent planning is already being used, the case
2326 plan must document the efforts the department is taking to
2327 complete the concurrent goal. ~~At this hearing, if the child is~~
2328 ~~not returned to the physical custody of the parents, the case~~
2329 ~~plan may be extended with the same goals only if the court finds~~
2330 ~~that the situation of the child is so extraordinary that the~~
2331 ~~plan should be extended. The case plan must document steps the~~
2332 ~~department is taking to find an adoptive parent or other~~
2333 ~~permanent living arrangement for the child.~~
2334 (f) ~~(g)~~ The court may issue a protective order in
2335 assistance, or as a condition, of any other order made under
2336 this part. In addition to the requirements included in the case
2337 plan, the protective order may set forth requirements relating
2338 to reasonable conditions of behavior to be observed for a
2339 specified period of time by a person or agency who is before the
2340 court; and the ~~such~~ order may require any ~~such~~ person or agency
2341 to make periodic reports to the court containing such
2342 information as the court in its discretion may prescribe.
2343 Section 24. Section 39.703, Florida Statutes, is amended
2344 to read:
2345 39.703 Initiation of termination of parental rights
2346 proceedings; judicial review.--
2347 (1) If, in preparation for a ~~any~~ judicial review hearing
2348 under this chapter, it is the opinion of the social service
2349 agency that the parents of the child have not complied with
2350 their responsibilities as specified in the written case plan
2351 although able to do so, the department shall state its intent to
2352 initiate proceedings to terminate parental rights, unless the

2353 social service agency can demonstrate to the court that such a
2354 recommendation would not be in the child's best interests. If it
2355 is the intent of the department to initiate proceedings to
2356 terminate parental rights, the department shall file a petition
2357 for termination of parental rights no later than 3 months after
2358 the date of the previous judicial review hearing. If the
2359 petition cannot be filed within 3 months, the department shall
2360 provide a written report to the court outlining the reasons for
2361 delay, the progress made in the termination of parental rights
2362 process, and the anticipated date of completion of the process.
2363 (2) If, at the time of the 12-month judicial review
2364 hearing, a child is not returned to the physical custody of the
2365 parents, the department shall file a petition to terminate
2366 parental rights. The court shall set an advisory hearing at the
2367 judicial review hearing if an advisory hearing has not
2368 previously been set. ~~initiate termination of parental rights~~
2369 ~~proceedings under this chapter within 30 days. Only if the court~~
2370 ~~finds that the situation of the child is so extraordinary and~~
2371 ~~that the best interests of the child will be met by such action~~
2372 ~~at the time of the judicial review may the case plan be~~
2373 ~~extended. If the court decides to extend the plan, the court~~
2374 ~~shall enter detailed findings justifying the decision to extend,~~
2375 ~~as well as the length of the extension. A termination of~~
2376 ~~parental rights petition need not be filed if: the child is~~
2377 ~~being cared for by a relative who chooses not to adopt the child~~
2378 ~~but who is willing, able, and suitable to serve as the legal~~
2379 ~~custodian for the child until the child reaches 18 years of age;~~
2380 ~~the court determines that filing such a petition would not be in~~

2381 ~~the best interests of the child; or the state has not provided~~
2382 ~~the child's parent, when reasonable efforts to return a child~~
2383 ~~are required, consistent with the time period in the state's~~
2384 ~~case plan, such services as the state deems necessary for the~~
2385 ~~safe return of the child to his or her home. Failure to initiate~~
2386 ~~termination of parental rights proceedings at the time of the~~
2387 ~~12-month judicial review or within 30 days after such review~~
2388 ~~does not prohibit initiating termination of parental rights~~
2389 ~~proceedings at any other time.~~
2390 (3) Notwithstanding subsection (2), the department may
2391 choose to not file or join in a petition to terminate the
2392 parental rights of a parent under subsection (2) if:
2393 (a) The child is being cared for by a relative under s.
2394 39.6231;
2395 (b) The department has documented in the report to the
2396 court a compelling reason for determining that filing such a
2397 petition would not be in the best interest of the child.
2398 Compelling reasons for not filing or joining a petition to
2399 terminate parental rights may include, but are not limited to:
2400 1. Adoption is not the appropriate permanency goal for the
2401 child;
2402 2. No grounds to file a petition to terminate parental
2403 rights exist;
2404 3. The child is an unaccompanied refugee minor as defined
2405 in 45 C.F.R. 400.111;
2406 4. There are international legal obligations or compelling
2407 reasons relating to foreign policy that would preclude
2408 terminating parental rights; or

