SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 374

SPONSOR: Judiciary Committee and Senator Laurent

SUBJECT: Civil Actions (Jurors)

DATE: February 18, 1999 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Forgas	Johnson	JU	Favorable/CS
2.			RC	
3.				
4.				
5.				

I. Summary:

This bill is based on a portion of the 1998 conference committee report of the Conference Committee on Litigation Reform which reviewed the impact of the civil litigation system on Florida's business climate. The bill makes modifications and additions to both the procedural and the substantive aspects of the civil litigation system in Florida. Some of the major provisions:

- Provide a series of jury reform measures to inform and instruct jurors, as well as allow greater participation by the jurors in civil trials, to include providing juror notebooks in civil trials likely to exceed 5 days and permission to direct written questions to witnesses;
- Authorize more sanctions to deter unfounded claims and defenses, as well as protracted litigation;
- Provide options for alternative or expedited court procedures in more types of civil cases;
- Provide that legal actions involving a resident contractor, subcontractor, sub-subcontractor or materialman be brought only in the State of Florida unless the parties agree to the contrary;
- Require offers of judgement in cases involving multiple parties to specify to whom the offer is made and require the court to consider statutory criteria, including whether an offer was unreasonaly rejected, when determining whether an offer was reasonably made before awarding costs and fees;
- Provide conditions a prevailing party must meet before it can recover expert witness fees as taxable costs;
- Repeal the requirement that the trier of fact itemize, calculate and reduce to present value future economic damages and allows the judge to reduce future economic damages to present value when those damages exceed $250,000;
- Require the parties to discuss the option of a structured settlement in both pre-judgment and post-judgment cases;
- Eliminate automatic application of joint and several liability in cases with total damages of $25,000 or less, and specify that joint and several liability will apply to economic damages only when a party's own fault exceeds 33% and exceeds the claimant's fault;

- Apply joint and several liability for economic damages in medical malpractice cases to parties that are not teaching hospitals and whose fault equals or exceeds that of a particular claimant;
- Require a defendant to affirmatively plead the fault of a nonparty and prove that fault by a preponderance of the evidence at trial in order to include the non-party on the verdict form; and
- Provide for an actuarial study to report, by March 1, 2001, an expected reduction in judgments, settlements, and other related costs in claims of certain insurers resulting from the impact of the litigation reform measures, and provide for subsequent review by the Department of Insurance of certain insurers' rate filings.

This bill substantially amends the following sections of the Florida Statutes: 44.102, 57.071, 57.105, 768.77, 768,78, 768,79, and 768.81. The bill also creates the following sections: 40.50, 44.1051, 47.025. The bill also repeals the following subsections: 768.77(2) and 768.81(5).

II. Present Situation:

Background

Select Senate Committee on Litigation Reform

In August 1997, the Senate President appointed an 11-member Select Senate Committee on Litigation Reform to conduct hearings to assess the manner and extent to which the current civil litigation environment is affecting economic development and job-creation efforts in the state. The select committee was additionally charged with ascertaining what civil litigation reforms, if any, would enhance the economic development climate of the state while continuing to preserve the rights of citizens to seek redress through the judicial system.

The select committee conducted a series of public meetings from September 1997 through early 1998. Testimony was solicited on key litigation topics from a variety of civil legal practitioners, representatives of interests in the area of civil litigation, and representatives of a judicial task force created by the Supreme Court to monitor the Legislature's efforts on litigation reform. The select committee developed and discussed specific issues within each topic. In February 1998, the select committee issued its report and recommendations on litigation reform to the Senate President, which included corresponding draft legislation.

Among the principal topics explored by the committee were alternative dispute resolution methods, attorney's fees and costs, doctrines of comparative fault and joint and several liability, economic and non-economic damages, jury duty, punitive damages and vicarious liability.

