



776 N.E. 125 Street, North Miami, Florida 33161

## Council Report

To: The Honorable Mayor and City Council

From: Arthur H. Sorey, III, Interim City Manager

Date: March 8, 2016

RE: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, OPPOSING SENATE BILL 872 AND HOUSE BILL 675, OR SIMILAR LEGISLATION THAT WOULD PREEMPT LOCAL GOVERNMENT POLICIES RELATED TO IMMIGRATION DETAINER REQUESTS; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

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### **RECOMMENDATION**

Staff is requesting that the Mayor and City Council of the City of North Miami, Florida, hereby oppose Senate Bill 872 and House Bill 675, or similar legislation that would preempt local government policies related to immigration detainer requests.

### **BACKGROUND**

Filed by Senator Aaron Bean (R-Jacksonville) and Representative Larry Metz (R-Groveland), respectively, Senate Bill 872 and House Bill 675 are identical bills that would prohibit local governmental entities and law enforcement agencies from limiting or restricting the enforcement of federal immigration law, including but not limited to, limiting or restricting compliance with an immigration detainer.

### **ATTACHMENT(s)**

Proposed Resolution

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, OPPOSING SENATE BILL 872 AND HOUSE BILL 675, OR SIMILAR LEGISLATION THAT WOULD PREEMPT LOCAL GOVERNMENT POLICIES RELATED TO IMMIGRATION DETAINER REQUESTS; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, the United States Department of Homeland Security, Immigration and Customs Enforcement (“Immigration and Customs Enforcement”) issues immigration detention requests, known as detainers, to local criminal justice agencies, including the Miami-Dade Corrections and Rehabilitation Department (“Department”); and

**WHEREAS**, Immigration and Customs Enforcement issues detainers to the Department requesting that Miami-Dade County ("County") hold an inmate until Immigration and Customs Enforcement can assume custody of the inmate, up to 48 hours after the inmate's local charges have been resolved; and

**WHEREAS**, on December 3, 2013, the County adopted Resolution No. R-1008-13 directing the County Mayor, or his designee to implement a policy whereby the Department may, in its discretion, honor detainer requests issued by Immigration and Customs Enforcement only if the federal government agrees in writing to reimburse the County for any and all costs relating to compliance with such detainer requests, and either:

- a. the inmate that is the subject of such a request has a previous conviction for a Forcible Felony, as defined in Section 776.08, Florida Statutes, or
- b. the inmate that is the subject of such a request has, at the time the Department receives the detainer request, a pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution, regardless of whether bond is eventually granted; and

**WHEREAS**, effective January 1, 2014, the County began honoring detainer requests only when the above conditions were met; and

**WHEREAS**, since the implementation of this policy, County taxpayers have saved hundreds of thousands of dollars in costs associated with honoring immigration detainer requests that were unreimbursed by the federal government; and

**WHEREAS**, Senate Bill (“SB”) 872 and House Bill (“HB”) 675 have been filed by Senator Aaron Bean (R-Jacksonville) and Representative Larry Metz (R-Groveland), respectively; and

**WHEREAS**, SB 872 and HB 675 are identical bills that would prohibit local governmental entities and law enforcement agencies from limiting or restricting the enforcement of federal immigration law, including but not limited to, limiting or restricting compliance with an immigration detainer; and

**WHEREAS**, SB 872 and HB 675 prohibit "Sanctuary Policies" defined therein as "a law, policy, practice, procedure, or custom adopted or permitted by a state entity, state official, law enforcement agency, local governmental entity, or local government official ... which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency or a federal immigration official with respect to federal immigration enforcement, including, but not limited to, cooperation with immigration detainers"; and

**WHEREAS**, SB 872 and HB 675 would preempt County policy as it specifies that "a state or local governmental entity or official or a law enforcement agency may not limit or restrict the enforcement of federal immigration law, including, but not limited to, limiting or restricting a state or local governmental entity or official or a law enforcement agency from complying with an immigration detainer"; and

**WHEREAS**, SB 872 and HB 675 would permit the Florida Attorney General, or applicable state attorney, to institute proceedings in Circuit Court to enjoin a law enforcement agency or local governmental entity found to be in violation of the proposed legislation and would impose fines of at least \$1,000, but not more than \$5,000, for each day that the policy or practice was found to be in effect before the injunction was granted; and

**WHEREAS**, pursuant to 8 C.F.R. §287.7(e), Immigration and Customs Enforcement is not responsible for incarceration costs of any individual against whom a detainer is lodged until actual assumption of custody; and

**WHEREAS**, SB 872 and HB 675 could impact the County's policy regarding immigration detainees and could prevent the County from obtaining reimbursement for any and all costs related to honoring immigration detainees; and

**WHEREAS**, detainer requests are an unfunded federal mandate that impose hefty fiscal burdens and legal liability on local law enforcement agencies; and

**WHEREAS**, SB 872 and HB 675 could result in the taxpayers of Miami-Dade County, and any county in Florida, incurring the cost of honoring immigration detainees; and

**WHEREAS**, the Mayor and City Council oppose SB 872 and HB 675 because such Bills would preempt policies set by Miami-Dade County that provide that the County will only hold such inmates under immigration detainer requests up to 48 hours if the federal government reimburses County taxpayers for the cost.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.**     **Opposition to SB 872 and HB 675.** The Mayor and City Council of the City of North Miami, Florida, hereby oppose Senate Bill 872 and House Bill 675, or similar legislation that would preempt local government policies related to immigration detainer requests.

**Section 2.**     **Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

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ROLAND C. GALDOS, ESQ.  
INTERIM CITY ATTORNEY

SPONSORED BY: VICE MAYOR ALIX DESULME

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.  
Vice Mayor Alix Desulme  
Councilman Scott Galvin  
Councilwoman Carol Keys, Esq.  
Councilman Philippe Bien-Aime

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

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1  
2 An act relating to estates; amending s. 733.106, F.S.;  
3 authorizing the court, if costs and attorney fees are  
4 to be paid from the estate under specified sections of  
5 law, to direct payment from a certain part of the  
6 estate or, under specified circumstances, to direct  
7 payment from a trust; authorizing costs and fees to be  
8 assessed against one or more persons' part of the  
9 trust in such proportions as the court finds just and  
10 proper; specifying factors that the court may consider  
11 in directing the assessment of such costs and fees;  
12 authorizing a court to assess costs and fees without  
13 finding that the person engaged in specified wrongful  
14 acts; amending s. 733.212, F.S.; revising the required  
15 content for a notice of administration; revising  
16 provisions that require an interested person, who has  
17 been served a notice of administration, to file  
18 specified objections in an estate matter within 3  
19 months after service of such notice; providing that  
20 the 3-month period may only be extended for certain  
21 estoppel; providing that objections that are not  
22 barred by the 3-month period must be filed no later  
23 than a specified date; deleting references to  
24 objections based upon the qualifications of a personal  
25 representative; amending s. 733.2123, F.S.; conforming  
26 provisions to changes made by the act; amending s.  
27 733.3101, F.S.; requiring a personal representative to  
28 resign immediately if he or she knows that he or she  
29 was not qualified to act at the time of appointment;

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30 requiring a personal representative who was qualified  
31 to act at such appointment to file a notice if no  
32 longer qualified; authorizing an interested person  
33 within a specified period to request the removal of a  
34 personal representative who files such notice;  
35 providing that a personal representative is liable for  
36 costs and attorney fees incurred in a removal  
37 proceeding if he or she is removed and should have  
38 known of the facts supporting the removal; defining  
39 the term "qualified"; amending s. 733.504, F.S.;  
40 requiring a personal representative to be removed and  
41 the letters of administration revoked if he or she was  
42 not qualified to act at the time of appointment;  
43 amending s. 733.817, F.S.; defining and redefining  
44 terms; deleting a provision that exempts an interest  
45 in protected homestead from the apportionment of  
46 taxes; providing for the payment of taxes on protected  
47 homestead family allowance and exempt property by  
48 certain other property to the extent such other  
49 property is sufficient; revising the allocation of  
50 taxes; revising the apportionment of the net tax  
51 attributable to specified interests; authorizing a  
52 court to assess liability in an equitable manner under  
53 certain circumstances; providing that a governing  
54 instrument may not direct that taxes be paid from  
55 property other than property passing under the  
56 governing instrument, except under specified  
57 conditions; requiring that direction in a governing  
58 instrument be express to apportion taxes under certain