2409 5. The department has not provided to the family,
2410 consistent with the time period in the case plan, services that
2411 the department deems necessary for the safe return of the child
2412 to the home.
2413 (4) Upon good cause shown by any party or on its own
2414 motion, the court may review the determination by the department
2415 that compelling reasons exist for not filing a petition for
2416 termination of parental rights.
2417 Section 25. Subsections (1) and (2) of section 39.806,
2418 Florida Statutes, are amended to read:
2419 39.806 Grounds for termination of parental rights.--
2420 (1) ~~The department, the guardian ad litem, or any person~~
2421 ~~who has knowledge of the facts alleged or who is informed of~~
2422 ~~those facts and believes that they are true may petition~~ Grounds
2423 for the termination of parental rights may be established under
2424 any of the following circumstances:
2425 (a) When the parent or parents have voluntarily executed a
2426 written surrender of the child and consented to the entry of an
2427 order giving custody of the child to the department for
2428 subsequent adoption and the department is willing to accept
2429 custody of the child.
2430 1. The surrender document must be executed before two
2431 witnesses and a notary public or other person authorized to take
2432 acknowledgments.
2433 2. The surrender and consent may be withdrawn after
2434 acceptance by the department only after a finding by the court
2435 that the surrender and consent were obtained by fraud or under
2436 duress.

2437 (b) Abandonment as defined in s. 39.01(1) or when the
2438 identity or location of the parent or parents is unknown and
2439 cannot be ascertained by diligent search within 60 days.
2440 (c) When the parent or parents engaged in conduct toward
2441 the child or toward other children that demonstrates that the
2442 continuing involvement of the parent or parents in the parent-
2443 child relationship threatens the life, safety, well-being, or
2444 physical, mental, or emotional health of the child irrespective
2445 of the provision of services. Provision of services may be
2446 evidenced by proof that services were provided through a
2447 previous plan or offered as a case plan from a child welfare
2448 agency.
2449 (d) When the parent of a child is incarcerated in a state
2450 or federal correctional institution and either:
2451 1. The period of time for which the parent is expected to
2452 be incarcerated will constitute a substantial portion of the
2453 period of time before the child will attain the age of 18 years;
2454 2. The incarcerated parent has been determined by the
2455 court to be a violent career criminal as defined in s. 775.084,
2456 a habitual violent felony offender as defined in s. 775.084, or
2457 a sexual predator as defined in s. 775.21; has been convicted of
2458 first degree or second degree murder in violation of s. 782.04
2459 or a sexual battery that constitutes a capital, life, or first
2460 degree felony violation of s. 794.011; or has been convicted of
2461 an offense in another jurisdiction which is substantially
2462 similar to one of the offenses listed in this paragraph. As used
2463 in this section, the term "substantially similar offense" means
2464 any offense that is substantially similar in elements and

2465 penalties to one of those listed in this subparagraph, and that
2466 is in violation of a law of any other jurisdiction, whether that
2467 of another state, the District of Columbia, the United States or
2468 any possession or territory thereof, or any foreign
2469 jurisdiction; or
2470 3. The court determines by clear and convincing evidence
2471 that continuing the parental relationship with the incarcerated
2472 parent would be harmful to the child and, for this reason, that
2473 termination of the parental rights of the incarcerated parent is
2474 in the best interest of the child.
2475 (e) ~~A petition for termination of parental rights may also~~
2476 ~~be filed~~ When a child has been adjudicated dependent, a case
2477 plan has been filed with the court, and:
2478 1. The child continues to be abused, neglected, or
2479 abandoned by the parents. In this case, the failure of the
2480 parents to substantially comply for a period of 12 months after
2481 an adjudication of the child as a dependent child or the child's
2482 placement into shelter care, whichever came first, constitutes
2483 evidence of continuing abuse, neglect, or abandonment unless the
2484 failure to substantially comply with the case plan was due
2485 either to the lack of financial resources of the parents or to
2486 the failure of the department to make reasonable efforts to
2487 reunify the parent and child. The ~~Such~~ 12-month period begins
2488 ~~may begin~~ to run only after the child's placement into shelter
2489 care or the entry of a disposition order placing the custody of
2490 the child with the department or a person other than the parent
2491 and the approval by the court of a case plan with a goal of
2492 reunification with the parent, whichever came first; or

