

1987

Session Law 87-194

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year 1987	Session Law No. 87-194	IOF Cite Vol. I, pt. 2, pp. 1255-56	#pp 2
Prime Bill# HB 693	Sponsor DRAGE	Comp./Sim. Bills SB 417 (Myers)	
JLMC Hist. Leg. Cites	Senate pp.#s P. 304 304 (SB 417)	House pp.#s P. 304 (HB 693)	#pp 2
Committee of Ref.	Senate Jud-Civ.	Previous versions?	
	House JUDICIARY		

Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
H	JUDICIARY	87	BILL FILE HB 693	19/1602	12
			Mtg FILE 4/28/87 (sub-comm.)	19/1604	
			4/30/87 (Full Com.)	19/1604	
S	JUD-CIV	87	BILL FILE SB 417	18/1627	1
			Mtg. FILE 5/26/87	18/1626	

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp

Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location Cite
H		JUDICIARY - Subcomm. Real Prop. + Family Law	4/28/87	1	414/619
H		JUDICIARY - Full Committee	4/30/87	2	414/619
S		JUD-CIV. (on tape 2 of 4)	5/26/87	1	625/407

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

By Representative Drage

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A bill to be entitled
An act relating to adverse possession of real
property; amending s. 95.16, F.S.; specifying
the extent of the property protected by a
substantial enclosure that is adversely
possessed under color of title; providing an
effective date.

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

Section 1. Section 95.16, Florida Statutes, is amended
to read:

95.16 Real property actions; adverse possession under
color of title.--

(1) When the occupant, or those under whom he claims,
entered into possession of real property under a claim of
title exclusive of any other right, founding the claim on a
written instrument as being a conveyance of the property, or
on a decree or judgment, and has for 7 years been in continued
possession of the property included in the instrument, decree,
or judgment, the property is held adversely. If the property
is divided into lots, the possession of one lot shall not be
deemed a possession of any other lot of the same tract.

Adverse possession commencing after December 31, 1945 shall
not be deemed adverse possession under color of title until
the instrument upon which the claim of title is founded is
recorded in the office of the clerk of the circuit court of
the county where the property is located

(2) For the purpose of this section, property is
deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

THIS PUBLICATION WAS PRODUCED AT AN AVERAGE COST OF 15 CENTS PER SINGLE PAGE IN COMPLIANCE WITH THE RULES AND FOR THE INFORMATION OF MEMBERS OF THE LEGISLATURE AND THE PUBLIC

1	(b) When it has been protected by a substantial	1.22
2	enclosure. All contiguous land protected by the enclosure	1.23
3	must <u>shall</u> be property included within the <u>description of the</u>	1.25
4	<u>property in the</u> written instrument, judgment, or decree;	1.26
5	within the purview of this section. <u>If only a portion of the</u>	1.115
6	<u>land protected by the enclosure is included within the</u>	
7	<u>description of the property in the written instrument,</u>	1.28
8	<u>judgment, or decree, only that portion is deemed possessed.</u>	1.29

9	(c) When, although not enclosed, it has been used for	1.31
10	the supply of fuel or fencing timber for husbandry or for the	1.32
11	ordinary use of the occupant.	

12	(d) When a known lot or single farm has been partly	1.33
13	improved, the part that has not been cleared or enclosed	1.34
14	according to the usual custom of the county is to be	1.35
15	considered as occupied for the same length of time as the part	
16	improved or cultivated	

17	Section 2 This act shall take effect January 1, 1988.	1.36
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SENATE SUMMARY

With respect to a claim of adverse possession under color of title of real property protected by a substantial enclosure, provides that only that portion of the real property protected by the substantial enclosure which is included within the description of the property in the written instrument, judgment, or decree upon which the claim is founded is deemed adversely possessed.

By Senator Myers

A bill to be entitled

An act relating to adverse possession of real property; amending s. 95.16, F.S.; specifying the extent of the property protected by a substantial enclosure that is adversely possessed under color of title; providing an effective date.

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

Section 1. Section 95.16, Florida Statutes, is amended to read:

95.16 Real property actions; adverse possession under color of title.--

(1) When the occupant, or those under whom he claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945 shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

This publication was produced at an average cost of 1.5 cents per page for the information of members of the legislature and the public.

1 (b) When it has been protected by a substantial
 2 enclosure. All ~~contiguous~~ land protected by the enclosure
 3 must ~~shall~~ be property included within the description of the
 4 property in the written instrument, judgment, or decree;
 5 ~~within the purview of this section.~~ If only a portion of the
 6 land protected by the enclosure is included within the
 7 description of the property in the written instrument,
 8 judgment, or decree, only that portion is deemed possessed.

9 (c) When, although not enclosed, it has been used for
 10 the supply of fuel or fencing timber for husbandry or for the
 11 ordinary use of the occupant.

12 (d) When a known lot or single farm has been partly
 13 improved, the part that has not been cleared or enclosed
 14 according to the usual custom of the county is to be
 15 considered as occupied for the same length of time as the part
 16 improved or cultivated.

