

By Senator Clary

7-103-98

1                                   A bill to be entitled  
2           An act relating to the Department of Revenue;  
3           providing for the relief of Ray Construction of  
4           Okaloosa County, Ltd.; providing an  
5           appropriation to compensate Ray Construction of  
6           Okaloosa County, Ltd., for documentary stamp  
7           tax assessments paid to the Department of  
8           Revenue and for attorney's fees and court  
9           costs; providing an effective date.

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11           WHEREAS, on December 6, 1994, the Circuit Court of the  
12   First Judicial Circuit in and for Okaloosa County entered a  
13   final judgment (Case No. 94-501-CA) pursuant to a complaint by  
14   Ray Construction of Okaloosa County, Ltd., which sought a  
15   declaratory judgment against the State of Florida, Department  
16   of Revenue, relative to the legality of four contested  
17   documentary stamp tax assessments made by the Department of  
18   Revenue against Ray Construction, and relative to a refund  
19   sought by Ray Construction against the Department of Revenue  
20   for a tax warrant issued pursuant to an assessment which Ray  
21   Construction contended was illegal and improper, and

22           WHEREAS, Ray Construction also sought a declaratory  
23   judgment to determine its documentary stamp tax liability with  
24   respect to other land transactions similar to those giving  
25   rise to the contested assessments but not yet subjected to  
26   audit and tax assessments by the department, and

27           WHEREAS, the Circuit Court ruled in favor of Ray  
28   Construction and against the Department of Revenue, finding  
29   that Ray Construction did not owe the department for the four  
30   contested documentary stamp tax assessments or the contested  
31   tax warrant, and that numerous other similar land transactions

1 by Ray Construction were not subject to audit and tax  
2 assessments by the department, and

3 WHEREAS, the Department of Revenue appealed the Circuit  
4 Court's decision in this matter (Case No. 95-228), and

5 WHEREAS, in its opinion filed January 30, 1996, the  
6 First District Court of Appeal found that the Department of  
7 Revenue's notice of the contested assessments to Ray  
8 Construction was sufficient and disagreed with Ray  
9 Construction's assertion that the Department of Revenue's  
10 failure to adopt a rule setting out specific procedure for  
11 delivery of notice of proposed tax assessment voids such  
12 notices, and

13 WHEREAS, the First District Court of Appeal found that,  
14 because Ray Construction's challenge to the four disputed  
15 assessments was untimely, the Circuit Court lacked  
16 subject-matter jurisdiction to entertain a challenge to the  
17 assessments and subsequently reversed that portion of the  
18 trial court's final judgment, and

19 WHEREAS, the First District Court of Appeal upheld that  
20 portion of the final judgment awarding a declaratory judgment  
21 in favor of Ray Construction in which the court declared that  
22 the Department of Revenue had no right to impose an assessment  
23 of additional documentary stamp taxes with respect to similar  
24 land conveyances not yet subjected to audit and assessment by  
25 the Department of Revenue, and

26 WHEREAS, given the First District Court of Appeal's  
27 affirmative ruling on that portion of the trial court's final  
28 judgment, Ray Construction would have prevailed with regard to  
29 a challenge to the four contested assessments if its challenge  
30 had been timely filed, and

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1           WHEREAS, Ray Construction of Okaloosa County, Ltd.,  
2 seeks to recover \$2,479.96 for four documentary stamp tax  
3 assessments paid to the Department of Revenue and \$15,750.50  
4 in attorney's fees and court costs, and

5           WHEREAS, the total amount of the claim against the  
6 Department of Revenue is \$18,230.46, NOW, THEREFORE,

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

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10           Section 1. The facts stated in the preamble to this  
11 act are found and declared to be true.

12           Section 2. The Executive Office of the Governor is  
13 directed to transfer existing spending authority or establish  
14 spending authority from the General Revenue Fund in the State  
15 Treasury in the amount of \$18,230.46 to a new category titled  
16 "Relief - Ray Construction of Okaloosa County, Ltd." as relief  
17 for damages sustained.

18           Section 3. The Comptroller is directed to draw his  
19 warrant in favor of Ray Construction of Okaloosa County, Ltd.,  
20 in the sum of \$18,230.46 upon funds in the State Treasury and  
21 the State Treasurer is directed to pay the same out of such  
22 funds in the State Treasury.

23           Section 4. This act shall take effect July 1, 1998.

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26           LEGISLATIVE SUMMARY

27           Provides an appropriation of \$18,230.46 from funds of the  
28 Department of Revenue to Ray Construction of Okaloosa  
29 County, Ltd., as compensation for documentary stamp tax  
30 assessments paid to the Department of Revenue and for  
31 attorney's fees and court costs.