2493 2. The parent has materially breached the case plan by
2494 making it unlikely that he or she will be able to substantially
2495 comply with the case plan before the time for compliance
2496 expires. Because time is of the essence for permanency of
2497 children in the dependency system and, thus, in order to prove
2498 the parent has materially breached the case plan, the court must
2499 find by clear and convincing evidence that the parent is
2500 unlikely or unable to substantially comply with the case plan
2501 before time expires to comply with the case plan.
2502 (f) When the parent or parents engaged in egregious
2503 conduct or had the opportunity and capability to prevent and
2504 knowingly failed to prevent egregious conduct that threatens the
2505 life, safety, or physical, mental, or emotional health of the
2506 child or the child's sibling.
2507 1. As used in this subsection, the term "sibling" means
2508 another child who resides with or is cared for by the parent or
2509 parents regardless of whether the child is related legally or by
2510 consanguinity.
2511 2. As used in this subsection, the term "egregious
2512 conduct" means abuse, abandonment, neglect, or any other conduct
2513 of the parent or parents that is deplorable, flagrant, or
2514 outrageous by a normal standard of conduct. Egregious conduct
2515 may include an act or omission that occurred only once but was
2516 of such intensity, magnitude, or severity as to endanger the
2517 life of the child.
2518 (g) When the parent or parents have subjected the child to
2519 aggravated child abuse as defined in s. 827.03, sexual battery
2520 or sexual abuse as defined in s. 39.01, or chronic abuse.

2521 (h) When the parent or parents have committed murder or
2522 voluntary manslaughter of another child, or a felony assault
2523 that results in serious bodily injury to the child or another
2524 child, or aided or abetted, attempted, conspired, or solicited
2525 to commit such a murder or voluntary manslaughter or felony
2526 assault.
2527 (i) When the parental rights of the parent to a sibling
2528 have been terminated involuntarily.
2529 (2) Reasonable efforts to preserve and reunify families
2530 are ~~shall~~ not ~~be~~ required if a court of competent jurisdiction
2531 has determined that any of the events described in paragraphs
2532 (1)(e)-(i) have occurred.
2533 Section 26. Subsection (1) of section 39.810, Florida
2534 Statutes, is amended to read:
2535 39.810 Manifest best interests of the child.--In a hearing
2536 on a petition for termination of parental rights, the court
2537 shall consider the manifest best interests of the child. This
2538 consideration shall not include a comparison between the
2539 attributes of the parents and those of any persons providing a
2540 present or potential placement for the child. For the purpose of
2541 determining the manifest best interests of the child, the court
2542 shall consider and evaluate all relevant factors, including, but
2543 not limited to:
2544 (1) Any suitable permanent custody arrangement with a
2545 relative of the child. However, the availability of a
2546 nonadoptive placement with a relative may not receive greater
2547 consideration than any other factor weighing on the manifest
2548 best interest of the child and may not be considered as a factor