17 Section 2. This act shall take effect January 1, 1988.

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22 SENATE SUMMARY

23 With respect to a claim of adverse possession under color
 24 of title of real property protected by a substantial
 25 enclosure, provides that only that portion of the real
 26 property protected by the substantial enclosure which is
 27 included within the description of the property in the
 28 written instrument, judgment, or decree upon which the
 29 claim is founded is deemed adversely possessed.
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DOCUMENTATION LIST
Laws of Florida, 1987, Chapter 87-194
"Adverse Possession of Real Property"

01. Laws of Florida, 1987, Chapter 87-194. In Volume I, Part Two, pp. 1255-1256.
02. Joint Legislative Management Committee. Division of Legislative Information. History of Legislation, 1987 Regular Session: HB 693 (p. 304) and SB 417 (p. 89).
03. House Bill (HB) 693 (1987), as prefiled 3/26/87.
04. House. Committee on the Judiciary. Staff Analysis of HB 693 (1987), 4/25/87. (in the Florida State Archives, Series 19, Box 1602).
05. _____. Correspondence of the Senate Judiciary-Civil Committee regarding [SB 417] (1987); (a) William D. Anderson, Jr., Attorney, Stuart, FL, to Senator William "Doc" Myers 10/24/86 re: suggested amendment to FS 95.16; (b) Phyllis Slater, Staff Attorney for the Senate Judiciary-Civil Committee, to Senator William Myers, 12/10/86, re: response to William D. Anderson letter,; and (c) Memorandum to File by Phyllis Slater ..., 12/10/86, re: historical note and recommended changes to FS 95.16. (in ibid.).
06. _____. Vote Sheets on HB 693 (1987): (a) Sub-committee on Real Property & Family Law, 4/28/87; and (b) Full Committee, 4/30/87. (in ibid.).
07. Senate Bill 417 (1987), as prefiled 3/11/87.
08. Senate. Committee on Judiciary-Civil. Staff Analysis of SB 417 (1987), 4/21/87. (in the Florida State Archives, Series 18, Box 1627).
09. House. Committee on the Judiciary. Meeting Tapes re: HB 693 (1987): (a) Sub-Committee on Real Property & Family Law, 4/28/87 (1 tape); and (b) Full Committee, 4/30/87 (1 tape). (in ibid., Series 414, Box 619). (NOTE: Not reviewed or copied).
10. Senate. Committee on Judiciary-Civil. Meeting Tape re: SB 417 (1987), 5/26/87 (1 tape -Tape 2 of 4). (in ibid., Series 625, Box 407). (NOTE: Not reviewed or copied).

AS REPORTED TO CLERK

SUBCOMMITTEE REPORT

House of Representatives

File with Parent Committee

To Chairman, Committee on Judiciary _____:

Subcommittee on Real Property & Family Law

Date of meeting April 28, 1987

Time 1:15 p.m.

Place 214 Capitol

Bill No. HB 693

FINAL ACTION: FAVORABLE
 FAVORABLE WITH _____ AMENDMENTS
 UNFAVORABLE

1602
19

VOTE:

YEA	MEMBER	NAY
	Canady	
X	Dunbar	
X	Ireland	
X	Liberti	
X	Martinez	
	Peeples	

YEA	MEMBER	NAY
X	Rush	
X	Woodruff	
X	Simon, Chmn.	

Total
Yea 7

Total
Nays 0


Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<u>Name</u>	<u>Representing</u>	<u>Address</u>

(If additional persons, enter on reverse side and check here ___)

NOTE: Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee
Date _____
Received by _____

COMMITTEE INFORMATION RECORD

House of Representatives

Committee on JUDICIARY
 Date of meeting April 30, 1987
 Time 8:00 a.m.
 Place 214 Capitol

Bill No. HB 693

AS REPORTED TO CLERK

FINAL ACTION: X FAVORABLE
 _____ FAVORABLE WITH _____ AMENDMENTS
 _____ FAVORABLE WITH SUBSTITUTE
 _____ UNFAVORABLE

1602

19

VOTE:

YEA	MEMBER	NAY
	CANADY	
X	COSGROVE	
X	DAVIS	
X	DIAZ-BALART	
	DRAGE	
X	DUNBAR	
X	IRELAND	
X	LAWSON	
X	LIBERTI	
X	MARTINEZ	
	PEEPLES	
X	PRESS	
X	RUSH	
X	SAUNDERS	
X	SIMON	

YEA	MEMBER	NAY
X	TITONE	
	WEBSTER	
X	WOODRUFF	
X	UPCHURCH (Chmn.)	

Total Yeas 15

Total Nays 0

William H. ...
 Chairman

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name Representing Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

**GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968**

**During the Regular Session
April 7, 1987 through June 6, 1987
and the Special Session
February 4, 1987**



**Volume I, Part Two
Published by Authority of Law
Under Direction of the
JOINT LEGISLATIVE MANAGEMENT
COMMITTEE
TALLAHASSEE**

1987

shall not render the recreational vehicle a permanent part of the recreational vehicle site.

Section 2. This act shall take effect October 1, 1987.

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

CHAPTER 87-194

House Bill No. 693

An act relating to adverse possession of real property; amending s. 95.16, F.S.; specifying the extent of the property protected by a substantial enclosure that is adversely possessed under color of title; providing an effective date.

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

Section 1. Section 95.16, Florida Statutes, is amended to read:

95.16 Real property actions; adverse possession under color of title.--

(1) When the occupant, or those under whom he claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945 shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All contiguous land protected by the enclosure ~~must~~ shall be property included within the ~~description of the property in the written instrument, judgment, or decree, within the purview of this section.~~ If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual

custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

Section 2. This act shall take effect January 1, 1988.