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59 | circumstances; requiring that the right of recovery  
60 | provided in the Internal Revenue Code for certain  
61 | taxes be expressly waived in the decedent's will or  
62 | revocable trust with certain specificity; specifying  
63 | the property upon which certain tax is imposed for  
64 | allocation and apportionment of certain tax; providing  
65 | that a general statement in the decedent's will or  
66 | revocable trust waiving all rights of reimbursement or  
67 | recovery under the Internal Revenue Code is not an  
68 | express waiver of certain rights of recovery;  
69 | requiring direction to specifically reference the  
70 | generation-skipping transfer tax imposed by the  
71 | Internal Revenue Code to direct its apportionment;  
72 | authorizing, under certain circumstances, the decedent  
73 | to direct by will the amount of net tax attributable  
74 | to property over which the decedent held a general  
75 | power of appointment under certain circumstances;  
76 | providing that an express direction in a revocable  
77 | trust is deemed to be a direction contained in the  
78 | decedent's will as well as the revocable trust under  
79 | certain circumstances; providing that an express  
80 | direction in the decedent's will to pay tax from the  
81 | decedent's revocable trust by specific reference to  
82 | the revocable trust is effective unless a contrary  
83 | express direction is contained in the revocable trust;  
84 | revising the resolution of conflicting directions in  
85 | governing instruments with regard to payment of taxes;  
86 | providing that the later express direction in the will  
87 | or other governing instrument controls; providing that

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88 the date of an amendment to a will or other governing  
89 instrument is the date of the will or trust for  
90 conflict resolution only if the codicil or amendment  
91 contains an express tax apportionment provision or an  
92 express modification of the tax apportionment  
93 provision; providing that a will is deemed executed  
94 after another governing instrument if the decedent's  
95 will and another governing instrument were executed on  
96 the same date; providing that an earlier conflicting  
97 governing instrument controls as to any tax remaining  
98 unpaid after the application of the later conflicting  
99 governing instrument; providing that a grant of  
100 permission or authority in a governing instrument to  
101 request payment of tax from property passing under  
102 another governing instrument is not a direction  
103 apportioning the tax to the property passing under the  
104 other governing instrument; providing a grant of  
105 permission or authority in a governing instrument to  
106 pay tax attributable to property not passing under the  
107 governing instrument is not a direction apportioning  
108 the tax to property passing under the governing  
109 instrument; providing application; prohibiting the  
110 requiring of a personal representative or fiduciary to  
111 transfer to a recipient property that may be used for  
112 payment of taxes; amending s. 736.1005, F.S.;

113 authorizing the court, if attorney fees are to be paid  
114 from the trust under specified sections of law, to  
115 direct payment from a certain part of the trust;  
116 providing that fees may be assessed against one or

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117 more persons' part of the trust in such proportions as  
118 the court finds just and proper; specifying factors  
119 that the court may consider in directing the  
120 assessment of such fees; providing that a court may  
121 assess fees without finding that a person engaged  
122 specified wrongful acts; amending s. 736.1006, F.S.;  
123 authorizing the court, if costs are to be paid from  
124 the trust under specified sections of law, to direct  
125 payment from a certain part of the trust; providing  
126 that costs may be assessed against one or more  
127 persons' part of the trust in such proportions as the  
128 court finds just and proper; specifying factors that  
129 the court may consider in directing the assessment of  
130 such costs; providing that specified provisions of the  
131 act are remedial and intended to clarify existing law;  
132 providing for retroactive and prospective application  
133 of specified portions of the act; providing an  
134 effective date.

135  
136 Be It Enacted by the Legislature of the State of Florida:

137  
138 Section 1. Section 733.106, Florida Statutes, is amended to  
139 read:

140 733.106 Costs and attorney ~~attorney's~~ fees.—

141 (1) In all probate proceedings, costs may be awarded as in  
142 chancery actions.

143 (2) A person nominated as personal representative, or any  
144 proponent of a will if the person so nominated does not act  
145 within a reasonable time, if in good faith justified in offering

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146 the will in due form for probate, shall receive costs and  
147 attorney ~~attorney's~~ fees from the estate even though probate is  
148 denied or revoked.

149 (3) Any attorney who has rendered services to an estate may  
150 be awarded reasonable compensation from the estate.

151 (4) If ~~When~~ costs and attorney ~~attorney's~~ fees are to be  
152 paid from the estate under this section, s. 733.6171(4), s.  
153 736.1005, or s. 736.1006, the court, in its discretion, may  
154 direct from what part of the estate they shall be paid.

155 (a) If the court directs an assessment against a person's  
156 part of the estate and such part is insufficient to fully pay  
157 the assessment, the court may direct payment from the person's  
158 part of a trust, if any, if a pourover will is involved and the  
159 matter is interrelated with the trust.

160 (b) All or any part of the costs and attorney fees to be  
161 paid from the estate may be assessed against one or more  
162 persons' part of the estate in such proportions as the court  
163 finds to be just and proper.

164 (c) In the exercise of its discretion, the court may  
165 consider the following factors:

166 1. The relative impact of an assessment on the estimated  
167 value of each person's part of the estate.

168 2. The amount of costs and attorney fees to be assessed  
169 against a person's part of the estate.

170 3. The extent to which a person whose part of the estate is  
171 to be assessed, individually or through counsel, actively  
172 participated in the proceeding.

173 4. The potential benefit or detriment to a person's part of  
174 the estate expected from the outcome of the proceeding.

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175 5. The relative strength or weakness of the merits of the  
176 claims, defenses, or objections, if any, asserted by a person  
177 whose part of the estate is to be assessed.

178 6. Whether a person whose part of the estate is to be  
179 assessed was a prevailing party with respect to one or more  
180 claims, defenses, or objections.

181 7. Whether a person whose part of the estate is to be  
182 assessed unjustly caused an increase in the amount of costs and  
183 attorney fees incurred by the personal representative or another  
184 interested person in connection with the proceeding.

185 8. Any other relevant fact, circumstance, or equity.

186 (d) The court may assess a person's part of the estate  
187 without finding that the person engaged in bad faith,  
188 wrongdoing, or frivolousness.

189 Section 2. Paragraph (c) of subsection (2) and subsection  
190 (3) of section 733.212, Florida Statutes, are amended to read:

191 733.212 Notice of administration; filing of objections.—

192 (2) The notice shall state:

193 (c) That any interested person on whom a copy of the notice  
194 of administration is served must file on or before the date that  
195 is 3 months after the date of service of a copy of the notice of  
196 administration on that person any objection that challenges the  
197 validity of the will, ~~the qualifications of the personal~~  
198 ~~representative,~~ the venue, or the jurisdiction of the court. The  
199 3-month time period may only be extended for estoppel based upon  
200 a misstatement by the personal representative regarding the time  
201 period within which an objection must be filed. The time period  
202 may not be extended for any other reason, including affirmative  
203 representation, failure to disclose information, or misconduct

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204 by the personal representative or any other person. Unless  
205 sooner barred by subsection (3), all objections to the validity  
206 of a will, venue, or the jurisdiction of the court must be filed  
207 no later than the earlier of the entry of an order of final  
208 discharge of the personal representative or 1 year after service  
209 of the notice of administration.

210 (3) Any interested person on whom a copy of the notice of  
211 administration is served must object to the validity of the  
212 will, ~~the qualifications of the personal representative,~~ the  
213 venue, or the jurisdiction of the court by filing a petition or  
214 other pleading requesting relief in accordance with the Florida  
215 Probate Rules on or before the date that is 3 months after the  
216 date of service of a copy of the notice of administration on the  
217 objecting person, or those objections are forever barred. The 3-  
218 month time period may only be extended for estoppel based upon a  
219 misstatement by the personal representative regarding the time  
220 period within which an objection must be filed. The time period  
221 may not be extended for any other reason, including affirmative  
222 representation, failure to disclose information, or misconduct  
223 by the personal representative or any other person. Unless  
224 sooner barred by this subsection, all objections to the validity  
225 of a will, venue, or the jurisdiction of the court must be filed  
226 no later than the earlier of the entry of an order of final  
227 discharge of the personal representative or 1 year after service  
228 of the notice of administration.

229 Section 3. Section 733.2123, Florida Statutes, is amended  
230 to read:

231 733.2123 Adjudication before issuance of letters.—A  
232 petitioner may serve formal notice of the petition for

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233 administration on interested persons. A person who is served  
234 with such notice before the issuance of letters or who has  
235 waived notice may not challenge the validity of the will,  
236 testacy of the decedent, ~~qualifications of the personal~~  
237 ~~representative,~~ venue, or jurisdiction of the court, except in  
238 the proceedings before issuance of letters.

239 Section 4. Section 733.3101, Florida Statutes, is amended  
240 to read:

241 733.3101 Personal representative not qualified.—

242 (1) A personal representative shall resign immediately if  
243 the personal representative knows that he or she was not  
244 qualified to act at the time of appointment.

245 (2) Any time a personal representative, who was qualified  
246 to act at the time of appointment, knows or should have known  
247 that he or she would not be qualified for appointment if  
248 application for appointment were then made, the personal  
249 representative shall promptly file and serve a notice setting  
250 forth the reasons. The personal representative's notice shall  
251 state that any interested person may petition to remove the  
252 personal representative. An interested person on whom a copy of  
253 the personal representative's notice is served may file a  
254 petition requesting the personal representative's removal within  
255 30 days after the date on which such notice is served.