2549 weighing against termination of parental rights. If a child has
2550 been in a stable or preadoptive placement for not less than 6
2551 months, the availability of a different placement, including a
2552 placement with a relative, may not be considered as a ground to
2553 deny the termination of parental rights.
2554 Section 27. Subsection (4) of section 39.811, Florida
2555 Statutes, is amended to read:
2556 39.811 Powers of disposition; order of disposition.--
2557 (4) If the child is neither in the custody of the
2558 department nor in the custody of a parent and the court finds
2559 that the grounds for termination of parental rights have been
2560 established for either or both parents, the court shall enter an
2561 order terminating parental rights for the parent or parents for
2562 whom the grounds for termination have been established and
2563 placing the child with the department or an appropriate legal
2564 custodian. If the parental rights of both parents have been
2565 terminated, or if the parental rights of only one parent have
2566 been terminated and the court makes specific findings based on
2567 evidence presented that placement with the remaining parent is
2568 likely to be harmful to the child, the court may order that the
2569 child be placed with a legal custodian other than the department
2570 after hearing evidence of the suitability of the ~~such~~ intended
2571 placement. Suitability of the intended placement includes the
2572 fitness and capabilities of the proposed legal custodian to
2573 function as the primary caregiver for a particular child; and
2574 the compatibility of the child with the home in which the child
2575 is intended to be placed. If the court orders that a child be
2576 placed with a legal custodian under this subsection, the court

2577 shall appoint a ~~such~~ legal custodian ~~either~~ as the guardian for
2578 the child as provided in s. 744.3021 or s. 39.621 ~~or as the~~
2579 ~~long-term custodian of the child as provided in s. 39.622 so~~
2580 ~~long as the child has been residing with the legal custodian for~~
2581 ~~a minimum of 6 months~~. The court may modify the order placing
2582 the child in the custody of the legal custodian and revoke the
2583 guardianship established under s. 744.3021 or another ~~the long-~~
2584 ~~term custodial~~ relationship if the court subsequently finds the
2585 placement to be no longer in the best interest of the child.
2586 Section 28. Paragraph (b) of subsection (3) of section
2587 39.0015, Florida Statutes, is amended to read:
2588 39.0015 Child abuse prevention training in the district
2589 school system.--
2590 (3) DEFINITIONS.--As used in this section:
2591 (b) "Child abuse" means those acts as defined in ss.
2592 39.01(1), (2), (32), (42), (44), (55) ~~(30), (43), (45), (52)~~,
2593 and (66) ~~(63)~~, 827.04, and 984.03(1), (2), and (37).
2594 Section 29. Subsection (5) of section 39.205, Florida
2595 Statutes, is amended to read:
2596 39.205 Penalties relating to reporting of child abuse,
2597 abandonment, or neglect.--
2598 (5) If the department or its authorized agent has
2599 determined after its investigation that a report is false, the
2600 department shall, with the consent of the alleged perpetrator,
2601 refer the report to the local law enforcement agency having
2602 jurisdiction for an investigation to determine whether
2603 sufficient evidence exists to refer the case for prosecution for
2604 filing a false report as defined in s. 39.01(28) ~~s. 39.01(27)~~.

2605 During the pendency of the investigation by the local law
2606 enforcement agency, the department must notify the local law
2607 enforcement agency of, and the local law enforcement agency must
2608 respond to, all subsequent reports concerning children in that
2609 same family in accordance with s. 39.301. If the law enforcement
2610 agency believes that there are indicators of abuse, abandonment,
2611 or neglect, it must immediately notify the department, which
2612 must assure the safety of the children. If the law enforcement
2613 agency finds sufficient evidence for prosecution for filing a
2614 false report, it must refer the case to the appropriate state
2615 attorney for prosecution.
2616 Section 30. Subsection (1) of section 39.302, Florida
2617 Statutes, is amended to read:
2618 39.302 Protective investigations of institutional child
2619 abuse, abandonment, or neglect.--
2620 (1) The department shall conduct a child protective
2621 investigation of each report of institutional child abuse,
2622 abandonment, or neglect. Upon receipt of a report that alleges
2623 that an employee or agent of the department, or any other entity
2624 or person covered by s. 39.01(33) or (46) ~~s. 39.01(31) or (47)~~,
2625 acting in an official capacity, has committed an act of child
2626 abuse, abandonment, or neglect, the department shall initiate a
2627 child protective investigation within the timeframe established
2628 by the central abuse hotline under ~~pursuant to~~ s. 39.201(5) and
2629 orally notify the appropriate state attorney, law enforcement
2630 agency, and licensing agency. These agencies shall immediately
2631 conduct a joint investigation, unless independent investigations
2632 are more feasible. When conducting investigations onsite or