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

CHAPTER 87-195

Committee Substitute for House Bill No. 714

An act relating to landlord and tenant; amending s. 83.231, F.S., providing for the imposition of a money judgment in an action for possession in the amount of the money owed to the landlord by the tenant; amending s. 83.46, F.S., providing for rental payments with respect to certain dwelling units furnished by an employer to an employee after the employee ceases employment; amending s. 83.49, F.S., providing an alternative procedure for the posting of bond by certain landlords or agents; amending s. 83.51, F.S., requiring tenants to vacate rental premises after notice for the purpose of exterminating pests; amending s. 83.53, F.S., providing that the landlord may enter the dwelling unit at any time for the repair, protection or preservation of the premises; amending s. 83.56, F.S., providing clarifying language with respect to the termination of the rental agreement; amending s. 83.60, F.S., providing for possession of the dwelling unit under certain circumstances; amending s. 83.625, F.S.; providing for attorney's fees and costs in certain actions for possession of the dwelling unit; amending s. 713.691, F.S., providing for the landlord's lien for rent; providing an effective date.

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

Section 1. Section 83.231, Florida Statutes, is amended to read:

83.231 Removal of tenant; judgment.--If the issues are found for plaintiff, judgment shall be entered that he recover possession of the premises. In addition to awarding possession of the premises to the plaintiff, the court shall also direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment in favor of the plaintiff and against the defendant for the amount of money found due, owing and unpaid by the defendant, with costs. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and the plaintiff in the judgment for possession and money damages may also be awarded attorney's fees and costs. If the issues are but-if-they-be found for defendant, judgment shall be entered dismissing the action.

Section 2. Subsection (3) of section 83.46, Florida Statutes, is amended to read:

83.46 Rent; duration of tenancies.--

FLORIDA LEGISLATURE

History of Legislation

1987 Regular Session

1987 Special Session A



prepared by:

Joint Legislative Management Committee

**Legislative Information Division
Capitol Building, Room 826 — 488-4371**

HISTORY OF HOUSE BILLS

H 689 (CONTINUED)

- 06/06/87 HOUSE Died in Committee on Criminal Justice, Iden /Sim / Compare bill passed, refer to CS/HB 1467 (Ch 87-243)
- H 690 GENERAL BILL/CS by Education, K - 12; Rush Values & Ethics Commission Act**, creates "Fla State Values & Ethics Study Commission Act of 1987"; creates Fla State Educational Commission on Values & Ethics, provides for duties of D O E & for program assessment & periodic review, etc Effective Date 10/01/87
- 03/26/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Education, K - 12, Appropriations
- 04/07/87 HOUSE Introduced, referred to Education, K - 12; Appropriations -HJ 63
- 04/10/87 HOUSE On Committee agenda—Education, K - 12, 04/14/87, 10 00 am, 214C, for subreferral
- 04/14/87 HOUSE Subreferred to Subcommittee on Programs
- 04/15/87 HOUSE On subcommittee agenda—Education, K - 12, 04/17/87, 8 00 am, 217 HOB—Meeting cancelled
- 04/16/87 HOUSE On subcommittee agenda—Education, K - 12, 04/20/87, 1:15 pm, 217 HOB
- 04/20/87 HOUSE On Committee agenda, pending subcommittee action—Education, K - 12, 04/22/87, 2 00 pm, 214C—Temporarily passed
- 04/23/87 HOUSE On Committee agenda—Education, K - 12, 04/27/87, 4 30 pm, 214C
- 04/27/87 HOUSE Preliminary Committee Action by Education, K - 12. Favorable, as a Committee Substitute
- 05/01/87 HOUSE Comm Report. CS by Education, K - 12 -HJ 331, CS read first time -HJ 328; Now in Appropriations -HJ 331
- 05/25/87 HOUSE On Committee agenda—Appropriations, 05/26/87, 8 00 am, 21 HOB—Temporarily passed
- 05/28/87 HOUSE On Committee agenda—Appropriations, 05/28/87, 3 30 pm, 21 HOB, Preliminary Committee Action by Appropriations Favorable, to Calendar
- 05/29/87 HOUSE Comm Report: Favorable by Appropriations, placed on Calendar -HJ 353
- 06/06/87 HOUSE Died on Calendar

H 691 GENERAL BILL by Grindie (Compare CS/S 19, CS/S 1195)

- Transportation/Local Option Fuel Tax**, authorizes certain counties to impose additional tax on motor & special fuels; provides procedures & requirements for levy of tax; specifies use of revenues, authorizes pledging of revenues to secure bonds; provides for distribution of revenues & application of specified administrative, collection, penalty, enforcement & refund provisions; creates trust fund Creates 336 027 Effective Date: Upon becoming law
- 03/26/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Transportation, Finance & Taxation; Appropriations
- 04/07/87 HOUSE Introduced, referred to Transportation, Finance & Taxation, Appropriations -HJ 63
- 04/10/87 HOUSE On Committee agenda—Transportation, 04/14/87, 8 30 am, 214C, for subreferral
- 04/14/87 HOUSE Subreferred to Subcommittee on Transportation Facilities and Services
- 06/06/87 HOUSE Died in Committee on Transportation

H 692 GENERAL BILL/CS by Retirement, Personnel & Collective Bargaining; Nergard; Starks; Kelly (Similar S 197, Compare ENG/S 24)