256 (3) A personal representative who fails to comply with this  
257 section shall be personally liable for costs, including attorney  
258 attorney's fees, incurred in any removal proceeding, if the  
259 personal representative is removed. This liability extends to a  
260 personal representative who does not know, but should have  
261 known, of the facts that would have required him or her to

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262 resign under subsection (1) or to file and serve notice under  
263 subsection (2). This liability shall be cumulative to any other  
264 provided by law.

265 (4) As used in this section, the term "qualified" means  
266 that the personal representative is qualified under ss. 733.302  
267 -733.305.

268 Section 5. Section 733.504, Florida Statutes, is amended to  
269 read:

270 733.504 Removal of personal representative; causes for  
271 removal.-A personal representative shall be removed and the  
272 letters revoked if he or she was not qualified to act at the  
273 time of appointment. A personal representative may be removed  
274 and the letters revoked for any of the following causes, ~~and the~~  
275 ~~removal shall be in addition to any penalties prescribed by law:~~

276 (1) Adjudication that the personal representative is  
277 incapacitated.

278 (2) Physical or mental incapacity rendering the personal  
279 representative incapable of the discharge of his or her duties.

280 (3) Failure to comply with any order of the court, unless  
281 the order has been superseded on appeal.

282 (4) Failure to account for the sale of property or to  
283 produce and exhibit the assets of the estate when so required.

284 (5) Wasting or maladministration of the estate.

285 (6) Failure to give bond or security for any purpose.

286 (7) Conviction of a felony.

287 (8) Insolvency of, or the appointment of a receiver or  
288 liquidator for, any corporate personal representative.

289 (9) Holding or acquiring conflicting or adverse interests  
290 against the estate that will or may interfere with the

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291 administration of the estate as a whole. This cause of removal  
292 shall not apply to the surviving spouse because of the exercise  
293 of the right to the elective share, family allowance, or  
294 exemptions, as provided elsewhere in this code.

295 (10) Revocation of the probate of the decedent's will that  
296 authorized or designated the appointment of the personal  
297 representative.

298 (11) Removal of domicile from Florida, if domicile was a  
299 requirement of initial appointment.

300 (12) The personal representative was qualified to act at  
301 the time of appointment, but is ~~would~~ not now ~~be~~ entitled to  
302 appointment.

303  
304 Removal under this section is in addition to any penalties  
305 prescribed by law.

306 Section 6. Section 733.817, Florida Statutes, is amended to  
307 read:

308 (Substantial rewording of section. See  
309 s. 733.817, F.S., for present text.)

310 733.817 Apportionment of estate taxes.—

311 (1) DEFINITIONS.—As used in this section, the term:

312 (a) "Fiduciary" means a person, other than the personal  
313 representative in possession of property included in the measure  
314 of the tax, who is liable to the applicable taxing authority for  
315 payment of the entire tax to the extent of the value of the  
316 property in possession.

317 (b) "Generation-skipping transfer tax" means the  
318 generation-skipping transfer tax imposed by chapter 13 of the  
319 Internal Revenue Code on direct skips of interests includible in

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320 the federal gross estate or a corresponding tax imposed by any  
321 state or country or political subdivision of the foregoing. The  
322 term does not include the generation-skipping transfer tax on  
323 taxable distributions, taxable terminations, or any other  
324 generation-skipping transfer. The terms "direct skip," "taxable  
325 distribution," and "taxable termination" have the same meanings  
326 as provided in s. 2612 of the Internal Revenue Code.

327 (c) "Governing instrument" means a will, trust instrument,  
328 or any other document that controls the transfer of property on  
329 the occurrence of the event with respect to which the tax is  
330 being levied.

331 (d) "Gross estate" means the gross estate, as determined by  
332 the Internal Revenue Code with respect to the federal estate tax  
333 and the Florida estate tax, and as that concept is otherwise  
334 determined by the estate, inheritance, or death tax laws of the  
335 particular state, country, or political subdivision whose tax is  
336 being apportioned.

337 (e) "Included in the measure of the tax" means for each  
338 separate tax that an interest may incur, only interests included  
339 in the measure of that particular tax are considered. As used in  
340 this section, the term does not include:

341 1. Any interest, whether passing under the will or not, to  
342 the extent the interest is initially deductible from the gross  
343 estate, without regard to any subsequent reduction of the  
344 deduction by reason of the charge of any part of the applicable  
345 tax to the interest. If an election is required for  
346 deductibility, an interest is not initially deductible unless  
347 the election for deductibility is allowed.

348 2. Interests or amounts that are not included in the gross

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349 estate but are included in the amount upon which the applicable  
350 tax is computed, such as adjusted taxable gifts pursuant to s.  
351 2001 of the Internal Revenue Code.

352 3. Gift taxes included in the gross estate pursuant to s.  
353 2035 of the Internal Revenue Code and the portion of any inter  
354 vivos transfer included in the gross estate pursuant to s. 529  
355 of the Internal Revenue Code, notwithstanding inclusion in the  
356 gross estate.

357 (f) "Internal Revenue Code" means the Internal Revenue Code  
358 of 1986, as amended.

359 (g) "Net tax" means the net tax payable to the particular  
360 state, country, or political subdivision whose tax is being  
361 apportioned, after taking into account all credits against the  
362 applicable tax except as provided in this section. With respect  
363 to the federal estate tax, net tax is determined after taking  
364 into account all credits against the tax except for the credit  
365 for foreign death taxes and except for the credit or deduction  
366 for state taxes imposed by states other than this state.

367 (h) "Nonresiduary devise" means any devise that is not a  
368 residuary devise.

369 (i) "Nonresiduary interest," in connection with a trust,  
370 means any interest in a trust which is not a residuary interest.

371 (j) "Recipient" means, with respect to property or an  
372 interest in property included in the gross estate, an heir at  
373 law in an intestate estate, devisee in a testate estate,  
374 beneficiary of a trust, beneficiary of a life insurance policy,  
375 annuity, or other contractual right, surviving tenant, taker as  
376 a result of the exercise or in default of the exercise of a  
377 general power of appointment, person who receives or is to

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378 receive the property or an interest in the property, or person  
379 in possession of the property, other than a creditor.

380 (k) "Residuary devise" has the meaning in s. 731.201.

381 (l) "Residuary interest," in connection with a trust, means  
382 an interest in the assets of a trust which remain after  
383 provision for any distribution that is to be satisfied by  
384 reference to a specific property or type of property, fund, sum,  
385 or statutory amount.

386 (m) "Revocable trust" means a trust as described in s.  
387 733.707(3).

388 (n) "Section 2044 interest" means an interest included in  
389 the measure of the tax by reason of s. 2044 of the Internal  
390 Revenue Code.

391 (o) "State" means any state, territory, or possession of  
392 the United States, the District of Columbia, or the Commonwealth  
393 of Puerto Rico.

394 (p) "Tax" means any estate tax, inheritance tax,  
395 generation-skipping transfer tax, or other tax levied or  
396 assessed under the laws of this or any other state, the United  
397 States, any other country, or any political subdivision of the  
398 foregoing, as finally determined, which is imposed as a result  
399 of the death of the decedent. The term also includes any  
400 interest or penalties imposed in addition to the tax. Unless the  
401 context indicates otherwise, the term means each separate tax.  
402 The term does not include any additional estate tax imposed by  
403 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a  
404 corresponding tax imposed by any state or country or political  
405 subdivision of the foregoing. The additional estate tax imposed  
406 shall be apportioned as provided in s. 2032A or s. 2057 of the

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407 Internal Revenue Code.

408 (q) "Temporary interest" means an interest in income or an  
409 estate for a specific period of time, for life, or for some  
410 other period controlled by reference to extrinsic events,  
411 whether or not in trust.

412 (r) "Tentative Florida tax" with respect to any property  
413 means the net Florida estate tax that would have been  
414 attributable to that property if no tax were payable to any  
415 other state in respect of that property.

416 (s) "Value" means the pecuniary worth of the interest  
417 involved as finally determined for purposes of the applicable  
418 tax after deducting any debt, expense, or other deduction  
419 chargeable to it for which a deduction was allowed in  
420 determining the amount of the applicable tax. A lien or other  
421 encumbrance is not regarded as chargeable to a particular  
422 interest to the extent that it will be paid from other  
423 interests. The value of an interest is not reduced by reason of  
424 the charge against it of any part of the tax, except as provided  
425 in paragraph (3) (a).

