A bill to be entitled
An act relating to residential construction
warranties; creating s. 553.835, F.S.; providing
legislative findings; providing legislative intent to
affirm the limitations to the doctrine of implied
warranty of fitness and merchantability or
habitability associated with the construction and sale
of a new home; providing a definition; prohibiting a
cause of action in law or equity based upon the
document of implied warranty of fitness and
merchantability or habitability for offsite
improvements; providing that the existing rights of
purchasers of homes or homeowners’ associations to
pursue certain causes of action are not altered or
limited; providing for applicability of the act;
providing for severability; providing an effective
date.

WHEREAS, the Legislature recognizes and agrees with the
limitations on the applicability of the doctrine of implied
warranty of fitness and merchantability or habitability for a
new home as established in the seminal cases of Gable v. Silver,
258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dism, 264
So.2d 418 (Fla. 1972); Conklin v. Hurley, 428 So.2d 654 (Fla.
1983); and Port Sewall Harbor & Tennis Club Owners Ass’n v.
First Fed. S. & L. Ass’n., 463 So.2d 530 (Fla. 4th DCA 1985),
and does not wish to expand any prospective rights,
responsibilities, or liabilities resulting from these decisions,
WHEREAS, the recent decision by the Fifth District Court of Appeal rendered in October of 2010, in Lakeview Reserve Homeowners et. al. v. Maronda Homes, Inc., et. al., 48 So.3d 902 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty of fitness and merchantability or habitability for a new home to the construction of roads, drainage systems, retention ponds, and underground pipes, which the court described as essential services, supporting a new home, and

WHEREAS, the Legislature finds, as a matter of public policy, that the Maronda case goes beyond the fundamental protections that are necessary for a purchaser of a new home and that form the basis for imposing an implied warranty of fitness and merchantability or habitability for a new home, and creates uncertainty in the state’s fragile real estate and construction industry, and

WHEREAS, it is the intent of the Legislature to reject the decision by the Fifth District Court of Appeal in the Maronda case insofar as it expands the doctrine of implied warranty and fitness and merchantability or habitability for a new home to include essential services as defined by the court, NOW THEREFORE,

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

Section 1. Section 553.835, Florida Statutes, is created to read:

553.835 Implied warranties.—
(1) The Legislature finds that the courts have reached different conclusions concerning the scope and extent of the
common law doctrine of implied warranty of fitness and
merchantability or habitability for improvements immediately
supporting the structure of a new home, which creates
uncertainty in the state’s fragile real estate and construction
industry.

(2) It is the intent of the Legislature to affirm the
limitations to the doctrine of implied warranty of fitness and
merchantability or habitability associated with the construction
and sale of a new home.

(3) As used in this section, the term “offsite improvement”
means the street, road, sidewalk, drainage, utilities, or any
other improvement or structure that is not located on or under
the lot on which a new home is constructed, or that is located
on or under the lot but that does not immediately and directly
support the fitness and merchantability or habitability of the
home itself.

(4) There is no cause of action in law or equity available
to a purchaser of a home or to a homeowners’ association based
upon the doctrine or theory of implied warranty of fitness and
merchantability or habitability for damages to offsite
improvements. However, this section does not alter or limit the
existing rights of purchasers of homes or homeowners’
associations to pursue any other cause of action arising from
defects in offsite improvements based upon contract, tort, or
statute.

Section 2. If any provision of the act or its application
to any person or circumstance is held invalid, the invalidity
does not affect other provisions or applications of the act
which can be given effect without the invalid provision or
application, and to this end the provisions of this act are
severable.

Section 3. This act shall take effect July 1, 2012, and
applies to all cases accruing before, pending on, or filed after
that date.