

THE FLORIDA SENATE
2018 SUMMARY OF LEGISLATION PASSED
Committee on Community Affairs

CS/SB 512 — Homestead Waivers

by Rules Committee and Senator Young

The Florida Constitution protects homestead property in three ways. The Florida Constitution provides homesteads with an exemption from taxes; protects homesteads from forced sale by creditors; and limits the manner in which homestead owners may alienate (transfer property to another person) or devise (leave to someone by the terms of a will) the property.

To protect the interests of the family unit, the Florida Constitution provides in Section 4(c) of Article X that a homestead property may not be devised when the owner is survived by a spouse or minor child. However, the homestead may be devised to the owner's spouse if there is no minor child in certain circumstances. Specifically, the Florida Statutes provide a procedure for waiving spousal rights, particularly homestead rights, under written contracts, agreements, or waivers. However, there is a difference of opinion among practitioners as to whether a deed is covered under the umbrella of "contracts, agreements, or waivers."

CS/SB 512 provides form language that a spouse may include in a deed to demonstrate that he or she knowingly waives the right to inherit homestead property.

The bill provides that a spouse waives his or her rights as a surviving spouse with regard to the devise restrictions contained in the Florida Constitution if certain language, or substantially similar language, is included in a deed.

This waiver language is not a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Additionally, the language is not a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 38-0; House 113-0

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HB 617 — Covenants and Restrictions

by Rep. Edwards-Walpole, and others (CS/SB 266 by Rules Committee and Senator Passidomo)

A covenant or restriction is an agreement or limitation that subjects a parcel to any use restriction. Covenants or restrictions are contained in a document recorded in the public records of the county in which a parcel is located, and these covenants may be enforced by a homeowners' association. Homeowners' associations may also be authorized to impose a charge or assessment against the parcel or the owner of the parcel. Florida law allows for the preservation and revitalization of covenants by a homeowners' association, but not other community associations. The bill addresses the covenants and restrictions of property owners' associations and makes the following changes:

- Extends statutes authorizing the preservation and revival of covenants and restrictions to a broader range of associations, notably commercial property owners' associations;
- Allows a homeowners' association to file a form notice with the clerk of court which preserves the association's covenants and restrictions;
- Repeals language that requires a two-thirds vote of the members of the board of directors to preserve existing covenants and restrictions;
- Authorizes parcel owners who were subject to covenants and restrictions, but who do not have a homeowners' association, to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions; and
- Requires a homeowners' association to annually consider preservation of the covenants and restrictions and requires that the association file a summary preservation every 5 years.

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 36-0; House 114-0

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HB 1013 — Daylight Saving Time

by Reps. Nunez and Fitzenhagen, and others (CS/CS/SB 858 by Commerce and Tourism Committee; Community Affairs Committee; and Senators Steube, Mayfield and Taddeo)

The Uniform Time Act of 1966 defines Daylight Saving Time (DST) as the advancement of time by one hour from the second Sunday of March to the first Sunday of November. Specifically, clocks are moved forward from 2 a.m. to 3 a.m. in spring, and they are moved back from 2 a.m. to 1 a.m. in fall. The act preempts state and local law regulating the observance of DST in any manner inconsistent with federal law. However, states may exempt themselves from observing DST and instead observe standard time year-round by passing a state law if:

- The entire state lies within a single time zone and the exemption applies statewide; or
- The state lies in more than one time zone and the exemption applies to the entire state or to the entire part of the state within one time zone.

Currently, DST is not observed in Hawaii, American Samoa, Guam, Puerto Rico, the Virgin Islands, and most of Arizona.

While states may exempt themselves from observing DST and remain on standard time year-round, they may not remain on the “spring forward” time change in March without making the corresponding “fall back” time change in October unless the United States Congress changes federal law.

HB 1013 creates the Sunshine Protection Act, which provides that the Legislature intends to adopt DST as the year-round standard time if the United States Congress amends 15 U.S.C. s. 260a, relating to Daylight Saving Time. Because a current Florida Legislature may not bind a future Florida Legislature, even if the United States Congress amends 15 U.S.C. s. 260a, further action may be required by the Florida Legislature to adopt DST as the year-round standard time in Florida.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 33-2; House 103-11

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CS/CS/HB 1151 — Developments of Regional Impact

by Commerce Committee; Agriculture and Property Rights Subcommittee; Rep. La Rosa (CS/CS/SB 1244 by Appropriations Committee; Community Affairs Committee; and Senator Lee)

A Development of Regional Impact (DRI) is defined in s. 380.06, F.S., as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for proposed projects that was largely duplicated by the successor comprehensive planning review process.