426 (2) ALLOCATION OF TAX.—Except as effectively directed in  
427 the governing instrument pursuant to subsection (4), the net tax  
428 attributable to the interests included in the measure of each  
429 tax shall be determined by the proportion that the value of each  
430 interest included in the measure of the tax bears to the total  
431 value of all interests included in the measure of the tax.  
432 Notwithstanding the foregoing provision of this subsection and  
433 except as effectively directed in the governing instrument:

434 (a) The net tax attributable to section 2044 interests  
435 shall be determined in the manner provided for the federal

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436 estate tax in s. 2207A of the Internal Revenue Code, and the  
437 amount so determined shall be deducted from the tax to determine  
438 the net tax attributable to all other interests included in the  
439 measure of the tax.

440 (b) The foreign tax credit allowed with respect to the  
441 federal estate tax shall be allocated among the recipients of  
442 interests finally charged with the payment of the foreign tax in  
443 reduction of any federal estate tax chargeable to the recipients  
444 of the foreign interests, whether or not any federal estate tax  
445 is attributable to the foreign interests. Any excess of the  
446 foreign tax credit shall be applied to reduce proportionately  
447 the net amount of federal estate tax chargeable to the remaining  
448 recipients of the interests included in the measure of the  
449 federal estate tax.

450 (c) The reduction in the net tax attributable to the  
451 deduction for state death taxes allowed by s. 2058 of the  
452 Internal Revenue Code shall be allocated to the recipients of  
453 the interests that produced the deduction. For this purpose, the  
454 reduction in the net tax shall be calculated in the manner  
455 provided for interests other than those described in paragraph  
456 (a).

457 (d) The reduction in the Florida tax, if one is imposed, on  
458 the estate of a Florida resident for tax paid to another state  
459 shall be allocated as follows:

460 1. If the net tax paid to another state is greater than or  
461 equal to the tentative Florida tax attributable to the property  
462 subject to tax in the other state, none of the Florida tax shall  
463 be attributable to that property.

464 2. If the net tax paid to another state is less than the

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465 tentative Florida tax attributable to the property subject to  
466 tax in the other state, the net Florida tax attributable to the  
467 property subject to tax in the other state shall be the excess  
468 of the amount of the tentative Florida tax attributable to the  
469 property over the net tax payable to the other state with  
470 respect to the property.

471 3. Any remaining net Florida tax shall be attributable to  
472 property included in the measure of the Florida tax exclusive of  
473 the property subject to tax in another state.

474 4. The net federal tax attributable to the property subject  
475 to tax in the other state shall be determined as if the property  
476 were located in that state.

477 (e) The net tax attributable to a temporary interest, if  
478 any, is regarded as attributable to the principal that supports  
479 the temporary interest.

480 (3) APPORTIONMENT OF TAX.—Except as otherwise effectively  
481 directed in the governing instrument pursuant to subsection (4),  
482 the net tax attributable to each interest shall be apportioned  
483 as follows:

484 (a) Generation-skipping transfer tax.—Any federal or state  
485 generation-skipping transfer tax shall be apportioned as  
486 provided in s. 2603 of the Internal Revenue Code after the  
487 application of the remaining provisions of this subsection to  
488 taxes other than the generation-skipping transfer tax.

489 (b) Section 2044 interests.—The net tax attributable to  
490 section 2044 interests shall be apportioned among the recipients  
491 of the section 2044 interests in the proportion that the value  
492 of each section 2044 interest bears to the total of all section  
493 2044 interests. The net tax apportioned by this paragraph to

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494 section 2044 interests that pass in the manner described in  
495 paragraph (c) or paragraph (d) shall be apportioned to the  
496 section 2044 interests in the manner described in those  
497 paragraphs before the apportionment of the net tax attributable  
498 to the other interests passing as provided in those paragraphs.  
499 The net tax attributable to the interests other than the section  
500 2044 interests which pass in the manner described in paragraph  
501 (c) or paragraph (d) shall be apportioned only to such other  
502 interests pursuant to those paragraphs.

503 (c) Wills.—The net tax attributable to property passing  
504 under the decedent's will shall be apportioned in the following  
505 order of priority:

506 1. The net tax attributable to nonresiduary devises shall  
507 be charged to and paid from the residuary estate, whether or not  
508 all interests in the residuary estate are included in the  
509 measure of the tax. If the residuary estate is insufficient to  
510 pay the net tax attributable to all nonresiduary devises, the  
511 balance of the net tax attributable to nonresiduary devises  
512 shall be apportioned among the recipients of the nonresiduary  
513 devises in the proportion that the value of each nonresiduary  
514 devise included in the measure of the tax bears to the total of  
515 all nonresiduary devises included in the measure of the tax.

516 2. The net tax attributable to residuary devises shall be  
517 apportioned among the recipients of the residuary devises  
518 included in the measure of the tax in the proportion that the  
519 value of each residuary devise included in the measure of the  
520 tax bears to the total of all residuary devises included in the  
521 measure of the tax. If the residuary estate is insufficient to  
522 pay the net tax attributable to all residuary devises, the

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523 balance of the net tax attributable to residuary devisees shall  
524 be apportioned among the recipients of the nonresiduary devisees  
525 in the proportion that the value of each nonresiduary devise  
526 included in the measure of the tax bears to the total of all  
527 nonresiduary devisees included in the measure of the tax.

528 (d) Trusts.—The net tax attributable to property passing  
529 under the terms of any trust other than a trust created in the  
530 decedent's will shall be apportioned in the following order of  
531 priority:

532 1. The net tax attributable to nonresiduary interests of  
533 the trust shall be charged to and paid from the residuary  
534 portion of the trust, whether or not all interests in the  
535 residuary portion are included in the measure of the tax. If the  
536 residuary portion is insufficient to pay the net tax  
537 attributable to all nonresiduary interests, the balance of the  
538 net tax attributable to nonresiduary interests shall be  
539 apportioned among the recipients of the nonresiduary interests  
540 in the proportion that the value of each nonresiduary interest  
541 included in the measure of the tax bears to the total of all  
542 nonresiduary interests included in the measure of the tax.

543 2. The net tax attributable to residuary interests of the  
544 trust shall be apportioned among the recipients of the residuary  
545 interests of the trust included in the measure of the tax in the  
546 proportion that the value of each residuary interest included in  
547 the measure of the tax bears to the total of all residuary  
548 interests of the trust included in the measure of the tax. If  
549 the residuary portion is insufficient to pay the net tax  
550 attributable to all residuary interests, the balance of the net  
551 tax attributable to residuary interests shall be apportioned

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552 among the recipients of the nonresiduary interests in the  
553 proportion that the value of each nonresiduary interest included  
554 in the measure of the tax bears to the total of all nonresiduary  
555 interests included in the measure of the tax.

556  
557 Except as provided in paragraph (g), this paragraph applies  
558 separately for each trust.

559 (e) Protected homestead, exempt property, and family  
560 allowance.—

561 1. The net tax attributable to an interest in protected  
562 homestead, exempt property, and the family allowance determined  
563 under s. 732.403 shall be apportioned against the recipients of  
564 other interests in the estate or passing under any revocable  
565 trust in the following order of priority:

566 a. Class I.—Recipients of interests passing by intestacy  
567 that are included in the measure of the federal estate tax.

568 b. Class II.—Recipients of residuary devises, residuary  
569 interests, and pretermitted shares under ss. 732.301 and 732.302  
570 that are included in the measure of the federal estate tax.

571 c. Class III.—Recipients of nonresiduary devises and  
572 nonresiduary interests that are included in the measure of the  
573 federal estate tax.

574 2. Any net tax apportioned to a class pursuant to this  
575 paragraph shall be apportioned among each recipient in the class  
576 in the proportion that the value of the interest of each bears  
577 to the total value of all interests included in that class. A  
578 tax may not be apportioned under this paragraph to the portion  
579 of any interest applied in satisfaction of the elective share  
580 whether or not included in the measure of the tax. For purposes

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581 of this paragraph, if the value of the interests described in s.  
582 732.2075(1) exceeds the amount of the elective share, the  
583 elective share shall be treated as satisfied first from  
584 interests other than those described in classes I, II, and III,  
585 and to the extent that those interests are insufficient to  
586 satisfy the elective share, from the interests passing to or for  
587 the benefit of the surviving spouse described in classes I, II,  
588 and III, beginning with those described in class I, until the  
589 elective share is satisfied. This paragraph has priority over  
590 paragraphs (a) and (h).

591 3. The balance of the net tax attributable to any interest  
592 in protected homestead, exempt property, and the family  
593 allowance determined under s. 732.403 which is not apportioned  
594 under the preceding provisions of this paragraph shall be  
595 apportioned to the recipients of those interests included in the  
596 measure of the tax in the proportion that the value of each  
597 bears to the total value of those interests included in the  
598 measure of the tax.