2633 having face-to-face interviews with the child, such
2634 investigation visits shall be unannounced unless it is
2635 determined by the department or its agent that the ~~such~~
2636 unannounced visits would threaten the safety of the child. When
2637 a facility is exempt from licensing, the department shall inform
2638 the owner or operator of the facility of the report. Each agency
2639 conducting a joint investigation is ~~shall be~~ entitled to full
2640 access to the information gathered by the department in the
2641 course of the investigation. A protective investigation must
2642 include an onsite visit of the child's place of residence. In
2643 all cases, the department shall make a full written report to
2644 the state attorney within 3 working days after making the oral
2645 report. A criminal investigation shall be coordinated, whenever
2646 possible, with the child protective investigation of the
2647 department. Any interested person who has information regarding
2648 the offenses described in this subsection may forward a
2649 statement to the state attorney as to whether prosecution is
2650 warranted and appropriate. Within 15 days after the completion
2651 of the investigation, the state attorney shall report the
2652 findings to the department and shall include in the ~~such~~ report
2653 a determination of whether or not prosecution is justified and
2654 appropriate in view of the circumstances of the specific case.
2655 Section 31. For the purpose of incorporating the
2656 amendments made by this act to section 39.806, Florida Statutes,
2657 in a reference thereto, subsection (5) of section 39.802,
2658 Florida Statutes, is reenacted to read:
2659 39.802 Petition for termination of parental rights;
2660 filing; elements.--

2661 (5) When a petition for termination of parental rights is
2662 filed under s. 39.806(1), a separate petition for dependency
2663 need not be filed and the department need not offer the parents
2664 a case plan with a goal of reunification, but may instead file
2665 with the court a case plan with a goal of termination of
2666 parental rights to allow continuation of services until the
2667 termination is granted or until further orders of the court are
2668 issued.
2669 Section 32. Subsection (1) of section 39.828, Florida
2670 Statutes, is amended to read:
2671 39.828 Grounds for appointment of a guardian advocate.--
2672 (1) The court shall appoint the person named in the
2673 petition as a guardian advocate with all the powers and duties
2674 specified in s. 39.829 for an initial term of 1 year upon a
2675 finding that:
2676 (a) The child named in the petition is or was a drug
2677 dependent newborn as described in s. 39.01(32)(g) ~~s.~~
2678 ~~39.01(30)(g)~~;
2679 (b) The parent or parents of the child have voluntarily
2680 relinquished temporary custody of the child to a relative or
2681 other responsible adult;
2682 (c) The person named in the petition to be appointed the
2683 guardian advocate is capable of carrying out the duties as
2684 provided in s. 39.829; and
2685 (d) A petition to adjudicate the child dependent under
2686 ~~pursuant to~~ this chapter has not been filed.
2687 Section 33. Subsection (3) of section 63.092, Florida
2688 Statutes, is amended to read:

2689 63.092 Report to the court of intended placement by an
2690 adoption entity; at-risk placement; preliminary study.--
2691 (3) PRELIMINARY HOME STUDY.--Before placing the minor in
2692 the intended adoptive home, a preliminary home study must be
2693 performed by a licensed child-placing agency, a child-caring
2694 agency registered under s. 409.176, a licensed professional, or
2695 agency described in s. 61.20(2), unless the adoptee is an adult
2696 or the petitioner is a stepparent or a relative. If the adoptee
2697 is an adult or the petitioner is a stepparent or a relative, a
2698 preliminary home study may be required by the court for good
2699 cause shown. The department is required to perform the
2700 preliminary home study only if there is no licensed child-
2701 placing agency, child-caring agency registered under s. 409.176,
2702 licensed professional, or agency described in s. 61.20(2), in
2703 the county where the prospective adoptive parents reside. The
2704 preliminary home study must be made to determine the suitability
2705 of the intended adoptive parents and may be completed prior to
2706 identification of a prospective adoptive minor. A favorable
2707 preliminary home study is valid for 1 year after the date of its
2708 completion. Upon its completion, a copy of the home study must
2709 be provided to the intended adoptive parents who were the
2710 subject of the home study. A minor may not be placed in an
2711 intended adoptive home before a favorable preliminary home study
2712 is completed unless the adoptive home is also a licensed foster
2713 home under s. 409.175. The preliminary home study must include,
2714 at a minimum:
2715 (a) An interview with the intended adoptive parents;
2716 (b) Records checks of the department's central abuse