In 2015, the Florida Legislature eliminated the requirement that new large-scale developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process for the review of local government comprehensive plan amendments.

Generally, the bill eliminates many unnecessary DRI statutory requirements governing the application and approval of DRIs since the program no longer exists. Proposed changes to an existing DRI development order will be the responsibility of the local government in which the development is located.

Specifically, the bill:

- Repeals obsolete language for the application and review of DRIs;
- Changes the process for existing DRIs to amend a development order;
- Retains current statewide guidelines and standards for determining when a development is subject to state coordinated review;
- Updates reporting requirements;
- Preserves certain unexpired letters, development orders, and agreements;
- Ends all DRI appeals to the Administration Commission except decisions by local governments under the DRI abandonment process;
- Repeals state land planning agency rules related to DRIs and Administration Commission rules related to aggregation of developments for the purpose of DRI review;
- Repeals the Florida Quality Developments (FQD) program and requires FQD development orders to be replaced by local government development orders; and
- Creates a definition of master development plan.

The Department of Economic Opportunity will incur less expenses related to the DRI process.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-0; House 110-1

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CS/CS/HB 1383 — Tax Deed Sales

by Government Accountability Committee; Ways and Means Committee; Rep. Latvala (CS/SB 1504 by Community Affairs Committee and Senators Rouson and Rader)

Local ad valorem taxes are due on November 1 or as soon as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 of the following year or immediately upon the expiration of 60 days from the date the original tax notice was mailed, whichever is later. If ad valorem taxes are not paid by June 1 or the 60th day after the tax becomes delinquent, whichever is later, the tax collector advertises and sells tax certificates to pay the delinquency.

Two years after April 1 of the year in which the tax certificate was issued, and before the certificate expires, a certificateholder may apply for a tax deed with the tax collector. Certificateholders other than the county must pay all costs required by statute before the sale may occur, including the costs of any title search or abstract. The tax collector is responsible for notifying the clerk of the circuit court of the parties requiring notice of the pending tax deed sale. The costs to bring the property to sale are added to the opening bid on the property.

Once the tax deed sale is completed, any proceeds in excess of the opening bid are paid over to and distributed by the clerk, first to governmental entities and then to nongovernmental entities in priority. However, if the balance after the governmental liens have been paid is insufficient to cover the cost to notify possible claimants of the proceeds then the clerk may retain the entire balance as a service charge. Any unclaimed money is remitted to the state on behalf of persons entitled to notice of the tax deed sale.

CS/CS/HB 1383 clarifies the responsibilities of the tax certificateholder when applying for a tax deed, including the specific costs to pay. The bill requires tax collectors to contract with title companies or abstract companies to provide a property information report. Costs for property information reports will be added to the costs of sale. Additionally, the bill revises certain provisions regarding notice and distribution of surplus funds and makes certain technical changes.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 37-0; House 114-0

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HB 6003 — Participant Local Government Advisory Council

by Rep. White (CS/SB 614 by Community Affairs Committee and Senators Montford, Simmons, Powell, and Taddeo)

The Local Government Surplus Funds Trust Fund (Florida PRIME) was created in 1977 to promote, through state assistance, the maximization of net interest earnings on invested surplus funds of local governments. All units of local government in Florida are permitted to invest their surplus funds in Florida PRIME. The State Board of Administration is responsible for administering Florida PRIME, and independent oversight is provided by the Investment Advisory Council and the Participant Local Government Advisory Council (PLGAC).

The six member PLGAC was created by the Legislature in 2008 following an unanticipated liquidity crisis in Florida PRIME for the purpose of regularly reviewing the administration of Florida PRIME and making recommendations regarding such administration to the Trustees. In its 2017 report, the PLGAC expressed that it had achieved all of its objectives, and recommended discontinuing the PLGAC.

The bill abolishes the Participant Local Government Advisory Council and makes conforming changes due to the abolishment. The State Board of Administration anticipates a reduction in expenditures of approximately \$25,000 associated with the abolishment of the PLGAC.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-0; House 112-1