599 (f) Construction.—For purposes of this subsection:

600 1. If the decedent's estate is the beneficiary of a life  
601 insurance policy, annuity, or contractual right included in the  
602 decedent's gross estate, or is the taker as a result of the  
603 exercise or default in exercise of a general power of  
604 appointment held by the decedent, that interest shall be  
605 regarded as passing under the terms of the decedent's will for  
606 the purposes of paragraph (c) or by intestacy if not disposed of  
607 by will. Additionally, any interest included in the measure of  
608 the tax by reason of s. 2041 of the Internal Revenue Code  
609 passing to the decedent's creditors or the creditors of the

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610 decedent's estate shall be regarded as passing to the decedent's  
611 estate for the purpose of this subparagraph.

612 2. If a trust is the beneficiary of a life insurance  
613 policy, annuity, or contractual right included in the decedent's  
614 gross estate, or is the taker as a result of the exercise or  
615 default in exercise of a general power of appointment held by  
616 the decedent, that interest shall be regarded as passing under  
617 the trust for purposes of paragraph (d).

618 (g) Common instrument construction.—In the application of  
619 this subsection, paragraphs (b)-(f) shall be applied to  
620 apportion the net tax to the recipients under certain governing  
621 instruments as if all recipients under those instruments, other  
622 than the estate or revocable trust itself, were taking under a  
623 common instrument. This construction applies to the following:

624 1. The decedent's will and revocable trust if the estate is  
625 a beneficiary of the revocable trust or if the revocable trust  
626 is a beneficiary of the estate.

627 2. A revocable trust of the decedent and another revocable  
628 trust of the decedent if either trust is the beneficiary of the  
629 other trust.

630 (h) Other interests.—The net tax that is not apportioned to  
631 interests under paragraphs (b)-(g), including, but not limited  
632 to, the net tax attributable to interests passing by intestacy,  
633 interests applied in satisfaction of the elective share pursuant  
634 to s. 732.2075(2), interests passing by reason of the exercise  
635 or nonexercise of a general power of appointment, jointly held  
636 interests passing by survivorship, life insurance, properties in  
637 which the decedent held a reversionary or revocable interest,  
638 annuities, and contractual rights, shall be apportioned among

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639 the recipients of the remaining interests included in the  
640 measure of the tax in the proportion that the value of each such  
641 interest bears to the total value of all remaining interests  
642 included in the measure of the tax.

643 (i) Assessment of liability by court.—If the court finds  
644 that:

645 1. It is inequitable to apportion interest or penalties, or  
646 both, in the manner provided in paragraphs (a)-(h), the court  
647 may assess liability for the payment thereof in the manner that  
648 the court finds equitable.

649 2. The payment of any tax was not effectively directed in  
650 the governing instrument pursuant to subsection (4) and that  
651 such tax is not apportioned by this subsection, the court may  
652 assess liability for the payment of such tax in the manner that  
653 the court finds equitable.

654 (4) DIRECTION AGAINST APPORTIONMENT.—

655 (a) Except as provided in this subsection, a governing  
656 instrument may not direct that taxes be paid from property other  
657 than that passing under the governing instrument.

658 (b) For a direction in a governing instrument to be  
659 effective to direct payment of taxes attributable to property  
660 passing under the governing instrument in a manner different  
661 from that provided in this section, the direction must be  
662 express.

663 (c) For a direction in a governing instrument to be  
664 effective to direct payment of taxes attributable to property  
665 not passing under the governing instrument from property passing  
666 under the governing instrument, the governing instrument must  
667 expressly direct that the property passing under the governing

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668 instrument bear the burden of taxation for property not passing  
669 under the governing instrument. Except as provided in paragraph  
670 (d), a direction in the governing instrument to the effect that  
671 all taxes are to be paid from property passing under the  
672 governing instrument whether attributable to property passing  
673 under the governing instrument or otherwise shall be effective  
674 to direct payment from property passing under the governing  
675 instrument of taxes attributable to property not passing under  
676 the governing instrument.

677 (d) In addition to satisfying the other provisions of this  
678 subsection:

679 1.a. For a direction in the decedent's will or revocable  
680 trust to be effective in waiving the right of recovery provided  
681 in s. 2207A of the Internal Revenue Code for the tax  
682 attributable to section 2044 interests, and for any tax imposed  
683 by Florida based upon such section 2044 interests, the direction  
684 must expressly waive that right of recovery. An express  
685 direction that property passing under the will or revocable  
686 trust bear the tax imposed by s. 2044 of the Internal Revenue  
687 Code is deemed an express waiver of the right of recovery  
688 provided in s. 2207A of the Internal Revenue Code. A reference  
689 to "qualified terminable interest property," "QTIP," or property  
690 in which the decedent had a "qualifying income interest for  
691 life" is deemed to be a reference to property upon which tax is  
692 imposed by s. 2044 of the Internal Revenue Code which is subject  
693 to the right of recovery provided in s. 2207A of the Internal  
694 Revenue Code.

695 b. If property is included in the gross estate pursuant to  
696 ss. 2041 and 2044 of the Internal Revenue Code, the property is

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697 deemed included under s. 2044, and not s. 2041, for purposes of  
698 allocation and apportionment of the tax.

699 2. For a direction in the decedent's will or revocable  
700 trust to be effective in waiving the right of recovery provided  
701 in s. 2207B of the Internal Revenue Code for tax imposed by  
702 reason of s. 2036 of the Internal Revenue Code, and any tax  
703 imposed by Florida based upon s. 2036 of the Internal Revenue  
704 Code, the direction must expressly waive that right of recovery.  
705 An express direction that property passing under the will or  
706 revocable trust bear the tax imposed by s. 2036 of the Internal  
707 Revenue Code is deemed an express waiver of the right of  
708 recovery provided in s. 2207B of the Internal Revenue Code. If  
709 property is included in the gross estate pursuant to ss. 2036  
710 and 2038 of the Internal Revenue Code, the property is deemed  
711 included under s. 2038, not s. 2036, for purposes of allocation  
712 and apportionment of the tax, and there is no right of recovery  
713 under s. 2207B of the Internal Revenue Code.

714 3. A general statement in the decedent's will or revocable  
715 trust waiving all rights of reimbursement or recovery under the  
716 Internal Revenue Code is not an express waiver of the rights of  
717 recovery provided in s. 2207A or s. 2207B of the Internal  
718 Revenue Code.

719 4. For a direction in a governing instrument to be  
720 effective to direct payment of generation-skipping transfer tax  
721 in a manner other than as provided in s. 2603 of the Internal  
722 Revenue Code, and any tax imposed by Florida based on s. 2601 of  
723 the Internal Revenue Code, the direction must specifically  
724 reference the tax imposed by s. 2601 of the Internal Revenue  
725 Code. A reference to the generation-skipping transfer tax or s.

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726 2603 of the Internal Revenue Code is deemed to be a reference to  
727 property upon which tax is imposed by reason of s. 2601 of the  
728 Internal Revenue Code.

729 (e) If the decedent expressly directs by will, the net tax  
730 attributable to property over which the decedent held a general  
731 power of appointment may be determined in a manner other than as  
732 provided in subsection (2) if the net tax attributable to that  
733 property does not exceed the difference between the total net  
734 tax determined pursuant to subsection (2), determined without  
735 regard to this paragraph, and the total net tax that would have  
736 been payable if the value of the property subject to such power  
737 of appointment had not been included in the decedent's gross  
738 estate. If tax is attributable to one or more section 2044  
739 interests pursuant to subsection (2), the net tax attributable  
740 to the section 2044 interests shall be calculated before the  
741 application of this paragraph unless the decedent expressly  
742 directs otherwise by will.

743 (f) If the decedent's will expressly provides that the tax  
744 is to be apportioned as provided in the decedent's revocable  
745 trust by specific reference to the revocable trust, an express  
746 direction in the revocable trust is deemed to be a direction  
747 contained in the will as well as the revocable trust.

748 (g) An express direction in the decedent's will to pay tax  
749 from the decedent's revocable trust by specific reference to the  
750 revocable trust is effective unless a contrary express direction  
751 is contained in the revocable trust.

752 (h) If governing instruments contain effective directions  
753 that conflict as to payment of taxes, the most recently executed  
754 tax apportionment provision controls to the extent of the

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755 conflict. For the purpose of this subsection, if a will or other  
756 governing instrument is amended, the date of the codicil to the  
757 will or amendment to the governing instrument is regarded as the  
758 date of the will or other governing instrument only if the  
759 codicil or amendment contains an express tax apportionment  
760 provision or an express modification of the tax apportionment  
761 provision. A general statement ratifying or republishing all  
762 provisions not otherwise amended does not meet this condition.  
763 If the decedent's will and another governing instrument were  
764 executed on the same date, the will is deemed executed after the  
765 other governing instrument. The earlier conflicting governing  
766 instrument controls as to any tax remaining unpaid after the  
767 application of the later conflicting governing instrument.