- Disabled Veteran/State Agency Hiring**, provides that certain disabled veterans may be hired by state agencies outside normal hiring procedures, provides for probationary period & permanent employment status Effective Date. 10/01/87
- 03/26/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Retirement, Personnel & Collective Bargaining
- 04/07/87 HOUSE Introduced, referred to Retirement, Personnel & Collective Bargaining -HJ 63
- 04/10/87 HOUSE Subreferred to Subcommittee on Personnel and Collective Bargaining; On subcommittee agenda—Retirement, Personnel & Collective Bargaining, 04/14/87, 1:30 pm, 317C
- 04/14/87 HOUSE Subcommittee Recommendation pending ratification by full Committee. Favorable
- 04/21/87 HOUSE On Committee agenda—Retirement, Personnel & Collective Bargaining, 04/23/87, 8:30 am, 317C
- 04/23/87 HOUSE Preliminary Committee Action by Retirement, Personnel & Collective Bargaining Favorable, as a Committee Substitute, to Calendar
- 04/30/87 HOUSE Comm Report: CS by Retirement, Personnel & Collective Bargaining, placed on Calendar -HJ 330, CS read first time -HJ 328
- 06/06/87 HOUSE Died on Calendar, Iden /Sim /Compare Bil passed, refer to SB 24 (Ch 87-356)

H 693 GENERAL BILL by Drage (Identical S 417)

- Real Property/Adverse Possession**, specifies extent of property protected by substantial enclosure that is adversely possessed under color of title Amends 95 16 Effective Date 01/01/88
- 03/26/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Judiciary

H 693 (CONTINUED)

- 04/07/87 HOUSE Introduced, referred to Judiciary -HJ 63
- 04/24/87 HOUSE Subreferred to Subcommittee on Real Property and Family Law, On subcommittee agenda—Judiciary, 04/28/87, 1 15 pm, 214C
- 04/28/87 HOUSE On Committee agenda—Judiciary, 04/30/87, 8 00 am, 214C
- 05/01/87 HOUSE Comm Report Favorable by Judiciary, placed on Calendar -HJ 330
- 05/06/87 HOUSE Placed on Special Order Calendar
- 05/12/87 HOUSE Read second time -HJ 410
- 05/13/87 HOUSE Read third time; Passed, YEAS 115 NAYS 0 -HJ 429
- 05/15/87 SENATE In Messages
- 05/20/87 SENATE Received, referred to Judiciary—Civil -SJ 348
- 05/29/87 SENATE Extension of time granted Committee Judiciary—Civil
- 06/02/87 SENATE Withdrawn from Judiciary—Civil, Substituted for SB 417, Passed, YEAS 35 NAYS 0 -SJ 614
- 06/02/87 Ordered enrolled
- 06/16/87 Signed by Officers and presented to Governor
- 06/30/87 Approved by Governor, Chapter No 87-194

H 694 GENERAL BILL by Goode and others (Compare ENG/S 268)

- Municipal Improvements/Approval**, requires approval of majority of affected property owners for any improvement, revises procedures re preparation of assessment roll Amends 170.01-.06-.08 Effective Date. Upon becoming law.
- 03/26/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Community Affairs, Finance & Taxation, Appropriations
- 04/07/87 HOUSE Introduced, referred to Community Affairs, Finance & Taxation; Appropriations -HJ 64
- 04/14/87 HOUSE On Committee agenda—Community Affairs, 04/16/87, 3 30 pm, 212 HOB, for ratification of subreferral—Meeting cancelled
- 04/20/87 HOUSE On Committee agenda—Community Affairs, 04/22/87, 8:30 am, 212 HOB, for ratification of subreferral
- 04/22/87 HOUSE Subreferred to Subcommittee on Intergovernmental Relations
- 06/06/87 HOUSE Died in Committee on Community Affairs, Iden /Sim / Compare bill passed, refer to SB 268 (Ch. 87-103)

H 695 GENERAL BILL by D.L. Jones (Similar H 812, S 1085)

- Mortgage Brokers/Licensure**, provides education requirements for licensure; provides for approval of instructors & instructor trainers; provides continuing education requirements for license renewal, etc Amends 494 037, 038, reenacts 494.121(1)(3) Effective Date 10/01/87.
- 03/27/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Regulatory Reform, Appropriations
- 04/07/87 HOUSE Introduced, referred to Regulatory Reform, Appropriations -HJ 64
- 04/10/87 HOUSE Subreferred to Subcommittee on Business Regulation
- 04/13/87 HOUSE On subcommittee agenda—Regulatory Reform, 04/16/87, 1 15 pm, 16 HOB—Temporarily passed
- 04/14/87 HOUSE On Committee agenda, pending subcommittee action—Regulatory Reform, 04/16/87, 3 30 pm, Morris Hall—Meeting cancelled
- 06/06/87 HOUSE Died in Committee on Regulatory Reform

H 696 LOCAL BILL by Hawkins

- Golden Gate Fire Control District**, (Collier Co) creates Golden Gate Fire & Rescue District, provides for creation & election of board, prohibits certain activity by board members, provides compensation for commissioners, provides for raising of funds by taxation on all property within district & provides methods of levying, collecting & disbursing such funds, repeals special acts re Golden Gate Fire Control & Rescue District, etc Effective Date 07/02/87.
- 03/27/87 HOUSE Prefiled
- 04/06/87 HOUSE Referred to Community Affairs, Finance & Taxation
- 04/07/87 HOUSE Introduced, referred to Community Affairs, Finance & Taxation -HJ 64
- 04/28/87 HOUSE On Committee agenda—Community Affairs, 04/30/87, 8 00 am, 212 HOB
- 04/30/87 HOUSE Preliminary Committee Action by Community Affairs Favorable
- 05/05/87 HOUSE Comm Report Favorable by Community Affairs -HJ 365; Now in Finance & Taxation -HJ 365
- 05/11/87 HOUSE On Committee agenda—Finance & Taxation, 05/13/87, 1 15 pm, 21 HOB, for ratification of subreferral
- 05/15/87 HOUSE Withdrawn from Finance & Taxation -HJ 453, Placed on Calendar
- 05/22/87 HOUSE Placed on Local Calendar
- 05/26/87 HOUSE Read second and third times. Passed, YEAS 118 NAYS 0 -HJ 592
- 05/26/87 SENATE In Messages
- 05/27/87 SENATE Received, referred to Rules and Calendar -SJ 423
- 05/29/87 SENATE Extension of time granted Committee Rules and Calendar
- 06/03/87 SENATE Considered by Rules and Calendar, placed on Local Calendar -SJ 628, Passed, YEAS 33 NAYS 0 -SJ 646
- 06/03/87 Ordered enrolled
- 06/16/87 Signed by Officers and presented to Governor