III. Effect of Proposed Changes:

This bill reflects the consensus legislation submitted in 1998 by select members of the Senate and the House of Representatives as part of the final report of the Conference Committee on Litigation Reform. The bill makes wide-ranging and substantial modifications to procedural and substantive components of the civil litigation system in Florida. Through its principal provisions, the bill:

- Creates provisions governing mandatory activities of juries during the civil trial process, including the ability to pose questions, take notes, and keep notebooks in certain trials;
- Requires court-ordered mediation for all civil cases, with limited exceptions;
- Expands the availability of sanctions for frivolous or protracted litigation;
- Eliminates any application of joint and several liability to non-economic damages and specifies that, with the exception of certain medical malpractice cases, joint and several liability will only apply to economic damages when a party's fault exceeds the claimant's fault and the party's own fault exceeds 33%;
- Requires a defendant to affirmatively plead the fault of a non-party and prove that fault by a preponderance of the evidence at trial in order to include the non-party on the verdict form;
- Revises the offer of judgment statute to address clarification of offers to multiple parties and the effect of subsequent offers of judgment for recovery of attorney fees, and imposing conditions for recovery of expert witness fees as a taxable cost;
- Provides that legal actions involving a resident contractor, subcontractor, sub-subcontractor or materialman be brought only in the State of Florida unless the parties agree to the contrary after the dispute arises;
- Repeals requirement that trier of fact itemize, calculate and reduce to present value future economic damages and allows the judge to reduce future economic damages to present value when those damages exceed $250,000; and
- Requires the parties to discuss the option of a structured settlement;
- Provides for an actuarial study to analyze expected reductions in judgments, settlements and related costs resulting from litigation reforms based on liability claims insured under other than private automobile insurance and homeowners insurance; requires rate filings by March 1, 2001, by certain insurers to enable the Legislature to monitor and evaluate the effects of the act.

A section-by-section description of the current law and the effects of the proposed changes is discussed below:

Alternative Dispute Resolution and Expedited Court Proceedings

a) Current Statutory and Common Law

Rule 2.085, Florida Rules of Judicial Administration, provides guidelines setting forth general timelines for conducting trial and appellate court proceedings. The guidelines state that civil jury trials should be conducted within 18 months after filing and civil-non jury trials should be conducted within 12 months after filing. Civil cases not completed within the timelines are reported on a quarterly basis to the Chief Justice of the Florida Supreme Court. There is no rule providing for speedy trial resolution analogous to the criminal speedy trial rule, Rule 3.191, Florida Rules of Criminal Procedure, which requires misdemeanor cases to be brought to trial within 90 days and felony cases to be brought to trial within 175 days.

Chapter 44, F.S., provides that courts may refer all or any part of a filed civil action to mediation. Mediation is a process in which a neutral third party acts to encourage and facilitate the resolution of a dispute between two or more parties. The mediator does not render a decision. Instead, the decision-making authority rests with the parties. Mediation is always non-binding. The law also provides that upon motion or request of a party, a court shall not refer any case to mediation

where there has been a history of domestic violence that would compromise the mediation process.

Chapter 44, F.S., also provides for arbitration. Arbitration is a process in which a neutral third party considers the facts and arguments presented by the parties. The arbitrator renders a decision that may be binding or non-binding. Courts may refer any contested civil action filed in a circuit court or county court to non-binding arbitration. The arbitration decision is presented to the parties in writing. This decision is final if a request for a trial de novo is not filed within the time provided by the rules promulgated by the Supreme Court. The party who files for a trial de novo may be liable for legal fees and court costs of the other party if the judgment at trial is not more favorable than the arbitration decision. Two or more parties may elect to submit the controversy to voluntary *binding* arbitration.

b) Effect of Proposed Changes

Section 1 creates s. 40.50, F.S., to provide for a series of jury reform measures to be implemented by the courts including, but not limited to, providing detailed preliminary and final instructions to the jurors, furnishing notebooks to jurors in trials likely to exceed 5 days, permitting jurors to take notes and allowing the jurors to submit written questions to witnesses (subject to approval by the court). This section also requires judges, attorneys, and court staff to provide detailed information to jurors.

Section 2 amends s. 44.102, F.S., relating to court-ordered mediation, to mandate that all civil actions for monetary damages be referred to mediation unless it falls within one of six exceptions. The exceptions are actions between landlord and tenant that do not involve personal injury claims, actions for debt collection, actions for medical malpractice, actions governed by the Florida Small Claims Rules, actions the court determines should be referred to non-binding arbitration, and those actions in which the parties have agreed to binding arbitration. In all cases for which mediation is not mandatory under the proposed changes, the court would retain the current statutory discretion to refer those cases to mediation under s. 44.102, F.S.

Section 3 creates s. 44.1051, F.S., to allow two or more parties involved in a civil dispute, in which no constitutional issues are raised, to agree to a voluntary trial resolution. The parties are responsible for selecting and compensating the trial resolution judge. The trial resolution judge must be a member in good standing of the Florida Bar for the preceding 5 years (the same qualifications needed for a circuit court or county court judge). Under current law, a retired Florida judge may be assigned on a temporary basis to conduct civil or criminal trials.

