Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	___	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Artiles offered the following:
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4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 553.835, Florida Statutes, is created
7 to read:
8 553.835 Implied warranties.—
9 (1) The Legislature finds that the courts have reached
10 different conclusions concerning the scope and extent of the
11 common law doctrine of implied warranty of fitness and
12 merchantability or habitability for improvements immediately
13 supporting the structure of a new home, which creates
14 uncertainty in the state's fragile real estate and construction
15 industry.
16 (2) It is the intent of the Legislature to affirm the
17 limitations to the doctrine of implied warranty of fitness and
18 merchantability or habitability associated with the construction
19 and sale of a new home.

20 (3) As used in this section, the term "offsite
21 improvement" means:
22 (a) The street, road, driveway, sidewalk, drainage,
23 utilities, or any other improvement or structure that is not
24 located on or under the lot on which a new home is constructed,
25 excluding such improvements that are shared by and part of the
26 overall structure of two or more separately owned homes that are
27 adjoined or attached whereby such improvements affect the
28 fitness and merchantability or habitability of one or more of
29 the other adjoining structures; and
30 (b) The street, road, driveway, sidewalk, drainage,
31 utilities, or any other improvement or structure that is located
32 on or under the lot but that does not immediately and directly
33 support the fitness and merchantability or habitability of the
34 home itself.
35 (4) There is no cause of action in law or equity available
36 to a purchaser of a home or to a homeowners' association based
37 upon the doctrine or theory of implied warranty of fitness and
38 merchantability or habitability for damages to offsite
39 improvements. However, this section does not alter or limit the
40 existing rights of purchasers of homes or homeowners'
41 associations to pursue any other cause of action arising from
42 defects in offsite improvements based upon contract, tort, or
43 statute.
44 Section 2. If any provision of the act or its application
45 to any person or circumstance is held invalid, the invalidity
46 does not affect other provisions or applications of the act
47 which can be given effect without the invalid provision or

48 application, and to this end the provisions of this act are
49 severable.
50 Section 3. This act shall take effect July 1, 2012, and
51 applies to all cases accruing before, pending on, or filed after
52 that date.
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54
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56 **T I T L E A M E N D M E N T**
57 Remove the entire title and insert:
58 A bill to be entitled
59 An act relating to residential construction
60 warranties; creating s. 553.835, F.S.; providing
61 legislative findings; providing legislative intent to
62 affirm the limitations to the doctrine of implied
63 warranty of fitness and merchantability or
64 habitability associated with the construction and sale
65 of a new home; providing a definition; prohibiting a
66 cause of action in law or equity based upon the
67 doctrine of implied warranty of fitness and
68 merchantability or habitability for offsite
69 improvements; providing that the existing rights of
70 purchasers of homes or homeowners' associations to
71 pursue certain causes of action are not altered or
72 limited; providing for applicability of the act;
73 providing for severability; providing an effective
74 date.
75

76 WHEREAS, the Legislature recognizes and agrees with the
77 limitations on the applicability of the doctrine of implied
78 warranty of fitness and merchantability or habitability for a
79 new home as established in the seminal cases of *Gable v. Silver,*
80 258 So.2d 11 (Fla. 4th DCA 1972) adopted and cert. dism, 264
81 So.2d 418 (Fla. 1972); *Conklin v. Hurley,* 428 So.2d 654 (Fla.
82 1983); and *Port Sewall Harbor & Tennis Club Owners Ass'n v.*
83 *First Fed. S. & L. Ass'n.,* 463 So.2d 530 (Fla. 4th DCA 1985),
84 and does not wish to expand any prospective rights,
85 responsibilities, or liabilities resulting from these decisions,
86 and
87 WHEREAS, the recent decision by the Fifth District Court of
88 Appeal rendered in October of 2010, in *Lakeview Reserve*
89 *Homeowners et. al. v. Maronda Homes, Inc., et. al.,* 48 So.3d 902
90 (Fla. 5th DCA, 2010), expands the doctrine of implied warranty
91 of fitness and merchantability or habitability for a new home to
92 the construction of roads, drainage systems, retention ponds,
93 and underground pipes, which the court described as essential
94 services, supporting a new home, and
95 WHEREAS, the Legislature finds, as a matter of public
96 policy, that the *Maronda* case goes beyond the fundamental
97 protections that are necessary for a purchaser of a new home and
98 that form the basis for imposing an implied warranty of fitness
99 and merchantability or habitability for a new home, and creates
100 uncertainty in the state's fragile real estate and construction
101 industry, and
102 WHEREAS, it is the intent of the Legislature to reject the
103 decision by the Fifth District Court of Appeal in the *Maronda*

104 case insofar as it expands the doctrine of implied warranty and
105 fitness and merchantability or habitability for a new home to
106 include essential services as defined by the court, NOW
107 THEREFORE,