HISTORY OF SENATE BILLS

S 415 (CONTINUED)

05/15/87 HOUSE Received, referred to Judiciary; Appropriations -HJ 446
06/06/87 HOUSE Died in Committee on Judiciary

S 416 GENERAL BILL by Langley (Similar H 357)

Secured Transactions/Statements, provides for filed financing statements to remain effective for collateral transferred by debtor Amends 679 402. Effective Date. 07/01/87 or upon becoming law, whichever occurs later.

03/11/87 SENATE Prefiled
03/27/87 SENATE Referred to Judiciary-Civil
04/07/87 SENATE Introduced, referred to Judiciary-Civil -SJ 39
04/14/87 SENATE On Committee agenda—Judiciary-Civil, 04/16/87, 9:00 am, Room-B
04/16/87 SENATE Comm. Report Favorable by Judiciary-Civil, placed on Calendar -SJ 125
06/05/87 SENATE Placed on Special Order Calendar -SJ 863, Iden./Sim. House Bill substituted, Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to HB 357 (Ch. 87-256) -SJ 881

S 417 GENERAL BILL by Myers (Identical H 693)

Real Property/Adverse Possession, specifies extent of property protected by substantial enclosure that is adversely possessed under color of title Amends 95.16. Effective Date. 01/01/88.

03/11/87 SENATE Prefiled
03/27/87 SENATE Referred to Judiciary-Civil
04/07/87 SENATE Introduced, referred to Judiciary-Civil -SJ 39
04/22/87 SENATE Extension of time granted Committee Judiciary-Civil
05/01/87 SENATE Extension of time granted Committee Judiciary-Civil
05/15/87 SENATE Extension of time granted Committee Judiciary-Civil
05/22/87 SENATE On Committee agenda—Judiciary-Civil, 05/26/87, 9:00 am, Room-B
05/26/87 SENATE Comm. Report: Favorable by Judiciary-Civil, placed on Calendar -SJ 417
06/02/87 SENATE Placed on Special Order Calendar -SJ 571, Iden./Sim. House Bill substituted -SJ 614, Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to HB 693 (Ch. 87-194) -SJ 615

S 418 GENERAL BILL by Myers (Identical H 635, Compare H 532)

AIDS Testing/Hospitals & Premarital; requires certain hospital patients to be tested for exposure to AIDS virus, provides that persons applying for license to marry be tested for exposure to such virus & be notified of results, provides for approval of premarital AIDS serological test by H.R.S., provides that dept. may use test information for protection of public health, provides for confidentiality of premarital serological tests, etc. Creates 384 311, 741 061. Effective Date: 10/01/87

03/11/87 SENATE Prefiled
03/27/87 SENATE Referred to Health and Rehabilitative Services; Appropriations
04/07/87 SENATE Introduced, referred to Health and Rehabilitative Services, Appropriations -SJ 39
04/10/87 SENATE On Committee agenda—Health and Rehabilitative Services, 04/14/87, 2:00 pm, Room-A
04/14/87 SENATE Comm Report. Favorable with 2 amendment(s) by Health and Rehabilitative Services -SJ 79
04/15/87 SENATE Now in Appropriations -SJ 79
05/06/87 SENATE Extension of time granted Committee Appropriations
05/21/87 SENATE Extension of time granted Committee Appropriations
06/06/87 SENATE Died in Committee on Appropriations

S 419 GENERAL BILL/CS/ENG by Judiciary-Civil; Judiciary-Civil (Similar H 1369)

Florida Trial Court Study Commission; creates Study Commission on Fla. Trial Court System, provides for appointment of members; provides for staffing; requires submission of report to Legislature, provides for expiration of commission, etc. Effective Date: 07/10/87.

03/11/87 SENATE Prefiled
03/27/87 SENATE Referred to Judiciary-Civil
04/07/87 SENATE Introduced, referred to Judiciary-Civil -SJ 39
04/22/87 SENATE Extension of time granted Committee Judiciary-Civil
04/30/87 SENATE On Committee agenda—Judiciary-Civil, 05/04/87, 2:00 pm, Room-B
05/01/87 SENATE Extension of time granted Committee Judiciary-Civil
05/04/87 SENATE Comm. Report. CS by Judiciary-Civil, placed on Calendar -SJ 273
05/12/87 SENATE CS read first time -SJ 275
05/21/87 SENATE Placed on Special Order Calendar -SJ 365, CS passed; YEAS 31 NAYS 0 -SJ 382
05/26/87 HOUSE In Messages
05/27/87 HOUSE Received, placed on Calendar -HJ 688
05/28/87 HOUSE Placed on Special Order Calendar
05/29/87 HOUSE Substituted for HB 1369; Read second time, Amendment adopted, Read third time, CS passed as amended; YEAS 110 NAYS 0 -HJ 793
06/01/87 SENATE In Messages
06/02/87 SENATE Concurred, CS passed as amended, YEAS 32 NAYS 0 -SJ 576