768 (i) A grant of permission or authority in a governing  
769 instrument to request payment of tax from property passing under  
770 another governing instrument is not a direction apportioning the  
771 tax to the property passing under the other governing  
772 instrument. A grant of permission or authority in a governing  
773 instrument to pay tax attributable to property not passing under  
774 the governing instrument is not a direction apportioning the tax  
775 to property passing under the governing instrument.

776 (j) This section applies to any tax remaining to be paid  
777 after the application of any effective express directions. An  
778 effective express direction for payment of tax on specific  
779 property or a type of property in a manner different from that  
780 provided in this section is not effective as an express  
781 direction for payment of tax on other property or other types of  
782 property included in the measure of the tax.

783 (5) TRANSFER OF PROPERTY.—A personal representative or

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784 fiduciary shall not be required to transfer to a recipient any  
785 property reasonably anticipated to be necessary for the payment  
786 of taxes. Further, the personal representative or fiduciary is  
787 not required to transfer any property to the recipient until the  
788 amount of the tax due from the recipient is paid by the  
789 recipient. If property is transferred before final apportionment  
790 of the tax, the recipient shall provide a bond or other security  
791 for his or her apportioned liability in the amount and form  
792 prescribed by the personal representative or fiduciary.

793 (6) ORDER OF APPORTIONMENT.—

794 (a) The personal representative may petition at any time  
795 for an order of apportionment. If administration of the  
796 decedent's estate has not commenced at any time after 90 days  
797 from the decedent's death, any fiduciary may petition for an  
798 order of apportionment in the court in which venue would be  
799 proper for administration of the decedent's estate. Notice of  
800 the petition for order of apportionment must be served on all  
801 interested persons in the manner provided for service of formal  
802 notice. At any time after 6 months from the decedent's death,  
803 any recipient may petition the court for an order of  
804 apportionment.

805 (b) The court shall determine all issues concerning  
806 apportionment. If the tax to be apportioned has not been finally  
807 determined, the court shall determine the probable tax due or to  
808 become due from all interested persons, apportion the probable  
809 tax, and retain jurisdiction over the parties and issues to  
810 modify the order of apportionment as appropriate until after the  
811 tax is finally determined.

812 (7) DEFICIENCY.—

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813        (a) If the personal representative or fiduciary does not  
814 have possession of sufficient property otherwise distributable  
815 to the recipient to pay the tax apportioned to the recipient,  
816 whether under this section, the Internal Revenue Code, or the  
817 governing instrument, if applicable, the personal representative  
818 or fiduciary shall recover the deficiency in tax so apportioned  
819 to the recipient:

820            1. From the fiduciary in possession of the property to  
821 which the tax is apportioned, if any; and

822            2. To the extent of any deficiency in collection from the  
823 fiduciary, or to the extent collection from the fiduciary is  
824 excused pursuant to subsection (8) and in all other cases, from  
825 the recipient of the property to which the tax is apportioned,  
826 unless relieved of this duty as provided in subsection (8).

827        (b) In any action to recover the tax apportioned, the order  
828 of apportionment is prima facie correct.

829        (c) In any action for the enforcement of an order of  
830 apportionment, the court shall award taxable costs as in  
831 chancery actions, including reasonable attorney fees, and may  
832 award penalties and interest on the unpaid tax in accordance  
833 with equitable principles.

834        (d) This subsection does not authorize the recovery of any  
835 tax from a company issuing life insurance included in the gross  
836 estate, or from a bank, trust company, savings and loan  
837 association, or similar institution with respect to any account  
838 in the name of the decedent and any other person which passed by  
839 operation of law at the decedent's death.

840        (8) RELIEF FROM DUTY.—

841        (a) A personal representative or fiduciary who has the duty

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842 under this section of collecting the apportioned tax from  
843 recipients may be relieved of the duty to collect the tax by an  
844 order of the court finding that:

845 1. The estimated court costs and attorney fees in  
846 collecting the apportioned tax from a person against whom the  
847 tax has been apportioned will approximate or exceed the amount  
848 of the recovery;

849 2. The person against whom the tax has been apportioned is  
850 a resident of a foreign country other than Canada and refuses to  
851 pay the apportioned tax on demand; or

852 3. It is impracticable to enforce contribution of the  
853 apportioned tax against a person against whom the tax has been  
854 apportioned in view of the improbability of obtaining a judgment  
855 or the improbability of collection under any judgment that might  
856 be obtained, or otherwise.

857 (b) A personal representative or fiduciary is not liable  
858 for failure to attempt to enforce collection if the personal  
859 representative or fiduciary reasonably believes that collection  
860 would have been economically impracticable.

861 (9) UNCOLLECTED TAX.—Any apportioned tax that is not  
862 collected shall be reapportioned in accordance with this section  
863 as if the portion of the property to which the uncollected tax  
864 had been apportioned had been exempt.

865 (10) CONTRIBUTION.—This section does not limit the right of  
866 any person who has paid more than the amount of the tax  
867 apportionable to that person, calculated as if all apportioned  
868 amounts would be collected, to obtain contribution from those  
869 who have not paid the full amount of the tax apportionable to  
870 them, calculated as if all apportioned amounts would be

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871 collected, and that right is hereby conferred. In any action to  
872 enforce contribution, the court shall award taxable costs as in  
873 chancery actions, including reasonable attorney fees.

874 (11) FOREIGN TAX.—This section does not require the  
875 personal representative or fiduciary to pay any tax levied or  
876 assessed by a foreign country unless specific directions to that  
877 effect are contained in the will or other instrument under which  
878 the personal representative or fiduciary is acting.

879 Section 7. Section 736.1005, Florida Statutes, is amended  
880 to read:

881 736.1005 Attorney ~~attorney's~~ fees for services to the  
882 trust.—

883 (1) Any attorney who has rendered services to a trust may  
884 be awarded reasonable compensation from the trust. The attorney  
885 may apply to the court for an order awarding attorney ~~attorney's~~  
886 fees and, after notice and service on the trustee and all  
887 beneficiaries entitled to an accounting under s. 736.0813, the  
888 court shall enter an order on the fee application.

889 (2) If attorney ~~Whenever attorney's~~ fees are to be paid  
890 ~~from out of~~ the trust under subsection (1), s. 736.1007(5)(a),  
891 or s. 733.106(4)(a), the court, in its discretion, may direct  
892 from what part of the trust the fees shall be paid.

893 (a) All or any part of the attorney fees to be paid from  
894 the trust may be assessed against one or more persons' part of  
895 the trust in such proportions as the court finds to be just and  
896 proper.

897 (b) In the exercise of its discretion, the court may  
898 consider the following factors:

899 1. The relative impact of an assessment on the estimated

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900 value of each person's part of the trust.

901 2. The amount of attorney fees to be assessed against a  
902 person's part of the trust.

903 3. The extent to which a person whose part of the trust is  
904 to be assessed, individually or through counsel, actively  
905 participated in the proceeding.

906 4. The potential benefit or detriment to a person's part of  
907 the trust expected from the outcome of the proceeding.

908 5. The relative strength or weakness of the merits of the  
909 claims, defenses, or objections, if any, asserted by a person  
910 whose part of the trust is to be assessed.

911 6. Whether a person whose part of the trust is to be  
912 assessed was a prevailing party with respect to one or more  
913 claims, defenses, or objections.

914 7. Whether a person whose part of the trust is to be  
915 assessed unjustly caused an increase in the amount of attorney  
916 fees incurred by the trustee or another person in connection  
917 with the proceeding.

918 8. Any other relevant fact, circumstance, or equity.

919 (c) The court may assess a person's part of the trust  
920 without finding that the person engaged in bad faith,  
921 wrongdoing, or frivolousness.

922 (3) Except when a trustee's interest may be adverse in a  
923 particular matter, the attorney shall give reasonable notice in  
924 writing to the trustee of the attorney's retention by an  
925 interested person and the attorney's entitlement to fees  
926 pursuant to this section. A court may reduce any fee award for  
927 services rendered by the attorney prior to the date of actual  
928 notice to the trustee, if the actual notice date is later than a

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929 date of reasonable notice. In exercising this discretion, the  
930 court may exclude compensation for services rendered after the  
931 reasonable notice date but before ~~prior to~~ the date of actual  
932 notice.

933 Section 8. Section 736.1006, Florida Statutes, is amended  
934 to read:

935 736.1006 Costs in trust proceedings.—

936 (1) In all trust proceedings, costs may be awarded as in  
937 chancery actions.

938 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust  
939 under subsection (1) or s. 733.106(4) (a), the court, in its  
940 discretion, may direct from what part of the trust the costs  
941 shall be paid. All or any part of the costs to be paid from the  
942 trust may be assessed against one or more persons' part of the  
943 trust in such proportions as the court finds to be just and  
944 proper. In the exercise of its discretion, the court may  
945 consider the factors set forth in s. 736.1005(2).