The trial resolution judge shall have the authority to administer oaths, conduct the proceedings in accordance with the Florida Rules of Civil Procedure and Florida Evidence Code, and issue enforceable subpoenas. A party may enforce a decision obtained in a voluntary trial resolution by filing a petition for final judgement in circuit court. An appeal may be made to the appropriate appellate court but review of factual findings is not allowed on appeal. The “harmless error doctrine” applies in all appeals, which is generally applied in all appellate cases under current law. The language does not clarify what the standard of review will be other than state that no further review will be allowed of a judgment unless a constitutional issue is raised. The presence of

competent substantial evidence to support the findings is a standard of review for most appellate cases.

Voluntary trial resolution is not available to parties in actions involving child custody, visitation, child support or any dispute involving the rights of a party not participating in a voluntary trial resolution.

Section 7 creates an optional speedy civil trial procedure called an expedited trial. Upon joint motion of the parties with approval of the court, the court is authorized to conduct an expedited civil trial. For purposes of the expedited trial, where two or more plaintiffs or defendants have a unity of interest, such as a husband and wife, the parties shall be considered one party. Unless otherwise ordered by the court or agreed to by the parties, discovery must be completed within 60 days. This section does not specify when discovery must begin. The court must determine the number of depositions required. The trial, whether jury or non-jury, must be conducted within 30 days after discovery ends. Jury selection is limited to 1 hour. Case presentation by each party is limited to 3 hours each. The trial is limited to 1 day. Expert witness reports and excerpts from depositions, including video depositions, may be introduced in lieu of live testimony regardless of the availability of the expert witness or deponent (note: this may represent a departure from the current rule of evidence governing admissible evidence.)

Attorney's Fees, Expert Witness Fees and Offers of Judgment

a) Current Statutory and Common Law

Currently, section 57.105, F.S., allows the prevailing party to recover attorney's fees when the court finds there was a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party. The amount awarded is to be paid based on an even split between the losing party and the losing party's attorney. The attorney will not be personally responsible if he or she acted in good faith based upon the representation of the client.

Section 57.071, F.S., currently provides for recovery of certain taxable costs such as premiums for bonds, court reporter expenses and sales taxes on legal services. Additionally, the Florida Supreme Court Statewide Uniform Guidelines for Taxation of Costs in Civil Actions provide directions to judges for imposing costs in civil actions to prevailing parties. The Guidelines contain numerous provisions pertaining to expert witness fees which primarily leave consideration of the expert's charges in the discretion of the trial court judge.

b) Effect of Proposed Changes

Section 4 amends s. 57.105, F.S., relating to an award of attorney's fees in frivolous (or unfounded) lawsuits. This section replaces the existing standard for an award of attorney's fees and allows the court to award attorney's fees upon its own initiative or motion of any party. The new standard for an award of attorney's fees will be based on whether the losing party or the losing party's attorney knew, or should have known, that the claim or defense at the time it was initially presented, or at any time before trial, was not supported by material facts or by the application of then-existing law. This section retains the good faith exception (modified slightly to apply to the new standard) for the losing party's attorney if the attorney acted in good faith based

on his or her client's representations as to material facts. In addition, sanctions for attorney's fees will not apply if the claim or defense is determined to have been made as a good-faith attempt with a reasonable probability of changing then-existing law.

This section expands the court's authority to impose sanctions or damages for protracted litigation if the moving party proves by a preponderance of the evidence that any litigation activities were taken for the primary purpose of unreasonable delay.

This section also authorizes the court to impose additional sanctions as are just and warranted for unsupported claims, unsupported defenses, or protracted litigation. The sanctions may include contempt of court, an award of taxable costs, the striking of a claim or defense, or dismissal of the pleading.

Section 5 amends subsections (3), (5), and (7) of s. 768.79, F.S., relating to offers and demands for judgment. In cases involving multiple parties, this section requires an offer of judgment to specify to whom the offer is made and the terms of the offer. A subsequent offer to a party automatically voids a previous offer to that party. This section additionally requires the court, before awarding costs and fees, to determine whether an offer was reasonable made in good faith at the time the offer was made and consider certain statutory criteria, including whether the offer was reasonably rejected.