S 419 (CONTINUED)

06/02/87 Ordered engrossed, then enrolled -SJ 576
06/25/87 Signed by Officers and presented to Governor
07/10/87 Approved by Governor; Chapter No. 87-314

S 420 GENERAL BILL/CS by Transportation; Hill (Compare CS/ENG/H 123, CS/S 659)

D.O.T./Contracts, provides that secretary may designate persons to approve supplemental agreements; increases minimum amount of construction contract requiring certification, provides for waiver of contract bonds; provides for waiver of surety bond, provides that dept. may require alternate security Amends 337 11, 14, 18. Effective Date Upon becoming law

03/11/87 SENATE Prefiled
03/27/87 SENATE Referred to Transportation; Appropriations
04/07/87 SENATE Introduced, referred to Transportation; Appropriations -SJ 39
04/17/87 SENATE Extension of time granted Committee Transportation
05/01/87 SENATE Extension of time granted Committee Transportation
05/15/87 SENATE Extension of time granted Committee Transportation
05/19/87 SENATE On Committee agenda—Transportation, 05/21/87, 2:00 pm, Room-C
05/21/87 SENATE Comm Report: CS by Transportation -SJ 388
05/25/87 SENATE CS read first time -SJ 389; Now in Appropriations -SJ 388
05/28/87 SENATE Withdrawn from Appropriations -SJ 489, Placed on Calendar
06/02/87 SENATE Placed on Special Order Calendar -SJ 571, CS passed, YEAS 37 NAYS 0 -SJ 617
06/02/87 HOUSE In Messages
06/06/87 HOUSE Died in Messages, Iden./Sim./Compare Bill passed, refer to CS/HB 123 (Ch. 87-100)

S 421 GENERAL BILL/CS by Commerce; Hill (Similar CS/CS/H 266)

Electrical Contracting/Alarm Systems; provides for state regulation of alarm system contractors; provides exemptions to certain businesses & alarm installations; expands board membership, provides for exam & certification, requires licensure, provides requirements for fire alarm system equipment; prohibits certain acts re alarm system contractors or certified unlimited electrical contractors, etc. Amends Ch. 489; creates 633.70-.72. Effective Date. 10/01/87

03/11/87 SENATE Prefiled
03/27/87 SENATE Referred to Economic, Community and Consumer Affairs, Commerce, Appropriations
04/07/87 SENATE Introduced, referred to Economic, Community and Consumer Affairs; Commerce, Appropriations -SJ 39
04/20/87 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
05/07/87 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs, On Committee agenda—Economic, Community and Consumer Affairs, 05/11/87, 9:00 am, Room-H
05/11/87 SENATE Comm Report: Favorable by Economic, Community and Consumer Affairs -SJ 271
05/12/87 SENATE Now in Commerce -SJ 271
05/14/87 SENATE On Committee agenda—Commerce, 05/18/87, 2:00 pm, Room-A
05/18/87 SENATE Comm Report. CS by Commerce -SJ 365
05/20/87 SENATE CS read first time -SJ 366, Now in Appropriations -SJ 366
05/21/87 SENATE Extension of time granted Committee Appropriations
06/05/87 SENATE Withdrawn from Appropriations -SJ 852; Placed on Special Order Calendar -SJ 863, Iden./Sim. House Bill substituted -SJ 876, Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to CS/CS/HB 266 (Ch. 87-254) -SJ 877

S 422 GENERAL BILL by Johnson and others (Identical H 67)

DUI/Blood Alcohol Level Lowered; lowers blood alcohol level which establishes offense of driving with an unlawful blood alcohol level from 0.10 to 0.08 percent. Amends 316 193, 1934. Effective Date 10/01/87.

03/12/87 SENATE Prefiled
03/27/87 SENATE Referred to Judiciary-Criminal, Appropriations
04/07/87 SENATE Introduced, referred to Judiciary-Criminal, Appropriations -SJ 39
04/10/87 SENATE On Committee agenda—Judiciary-Criminal, 04/14/87, 9:00 am, Room-C
04/14/87 SENATE Comm Report Favorable by Judiciary-Criminal -SJ 79
04/15/87 SENATE Now in Appropriations -SJ 79
05/06/87 SENATE Extension of time granted Committee Appropriations
05/21/87 SENATE Extension of time granted Committee Appropriations
06/06/87 SENATE Died in Committee on Appropriations

S 423 GENERAL BILL by Johnson (Similar CS/ENG/H 282)

School Boards/Teacher Recruitment, requires school boards to provide teacher recruitment policies Amends 230 23 Effective Date 10/01/87

03/12/87 SENATE Prefiled
03/27/87 SENATE Referred to Education
04/07/87 SENATE Introduced, referred to Education -SJ 40
04/17/87 SENATE Extension of time granted Committee Education
05/01/87 SENATE Extension of time granted Committee Education
05/15/87 SENATE Extension of time granted Committee Education

STORAGE NAME: 87 SS HB 0693

Date: April 25, 1987

Revised: _____

Final: _____

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL #: HB 693

RELATING TO: Adverse possession

SPONSOR(S): Drage

EFFECTIVE DATE: January 1, 1988

COMPANION BILL(S): SB 417

OTHER COMMITTEES OF REFERENCE: (1) _____

(2) _____

I. SUMMARY:

A. Present Situation:

Adverse possession of real property operates in the nature of a statute of limitations in that after a specified period of time other claimants are precluded from contesting title. When the possession is under color of title (i.e., by virtue of a written conveyance, decree or judgment recorded in the public records of the county in which the property is located), the claim ripens in 7 years. s. 95.16(1), F.S. The statute provides certain circumstances under which property is deemed possessed, including where the property has been protected by a substantial enclosure, if all the property within the enclosure is included within the document purporting to give title. s. 95.16(2)(b), F.S.