946 Section 9. The amendments made by this act to ss. 733.212,  
947 733.2123, 733.3101, and 733.504, Florida Statutes, apply to  
948 proceedings commenced on or after July 1, 2015. The law in  
949 effect before July 1, 2015, applies to proceedings commenced  
950 before that date.

951 Section 10. (1) The amendment made by this act to s.  
952 733.817(1) (g) and (2) (c), Florida Statutes, is remedial in  
953 nature, is intended to clarify existing law, and applies  
954 retroactively to all proceedings pending or commenced on or  
955 after July 1, 2015, in which the apportionment of taxes has not  
956 been finally determined or agreed for the estates of decedents  
957 who die after December 31, 2004.

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958           (2) The amendment made by this act to s. 733.817(1)(e)3.,  
959 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and  
960 (6), Florida Statutes, applies to the estates of decedents who  
961 die on or after July 1, 2015.

962           (3) Except as provided in subsections (1) and (2), the  
963 amendment made by this act to s. 733.817, Florida Statutes, is  
964 remedial in nature, is intended to clarify existing law, and  
965 applies retroactively to all proceedings pending or commenced on  
966 or after July 1, 2015, in which the apportionment of taxes has  
967 not been finally determined or agreed and without regard to the  
968 date of the decedent's death.

969           Section 11. The amendments made by this act to ss. 733.106,  
970 736.1005, and 736.1006, Florida Statutes, apply to proceedings  
971 commenced on or after July 1, 2015. The law in effect before  
972 July 1, 2015, applies to proceedings commenced before that date.

973           Section 12. This act shall take effect July 1, 2015.



1                   A bill to be entitled  
2           An act relating to federal immigration enforcement;  
3           providing a short title; creating chapter 908, F.S.,  
4           relating to federal immigration enforcement; providing  
5           legislative findings and intent; providing  
6           definitions; prohibiting sanctuary policies; requiring  
7           state entities, local governmental entities, and law  
8           enforcement agencies to comply with and support the  
9           enforcement of federal immigration law; prohibiting  
10          restrictions by such entities and agencies on taking  
11          certain actions with respect to information regarding  
12          a person's immigration status; authorizing a law  
13          enforcement agency to transport an unauthorized alien  
14          under certain circumstances; providing an exception to  
15          reporting requirements for crime victims or witnesses;  
16          requiring recordkeeping relating to crime victim and  
17          witness cooperation in certain investigations;  
18          authorizing a board of county commissioners to adopt  
19          an ordinance to recover costs for complying with an  
20          immigration detainer; authorizing local governmental  
21          entities and law enforcement agencies to petition the  
22          Federal Government for reimbursement of certain costs;  
23          requiring reporting of violations; providing penalties  
24          for failing to report a violation; providing whistle-  
25          blower protections for persons who report violations;  
26          providing for investigation of possible violations;



27 providing for injunctive relief and civil penalties;  
 28 requiring written findings; prohibiting the  
 29 expenditure of public funds for specified purposes;  
 30 requiring the Attorney General to prescribe the format  
 31 for submitting complaints; providing a cause of action  
 32 for personal injury or wrongful death attributed to a  
 33 sanctuary policy; providing that a trial by jury is a  
 34 matter of right; requiring written findings; providing  
 35 for implementation; requiring repeal of existing  
 36 sanctuary policies within a specified period;  
 37 providing effective dates.

38

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

40

41 Section 1. Short title.—This act may be cited as the "Rule  
 42 of Law Adherence Act."

43 Section 2. Chapter 908, Florida Statutes, consisting of  
 44 sections 908.001-908.0010, is created to read:

45 CHAPTER 908

46 FEDERAL IMMIGRATION ENFORCEMENT

47 908.001 Legislative findings and intent.—The Legislature  
 48 finds it is an important state interest that state agencies,  
 49 local governments, and their officials owe an affirmative duty  
 50 to all citizens and other persons lawfully within the United  
 51 States to assist the Federal Government with enforcement of  
 52 federal immigration laws within this state, including complying



53 with federal immigration detainers. The Legislature further  
54 finds it is an important state interest that, in the interest of  
55 public safety and adherence to federal law, this state support  
56 federal immigration enforcement efforts and ensure that such  
57 efforts are not impeded or thwarted by state or local laws,  
58 policies, practices, procedures, or customs. State agencies,  
59 local governments, and their officials who encourage persons  
60 unlawfully present in the United States to locate within this  
61 state or who shield such persons from personal responsibility  
62 for their unlawful actions breach this duty and should be held  
63 accountable.

64 908.002 Definitions.—As used in this chapter, the term:

65 (1) "Federal immigration agency" means the United States  
66 Department of Homeland Security, or its successor agency, and  
67 any of its divisions, including United States Immigration and  
68 Customs Enforcement, United States Customs and Border  
69 Protection, or any other federal agency charged with the  
70 enforcement of immigration law. The term includes an official or  
71 employee of such agency.

72 (2) "Immigration detainer" means a facially sufficient  
73 written or electronic request issued by a federal immigration  
74 agency using that agency's official form to request that another  
75 law enforcement agency detain a person based on an inquiry into  
76 the person's immigration status or an alleged violation of a  
77 civil immigration law, including detainers issued pursuant to 8  
78 U.S.C. ss. 1226 and 1357. For purposes of this subsection, an



79 immigration detainer is deemed facially sufficient if:

80 (a) The federal immigration agency's official form is  
81 complete and indicates on its face that the federal immigration  
82 official has reason to believe that the person to be detained  
83 may not have been lawfully admitted to the United States or  
84 otherwise is not lawfully present in the United States; or

85 (b) The federal immigration agency's official form is  
86 incomplete and fails to indicate on its face that the federal  
87 immigration official has reason to believe that the person to be  
88 detained may not have been lawfully admitted to the United  
89 States or otherwise is not lawfully present in the United  
90 States, but is supported by an accompanying affidavit or order  
91 that indicates the federal immigration official has reason to  
92 believe that the person to be detained may not have been  
93 lawfully admitted to the United States or otherwise is not  
94 lawfully present in the United States.

95 (3) "Inmate" means a person in the custody of a law  
96 enforcement agency.

97 (4) "Law enforcement agency" means an agency in this state  
98 charged with enforcement of state, county, municipal, or federal  
99 laws or with managing custody of detained persons in the state  
100 and includes municipal police departments, sheriff's offices,  
101 state police departments, campus police departments, and the  
102 Department of Corrections. The term includes an official or  
103 employee of such agency.

104 (5) "Local governmental entity" means any county,



105 municipality, or other political subdivision of this state. The  
106 term includes a person holding public office or having official  
107 duties as a representative, agent, or employee of such entity.

108 (6) "Sanctuary policy" means a law, policy, practice,  
109 procedure, or custom adopted or permitted by a state entity, law  
110 enforcement agency, or local governmental entity which  
111 contravenes 8 U.S.C. s. 1373(a) or (b), or which knowingly  
112 prohibits or impedes a law enforcement agency from communicating  
113 or cooperating with a federal immigration agency with respect to  
114 federal immigration enforcement, including, but not limited to,  
115 limiting or preventing a state entity, local governmental  
116 entity, or law enforcement agency from:

117 (a) Complying with an immigration detainer;

118 (b) Complying with a request from a federal immigration  
119 agency to notify the agency before the release of an inmate or  
120 detainee in the custody of the state entity, local governmental  
121 entity, or law enforcement agency.

122 (c) Providing a federal immigration agency access to an  
123 inmate for interview;

124 (d) Initiating an immigration status investigation; or

125 (e) Providing a federal immigration agency with an  
126 inmate's incarceration status or release date.

127 (7) "Sanctuary policymaker" means a state or local elected  
128 official, or an appointed official of a local governmental  
129 entity governing body, who has voted for, allowed to be  
130 implemented, or voted against repeal or prohibition of a



131 sanctuary policy.

132 (8) "State entity" means the state or any office, board,  
133 bureau, commission, department, branch, division, or institution  
134 thereof. The term includes a person holding public office or  
135 having official duties as a representative, agent, or employee  
136 of such entity.

137 908.003 Sanctuary policies prohibited.—A state entity, law  
138 enforcement agency, or local governmental entity may not adopt  
139 or have in effect a sanctuary policy.

140 908.004 Cooperation with federal immigration authorities.—

141 (1) Except as otherwise expressly prohibited by federal  
142 law, a state entity, local governmental entity, or law  
143 enforcement agency may not prohibit or in any way restrict  
144 another state entity, local governmental entity, or law  
145 enforcement agency from taking any of the following actions with  
146 respect to information regarding a person's immigration status:

147 (a) Sending such information to or requesting or receiving  
148 such information from a federal immigration agency for purposes  
149 of this chapter.

150 (b) Maintaining such information for purposes of this  
151 chapter.