Section 6 amends s. 57.071, F.S., relating to taxable costs in civil proceedings, to condition the recovery of expert witness fees as taxable costs to a prevailing party. The prevailing party must file a written notice, within 30 days after entry of an order setting the trial date, setting out the expertise and experience of the witness, the subjects upon which the expert is expected to testify, and an estimate of the expert witness' total fees by flat rate or hourly. The party retaining the expert witness must also furnish each opposing party a written report signed by the expert witness which summarizes the opinions expressed, the factual basis for each opinion and the authorities relied upon for such opinions. The report must be filed at least 10 days prior to the discovery deadline, 45 days prior to trial, or as otherwise determined by the court. This section overlaps and may conflict with the Florida Rules of Civil Procedure governing procedures for disclosure and discovery of expert witnesses and the *Florida Supreme Court Statewide Uniform Guidelines for Taxation of Costs in Civil Actions*.

Itemized Verdicts, Venue Provisions and Reporting Requirements

a) Current Statutory and Common Law

Section 768.77, F.S., currently requires the jury in a civil trial to itemize the damages it awards to the plaintiff. The jury must separately determine the amounts for economic, non-economic and punitive damages, if any, and separately enter those amounts on the verdict form. Additionally, for any amount of future economic damages, the jury must determine how many years the award is for and then reduce the future amount to present value.

Section 768.78, F.S., currently requires the court in post-trial proceedings to enter judgment ordering future economic damages in excess of $250,000 to be paid in whole, or in part, by periodic payments. The court must do so upon the request of either party unless the court

determines manifest injustice would result to any party. There are no current statutes which require similar action by the court for settlements reached by the parties prior to a trial or the rendition of a verdict at trial.

b) Effect of Proposed Changes

Section 8 amends s. 768.77, F.S., relating to itemized verdicts, to repeal the requirements that the trier of fact itemize and calculate on the verdict form economic damages before and after reduction to present value and to specify the period of time for which future damages are intended to provide compensation. This section may have the effect of simplifying the verdict form and reducing some of the confusion for jurors. The trier of fact would still be required to itemize damages as to economic and non-economic losses, as well as punitive damages when they are awarded.

Section 9 amends s. 768.78, F.S., relating to alternative methods of payment of damage awards, to conform the provisions of the alternative payment statute with the elimination of the itemization of future economic losses by the trier of fact as amended in s. 768.77, F.S. The term "trier of fact" is replaced with the term "the court" as the specific trier of fact to make the determination of whether an award includes future economic losses exceeding $250,000, for purposes of alternative methods of payment of damage awards.

Section 768.78 is amended to include provisions requiring the parties to discuss the option of a structured settlement in pre-judgment and post-judgment cases. If the plaintiff chooses to receive payment in the form of a structured settlement, the defendant must provide payment in a periodic manner. The plaintiff has the right to select the third party assignee and the licensed structured settlement broker. The defendant may not withdraw from the settlement agreement because of the plaintiff's choice of third party assignee. This sub-section does not apply to settlements under $50,000 and only applies to cases impacted by section 104 of the Internal Revenue Code.

Section 10 creates s. 47.025, F.S., to find that a venue provision that requires legal action involving a resident contractor, subcontractor, sub-subcontractor or materialman to be brought outside the state is void as a matter of public policy. In that event, such legal actions arising out of that contract may be brought only in the State of Florida and only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located, unless the parties agree to the contrary after the dispute arises.

Section 11 requires the clerk of the court, through the uniform state case reporting system, to report to the Office of the State Court Administrator certain information from each settlement, jury verdict, and final judgment in a negligence case as defined in s. 768.81(4), F.S. This reporting requirement need be made only as deemed necessary from time to time by the President of the Senate and the Speaker of the House of Representatives.

Section 13 requires the Department of Insurance to contract with a national independent actuarial firm to conduct an actuarial analysis of the expected reduction in liability judgments, settlements and related costs resulting from the litigation reform provisions in this act. The analysis must be based on credible loss cost data derived from settlement or adjudication of liability claims accruing after October 1, 1999, and must include an estimate of the percentage decrease in judgments,

settlements and costs by type of coverage affected by the act. Liability claims insured under private passenger automobile insurance ("personal auto insurance") and personal line residential property insurance ("homeowners insurance") are excluded from the analysis. The analysis report must be submitted to DOI by March 1, 2001. The report may be admitted into evidence in any proceedings relating to a liability insurance rate filing if the actuary providing the report is available to testify regarding the report's preparation and validity. Each party to such proceeding shall otherwise bear its own cost.