B. Effect of Proposed Changes:

HB 693 amends s. 95.16(2)(b), F.S., to clarify that if a portion of the property claimed through adverse possession is protected by an enclosure, that portion of the property is deemed possessed. Property outside the enclosure which is being claimed would have to be proven to be possessed without the aid of the statutory presumption.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. AMENDMENTS:

None

VI. PREPARED BY: Debby Kearney *dk*

VII. STAFF DIRECTOR: Richard Hixson *rh*



THE FLORIDA SENATE

COMMITTEE ON JUDICIARY-CIVIL

422 Senate Office Building
Tallahassee, Florida 32301
(904) 487-5198

Senator Edgar M. Dunn, Jr., *Chairman*
Senator Joseph M. Gersten, *Vice-Chairman*

Robert B. Lester, III, *Staff Director*

M E M O R A N D U M

TO: File

FROM: Phyllis Slater

SUBJECT: Section 95.16, F.S.
Adverse possession of real property
under color of title

DATE: December 10, 1986

Chapter 95 was substantially revised in 1974 with the passage of CS/HB 895. The staff summary for CS/HB 895 prepared by the House Judiciary Committee states that the bill "consolidates and makes more uniform the limitations of actions chapter" and that the major policy issue of the bill is whether actions for products liability and fraud should commence at the time the cause of action is discovered or whether it should commence at the time the actionable event occurs. This staff summary indicates that the changes made to sections 95.16 and 95.17, F.S., (s. 95.17, F.S. was later transferred to s. 95.16, F.S.) were "language modernization only." Attached is a copy of CS/HB 895 and the staff summary which were both obtained from the Florida State Archives. Also attached is a copy of the legislative history of this bill.

Section 95.16, F.S., had been interpreted by the Supreme Court of Florida prior to the enactment of CS/HB 895 (the effective date of the bill was January 1, 1975) in Meyer v. Law, 287 So.2d 37 (Fla. 1973). In Meyer the court interpreted the statutory predecessors of s. 95.16, F.S., to hold that adverse possession under color of title could only arise where the claimant had paper title accurately describing the disputed property. Those sections read as follows:

Section 95.16, F.S. (1973)

Whenever it appears that the occupant, or those under whom he claims, entered into possession of premises under claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment for seven years, the premises so included shall be deemed to have been held adversely...

Section 95.17(2), F.S. (1973)

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in any of the following cases: ...

(2) Where it has been protected by a substantial enclosure. All contiguous land protected by such substantial enclosure shall be deemed to be premises included within the written instrument, judgment, or decree, within the purview of s. 95.16 ...

The Supreme Court again interpreted this section after the enactment of CS/HB 895. In Seddon v. Harpster, 403 So.2d 409 (Fla. 1981), the court stated that "the new statute clearly states that one does not have to have paper title correctly describing the disputed property as long as that area is contiguous to the described land and 'protected by a substantial enclosure.' s. 95.16, F.S. (Supp. 1974)." Id., at 411.

The question certified by the Second District Court of Appeal to the Supreme Court in the Seddon case was whether the new law could be interpreted retroactively. The Supreme Court held that it could not. All other pronouncements by the Court in the Seddon case are dicta. Therefore, under

the theory of state decisis only the holding of the case is binding precedent, not dicta. However, it appears that the Second District Court of Appeal in Elizabethan Development, Inc. v. Maywood, 479 So.2d 251 (2nd DCA 1985) is interpreting the dictum in the Seddon case as the legal precedent to be followed by the lower courts. Therefore it appears that legislation will be necessary to restore the "status quo" of s. 95.16, F.S., to pre-Seddon times.

In the Seddon case the court noted that the "presumption is against retroactive application in the absence of an express manifestation of legislative intent to the contrary. Foley v. Morris, 339 So.2d 215 (Fla. 1976)." The court also noted that there is a presumption that "when the legislature amends a statute, it intends to accord the statute a meaning different from that accorded it before the amendment. Rano v. State, 352 So.2d 853 (Fla. 1977)." The court further pointed out that there is a presumption that the Legislature is "aware of the existing law and the judicial construction of former laws on the subjects of its enactments. Foley v. State, 50 So.2d 179 (Fla. 1951)."

Since Seddon was decided in 1981 it has been cited more than 20 times in subsequent cases. Only in Elizabethan Development, Inc. v. Maywood and Revel v. Sico, Inc., 468 So.2d 482 (2nd DCA 1985), has it been cited for holding that you do not have to have paper title describing the disputed property as long as that area is contiguous to the described land and protected by a substantial enclosure. In the Revel case the court did not find adverse possession of the disputed land because there was not clear and convincing evidence that possession was open, continuous, notorious and hostile.

To clarify s. 95.16, F.S., we are recommending the following change:

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All ~~contiguous~~ land protected by the enclosure ~~must be~~ shall be ~~property~~ included in the description of the

property in the within-the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included in the description of the property in the written instrument, judgment, or decree, only that portion shall be adversely possessed under color of title. ,-within-the-purview-of-this section-

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.