2717 registry and criminal records ~~correspondence~~ checks under s.
2718 39.0138 ~~pursuant to s. 435.045~~ through the Department of Law
2719 Enforcement on the intended adoptive parents;
2720 (c) An assessment of the physical environment of the home;
2721 (d) A determination of the financial security of the
2722 intended adoptive parents;
2723 (e) Documentation of counseling and education of the
2724 intended adoptive parents on adoptive parenting;
2725 (f) Documentation that information on adoption and the
2726 adoption process has been provided to the intended adoptive
2727 parents;
2728 (g) Documentation that information on support services
2729 available in the community has been provided to the intended
2730 adoptive parents; and
2731 (h) A copy of each signed acknowledgment of receipt of
2732 disclosure required by s. 63.085.
2733
2734 If the preliminary home study is favorable, a minor may be
2735 placed in the home pending entry of the judgment of adoption. A
2736 minor may not be placed in the home if the preliminary home
2737 study is unfavorable. If the preliminary home study is
2738 unfavorable, the adoption entity may, within 20 days after
2739 receipt of a copy of the written recommendation, petition the
2740 court to determine the suitability of the intended adoptive
2741 home. A determination as to suitability under this subsection
2742 does not act as a presumption of suitability at the final
2743 hearing. In determining the suitability of the intended adoptive
2744 home, the court must consider the totality of the circumstances

2745 in the home. No minor may be placed in a home in which there
2746 resides any person determined by the court to be a sexual
2747 predator as defined in s. 775.21 or to have been convicted of an
2748 offense listed in s. 63.089(4)(b)2.
2749 Section 34. Paragraph (b) of subsection (3) of section
2750 409.165, Florida Statutes, is amended to read:
2751 409.165 Alternate care for children.--
2752 (3) With the written consent of parents, custodians, or
2753 guardians, or in accordance with those provisions in chapter 39
2754 that relate to dependent children, the department, under rules
2755 properly adopted, may place a child:
2756 (b) With an adult nonrelative approved by the court for
2757 permanent guardianship ~~long-term custody~~;
2758
2759 under such conditions as are determined to be for the best
2760 interests or the welfare of the child. Any child placed in an
2761 institution or in a family home by the department or its agency
2762 may be removed by the department or its agency, and such other
2763 disposition may be made as is for the best interest of the
2764 child, including transfer of the child to another institution,
2765 another home, or the home of the child. Expenditure of funds
2766 appropriated for out-of-home care can be used to meet the needs
2767 of a child in the child's own home or the home of a relative if
2768 the child can be safely served in the child's own home or that
2769 of a relative if placement can be avoided by the expenditure of
2770 such funds, and if the expenditure of such funds in this manner
2771 is calculated by the department to be a potential cost savings.
2772 Section 35. Paragraph (d) of subsection (1) of section

2773 419.001, Florida Statutes, is amended to read:
2774 419.001 Site selection of community residential homes.--
2775 (1) For the purposes of this section, the following
2776 definitions shall apply:
2777 (d) "Resident" means any of the following: a frail elder
2778 as defined in s. 400.618; a physically disabled or handicapped
2779 person as defined in s. 760.22(7)(a); a developmentally disabled
2780 person as defined in s. 393.063; a nondangerous mentally ill
2781 person as defined in s. 394.455(18); or a child <u>who is found to</u>
2782 <u>be dependent or a child in need of services</u> as defined in s.
2783 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).
2784 Section 36. <u>Sections 39.601, 39.622, 39.623, 39.624, and</u>
2785 <u>435.045, Florida Statutes, are repealed.</u>
2786 Section 37. This act shall take effect July 1, 2006.