The DOI must subsequently review rate filings of insurers, and underwriting profits or losses for Florida liability insurance businesses, and require any rate modifications deemed necessary, in accordance with applicable rating law. Liability insurers other than personal auto insurers and homeowners insurers are required to submit their first rate filing to include specific data on judgments, settlements, and costs after March 1, 2001, for the purpose of enabling DOI and the Legislature to monitor and evaluate the effects of the act.

It is clarified that the provisions of this section do not limit the authority of the DOI to order an insurer to refund excessive profits to policyholders as refunds or credits, as provided in s. 627.066, F.S., relating to motor vehicle insurance, and s. 627.215, F.S., relating to workers' compensation, employer's liability, commercial property and commercial casualty insurance (Note: The refund of excessive profits provision as applied to commercial property and commercial casualty insurance ceased on January 1, 1997).

Comparative Fault and Joint & Several Liability

a) **Current Statutory and Common Law**

In 1986, the Florida Legislature codified the doctrine of comparative fault, which had been adopted by the Florida Supreme Court in 1973, to replace contributory negligence. Section 768.81, F.S., provides for an application of the doctrines of comparative fault and joint and several liability for calculation of damages. Under the doctrine of comparative fault, the court enters a judgment in negligence cases against each party liable on the basis of each party's percentage of fault for all damages. Under current law, with the exception of medical malpractice actions against teaching hospitals, the doctrine of joint and several liability applies if a party's percentage of fault equals or exceeds the percentage of fault of the claimant. This means that the court shall enter judgment with respect to the economic damages against that party such that the party is individually liable for the total amount of damages until the claimant recovers all damages completely. Furthermore, the doctrine of joint and several liability is applied automatically in cases where the total amount of damages (economic and non-economic) is $25,000 or less.

In a significant decision construing the interplay between the doctrines of joint and several liability and comparative fault, the Florida Supreme Court ruled in *Fabre v. Marin*, 623 So.2d 1182 (Fla.1993), that a defendant could apportion fault to non-party defendants. Specifically, the court held that, in determining non-economic damages, fault must be apportioned among all responsible entities who contribute to an accident even though not all of them were joined as defendants in the lawsuit. In *Nash v. Wells Fargo Guard Services, Inc.*, 678 So.2d 1262 (Fla.1996), the Court subsequently clarified that, in order for a non-party to be included on a jury verdict form, the defendant must have pleaded the non-party's negligence as an affirmative

defense and specifically identified the non-party. In addition, the defendant bears the burden of presenting evidence that the non-party's negligence contributed to the claimant's injuries. Some legal commentators have expressed concern that the *Fabre* and *Nash* decisions have resulted in plaintiffs bringing all potentially liable actors into lawsuits, some of whom might otherwise not have been named because it is likely they would have little or no liability.

Economic and Non-Economic Damages

The term "non-economic damages" encompasses not only pain and suffering but also mental anguish, inconvenience, physical impairment, disfigurement, loss of capacity for enjoyment of life, and other non-pecuniary losses. There is no strict mathematical formula for calculating such damages, rather the Florida Supreme Court has said such awards are up to the enlightened conscience of impartial jurors. Awards are subject to court review, however, and s. 768.74, F.S., which governs negligence actions, provides criteria for a court to apply in deciding whether to reduce an excessive award or add to an insufficient award, such as whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact.

As part of the Tort Reform Act of 1986, the Legislature imposed a $450,000 cap on damages for non-economic losses. In *Smith v. Dept. of Insurance*, 507 So.2d 1080 (Fla. 1987), the Florida Supreme Court held that the cap violated s. 21, Art. I, State Constitution, which provides a right of access to the courts to seek redress of injuries. The Court said legislative restrictions on rights of access to the courts are impermissible unless: 1) the statute provides a reasonable alternative remedy or commensurate benefit, or 2) there is a legislative showing of an overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

b) Effect of Proposed Changes

Section 12 amends s. 768.81, F.S., relating to comparative fault and apportionment of damages. This section eliminates automatic application of joint and several liability for actions with total damages of $25,000 or less. This repeal has the effect of eliminating joint and several liability for all non-economic damages. Subsection (3) is amended to add that, in order for joint and several liability to apply to economic damages instead of comparative fault, the defendant's percentage of fault must not only equal or exceed the claimant's percentage of fault, but the defendant's percentage of fault must also exceed 33%. Subsection (6) is amended to add that joint and several liablility for economic damages where the defendant's percentage of fault equals or exceeds that of the claimant will still apply to any party that is not a teaching hospital in a medical malpractice case.