THE FLORIDA SENATE
COMMITTEE ON JUDICIARY-CIVIL
111 Senate Office Building
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Senator Edgar M. Dunn, Jr., *Chairman*
Senator Joseph M. Gersten, *Vice-Chairman*

Robert B. Lester, III, *Staff Director*

December 10, 1986

Senator William Myers
5765 S. E. Federal Hwy.
Stuart, FL 33497-8599

Re: Section 95.16, F.S.
Adverse possession of real property
under color of title

Dear Senator Myers:

After reviewing the information you sent us from attorney William Anderson and researching s. 95.16, F.S., we agree that the Supreme Court indicated in Seddon v. Harpster, 403 So.2d 409 (Fla. 1981), that the Court felt the Legislature had intended to change the meaning of s. 95.16, F.S., when this section was amended in 1974.

However, the issue in the Seddon case which was certified to the Supreme Court by the Second District Court of Appeal was whether Chapter 74-382 was retroactive. The holding of the case was that the law was not retroactive. Any other pronouncement by the Court in that case is dictum. Dictum is defined in Black's Law Dictionary as "opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point..." The holding of a case is defined by Black's as "the legal principle to be drawn from the opinion (decision) of the court. Opposite of dictum."

According to the theory of stare decisis (which is defined by Black's as a doctrine where "a deliberate or solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy.") only the holding of a case is binding precedent, not dictum.

However, it appears that the Second District Court of Appeal in Elizabethan Development, Inc. v. Maywood, 479 So.2d 251 (2nd DCA 1985) is interpreting the dictum in the Seddon case as the legal precedent to be followed by the lower courts. Therefore, it appears that legislation will

Senator William Myers
December 10, 1986
Page 2

be necessary to restore the "status quo" of s. 95.16, F.S., to pre-Seddon times.

We suggest that s. 95.16, F.S., be changed to read:

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All ~~contiguous~~ land protected by the enclosure ~~must be shall-be~~ property included in the description of the property in the within-the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included in the description of the property in the written instrument, judgment, or decree, only that portion shall be adversely possessed under color of title. ; -within-the-purview-of-this section-

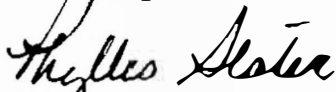
(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

We are enclosing for your information a copy of a "file memorandum" which outlines the historical background of s. 95.16, F.S.

We hope this information is helpful.

Sincerely,



Phyllis Slater
Staff Attorney

PS:li
Enclosure

LAW OFFICE OF
WILLIAM D. ANDERSON, JR., P. A.
525 CAMDEN AVENUE
P O BOX 288
STUART, FLORIDA 33495
(305) 283 2411

file
HB 693

OCT 27 1986

October 24, 1986

Honorable William "Doc" Myers
State Senator
5765 S.E. Federal Highway
Stuart, Florida 33497

Re: Florida Statute 95.16

Dear Doc:

I am writing to you concerning a problem regarding Florida Statute 95.16 which was amended by the Legislature effective January 1, 1975. I am sure the Legislature did not intend the result to occur as a result of that amendment. Prior to the amendment, to obtain adverse possession you had to have title. An example of color of title would be your owning Lot 16, Block 1, Sunny Acre Farms. If the adjoining neighbor had encroached your property with a fence for the seven-year period she could not obtain title to the property because she had no color of title. The amendment stated that all contiguous lands protected by the enclosure shall be property included within the written instrument or the effect was to grant color of title to that portion of the property encumbered by the fence that was not there previously.

This was the interpretation given by the Supreme Court in Seddon v. Harpster, 403 So.2d 409 (Fla. 1981), and I draw your attention to the excellent dissent pointing out the problems with the amendment. That interpretation has been followed in Eliabethan Development, Inc. v. Magwood, 479 So.2d 251 (Fla. App. 2 Dist. 1985). Copies of these cases are enclosed for your reference.

The net effect of the amendment will be to require every person to survey their property every time a hedge or fence is planted to insure that they don't lose it through adverse possession.

Honorable William "Doc" Myers
October 24, 1986
Page 2

I am requesting that you review the matter and forward it to the proper legislative review committee to consider eliminating the amendment dealing with contiguous lands and restore the adverse possession under color of title to its previous form.

Thank you for your assistance in this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Dale".

William D. Anderson, Jr.

WDA,Jr./ssg
Enc.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	<u>Cochran</u> <i>MC</i>	<u>Lester</u> <i>BL</i>	1. <u>JCI</u>	<u>Favorable</u>
2.	_____	_____	2. _____	_____
3.	_____	_____	3. _____	_____
4.	_____	_____	4. _____	_____

SUBJECT:

Adverse Possession/
Real Property

BILL NO. AND SPONSOR:

SB 417 by
Senator Myers

I. SUMMARY:

A. Present Situation:

Section 95.16, F.S., provides the conditions under which real property is adversely possessed under color of title. An occupant or those under whom he claims, in possession of real property under a claim of title exclusive of any other right, who bases the claim on a written instrument of conveyance of the property or on a decree or judgment and who has for 7 years possessed the property included in the instrument decree, or judgment holds the property adversely.

Possession is defined, in part, as land protected by a substantial enclosure. All contiguous land protected by the enclosure must be property included within the written instrument, judgment, or decree under which the possessor is claiming.

B. Effect of Proposed Changes:

Section 95.16, F.S., is clarified by providing that all land protected by the enclosure must be included within the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included within the written instrument, judgment, or decree, only that portion is adversely possessed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

Identical to HB 693.

IV. AMENDMENTS:

None.