This section also codifies, in part, *Fabre* and *Nash* to require a defendant who alleges a non-party to be at fault to affirmatively plead that defense and, absent a showing of good cause, identify that non-party or describe the non-party as specifically as practicable, in a motion or in an initial pleading, subject to amendment any time before trial in accordance with the rules of court. Additionally, in order to include the non-party on the verdict form, the defendant must prove at trial the non-party's fault in causing the claimant's injuries by a preponderance of the evidence.

Section 14 provides a severability clause.

Section 15 provides that the act shall take effect October 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Legislative Encroachment Upon Judicial Authority

The bill raises a concern regarding legislative encroachment upon judicial authority regarding matters of practice and procedure in violation of the state constitutional separation of powers provision. *See* art. II, s. 3, Fla. Const. Whereas the Legislature has authority to create substantive law, the Florida Supreme Court has sole and preemptive constitutional authority to promulgate court rules of practice and procedure. *See* art. V, s.2(a), Fla. Const. However, the Legislature can repeal the court rules by a 2/3 vote. *See* art. V, s.2(a), Fla. Const.. The Legislature cannot enact law that amends or supersedes existing court rules, it can only repeal them. *See Market v. Johnston*, 367 So.2d 1003 (Fla. 1978).

What constitutes practice and procedure versus substantive law has been decided by the courts on a case by case basis. With few exceptions, it is not entirely clear or definitive. Generally substantive laws create, define and regulate rights. Court rules of practice and procedure prescribe the method or process by which a party seeks to enforce or obtain redress. *See Haven Federal Savings & Loan Assoc.*, 579 So.2d 730 (Fla. 1991).

Based on current law, the courts tend to find certain provisions unconstitutional such as those regarding timing and sequence of court procedures, creating expedited proceedings, issuing mandates to the courts to perform certain functions, and attempting to supersede or modify existing rules of court or intrude in areas of practice and procedure within the province of the court. The bill contains a number of provisions which arguably involve matters of judicial practice and procedure versus substantive law.

However, over the years, the courts have shown some willingness to adopt a "procedural" statute as a court rule, particularly when the court finds the legislative intent or underlying legislative policy to be beneficial to the justice system. In this situation, the court will typically invalidate the procedural provision as constitutionally infirm and then adopt the substance of the invalid section as a court rule. *See TGI Friday's, Inc. V. Dvorak*, 663 So.2d

606 (Fla. 1995); *Timmons v. Combs*, 608 So.2d 1 (Fla. 1992)(re: Fla.R.Civ.P. 1.442, Proposals for Settlement). Under Florida Rule of Judicial Administration 2.130(a), the courts can also adopt the substance of an invalid section as an emergency rule of procedure based on a recognition of the importance of providing a procedural vehicle or otherwise recognizing the usefulness of the policy sought to be asserted by the Legislature. *See* Fla.R.Civ.P. 1.222-emergency rule adoption of statutory provisions governing Mobile Homeowners' Association.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill substantially affects a wide variety of procedures and standards governing civil actions in Florida, from the perspective of both plaintiffs and defendants. For example, certain provisions are devised to enable civil trial jurors to become better informed and more active participants; provide options for alternative and speedier forms of resolution; discourage frivolous lawsuits and deter protracted litigation; and lessen unnecessary litigation. However, precise impact of this bill on the private and business sector is indeterminate. Further insight into the impact of certain litigation reform measures may be available upon completion of the actuarial study report on expected reductions in settlements, judgments, and related costs, due in March 2001, and of the Department of Insurance's review of certain insurers' rate filings.

C. Government Sector Impact:

The bill's provisions pertaining to jurors, voluntary trial resolution, expedited trials and clerk of the court reporting may have a substantial, but at this time undeterminable, impact upon the court system. The requirements pertaining to juror notebooks, notes and instructions will require additional time from judges and clerks to insure the statutory requirements are met, along with an increase in costs for each. The requirement for the clerks to maintain separate records for voluntary trials could have a significant impact on computer programming, indexing, logistics and reporting functions. Finally, expedited trials could create problems by eliminating judicial discretion in specific cases and diminishing control of the trial docket.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.