152 (c) Exchanging such information with a federal immigration  
153 agency or another state entity, local governmental entity, or  
154 law enforcement agency for purposes of this chapter.

155 (d) Using such information to determine eligibility for a  
156 public benefit, service, or license pursuant to federal or state



157 law or an ordinance or regulation of a local governmental  
158 entity.

159 (e) Using such information to verify a claim of residence  
160 or domicile if a determination of residence or domicile is  
161 required under federal or state law, an ordinance or regulation  
162 of any local governmental entity, or a judicial order issued  
163 pursuant to a civil or criminal proceeding in this state.

164 (f) Using such information to confirm the identity of a  
165 person who is detained by a law enforcement agency.

166 (2) A state entity, local governmental entity, or law  
167 enforcement agency shall fully comply with and, to the full  
168 extent permitted by law, support the enforcement of federal  
169 immigration law. This subsection is only applicable to an  
170 official, representative, agent, or employee of such entity or  
171 agency when he or she is acting within the scope of his or her  
172 official duties or within the scope of his or her employment.

173 (3) Notwithstanding any other provision of law, if a law  
174 enforcement agency has received verification from a federal  
175 immigration agency that an alien in the law enforcement agency's  
176 custody is unlawfully present in the United States, the law  
177 enforcement agency may securely transport such alien to a  
178 federal facility in this state or to another point of transfer  
179 to federal custody outside the jurisdiction of the law  
180 enforcement agency. A law enforcement agency shall obtain  
181 judicial authorization before securely transporting such alien  
182 to a point of transfer outside of this state.



183        (4) This section does not require a state entity, local  
184 governmental entity, or law enforcement agency to provide a  
185 federal immigration agency with information related to a victim  
186 of or a witness to a criminal offense if such victim or witness  
187 timely and in good faith responds to the entity's or agency's  
188 request for information and cooperation in the investigation or  
189 prosecution of such offense.

190        (5) A state entity, local governmental entity, or law  
191 enforcement agency that, pursuant to subsection (4), withholds  
192 information regarding the immigration information of a victim of  
193 or witness to a criminal offense shall document such victim's or  
194 witness's cooperation in the entity's or agency's investigative  
195 records related to the offense and shall retain such records for  
196 at least 10 years for the purpose of audit, verification, or  
197 inspection by the Auditor General.

198        908.005 Reimbursement of costs.—

199        (1) A board of county commissioners may adopt an ordinance  
200 requiring a person detained pursuant to a lawful and valid  
201 immigration detainer to reimburse the county for any expenses  
202 incurred in detaining the person pursuant to the immigration  
203 detainer. A person detained pursuant to an immigration detainer  
204 is not liable under this section if a federal immigration agency  
205 determines that the immigration detainer was improperly issued.

206        (2) The state hereby authorizes a local governmental  
207 entity or law enforcement agency to petition the Federal  
208 Government for reimbursement of the entity's or agency's



209 detention costs and the costs of compliance with federal  
210 requests when such costs are incurred in support of the  
211 enforcement of federal immigration law.

212 908.006 Duty to report.—

213 (1) An official, representative, agent, or employee of a  
214 state entity, local governmental entity, or law enforcement  
215 agency shall promptly report a known or probable violation of  
216 this chapter to the Attorney General or the state attorney  
217 having jurisdiction over the entity or agency.

218 (2) An official, representative, agent, or employee of a  
219 state entity, local governmental entity, or law enforcement  
220 agency who willfully and knowingly fails to report a known or  
221 probable violation of this chapter may be suspended or removed  
222 from office pursuant to general law and s. 7, Art. IV of the  
223 State Constitution.

224 (3) A state entity, local governmental entity, or law  
225 enforcement agency may not dismiss, discipline, take any adverse  
226 personnel action as defined in s. 112.3187(3) against, or take  
227 any adverse action described in s. 112.3187(4)(b) against, an  
228 official, representative, agent, or employee for complying with  
229 subsection (1).

230 (4) Section 112.3187 of the Whistle-blower's Act applies  
231 to an official, representative, agent, or employee of a state  
232 entity, local governmental entity, or law enforcement agency who  
233 is dismissed, disciplined, subject to any adverse personnel  
234 action as defined in s. 112.3187(3) or any adverse action



235 described in s. 112.3187(4) (b), or denied employment because he  
236 or she complied with subsection (1).

237 908.007 Enforcement; penalties.-

238 (1) The state attorney for the county in which a state  
239 entity is headquartered or in which a local governmental entity  
240 or law enforcement agency is located has primary responsibility  
241 and authority for investigating credible reports of a violation  
242 of this chapter. The results of an investigation by a state  
243 attorney shall be provided to the Attorney General in a timely  
244 manner.

245 (2) The Attorney General, the state attorney who conducted  
246 the investigation, or a state attorney ordered by the Governor  
247 pursuant to s. 27.14 may institute proceedings in circuit court  
248 to enjoin a state entity, local governmental entity, or law  
249 enforcement agency found to be in violation of this chapter. The  
250 court shall expedite an action under this section, including  
251 setting a hearing at the earliest practicable date.

252 (3) Upon adjudication by the court or as provided in a  
253 consent decree declaring that a state entity, local governmental  
254 entity, or law enforcement agency has violated this chapter, the  
255 court shall enjoin the unlawful sanctuary policy and order that  
256 such entity or agency pay a civil penalty to the state of at  
257 least \$1,000 but not more than \$5,000 for each day that the  
258 sanctuary policy was in effect before the injunction was  
259 granted. The court shall have continuing jurisdiction over the  
260 parties and subject matter and may enforce its orders with



261 imposition of additional civil penalties as provided for in this  
262 section and contempt proceedings as provided by law.

263 (4) An order approving a consent decree or granting an  
264 injunction or civil penalties pursuant to subsection (3) must  
265 include written findings of fact that describe with specificity  
266 the existence and nature of the sanctuary policy and that  
267 identify each sanctuary policymaker who voted for, allowed to be  
268 implemented, or voted against repeal or prohibition of the  
269 sanctuary policy. The court shall provide a copy of the consent  
270 decree or order granting an injunction or civil penalties that  
271 contains the written findings required by this subsection to the  
272 Governor within 30 days after the date of rendition. A sanctuary  
273 policymaker identified in an order approving a consent decree or  
274 granting an injunction or civil penalties may be suspended or  
275 removed from office pursuant to general law and s. 7, Art. IV of  
276 the State Constitution.

277 (5) A state entity, local governmental entity, or law  
278 enforcement agency ordered to pay a civil penalty pursuant to  
279 subsection (3) shall remit payment to the Chief Financial  
280 Officer, who shall deposit such payment into the General Revenue  
281 Fund.

282 (6) Except as required by applicable law, public funds may  
283 not be used to defend or reimburse a sanctuary policymaker or an  
284 official, representative, agent, or employee of a state entity,  
285 local governmental entity, or law enforcement agency who  
286 knowingly and willfully violates this chapter.



287 908.008 Resident complaint; penalties.—The Attorney  
288 General shall prescribe and provide through the Department of  
289 Legal Affairs' website the format for a person to submit a  
290 complaint alleging a violation of this chapter. This section  
291 does not prohibit the filing of an anonymous complaint or a  
292 complaint not submitted in the prescribed format.

293 908.009 Civil cause of action for personal injury or  
294 wrongful death attributed to a sanctuary policy; trial by jury;  
295 required written findings.—

296 (1) A person injured by the tortious acts or omissions of  
297 an alien unlawfully present in the United States, or the  
298 personal representative of a person killed by the tortious acts  
299 or omissions of an alien unlawfully present in the United  
300 States, has a cause of action for damages against a state  
301 entity, local governmental entity, or law enforcement agency in  
302 violation of ss. 908.003 and 908.004 upon proof by the greater  
303 weight of the evidence of:

304 (a) The existence of a sanctuary policy in violation of s.  
305 908.003; and

306 (b) A failure to comply with any provision of s. 908.004  
307 resulting in such alien's having access to the person injured or  
308 killed when the tortious acts or omissions occurred.

309 (2) A cause of action brought pursuant to subsection (1)  
310 may not be brought against any person who holds public office,  
311 or has official duties as a representative, agent, or employee  
312 of a state entity, local governmental entity, or law enforcement



313 agency, including a sanctuary policymaker.

314 (3) Trial by jury is a matter of right in an action  
315 brought under this section.

316 (4) A final judgment entered in favor of a plaintiff in a  
317 cause of action brought pursuant to this section must include  
318 written findings of fact that describe with specificity the  
319 existence and nature of the sanctuary policy in violation of s.  
320 908.003 and that identify each sanctuary policymaker who voted  
321 for, allowed to be implemented, or voted against repeal or  
322 prohibition of the sanctuary policy. The court shall provide a  
323 copy of the final judgment containing the written findings  
324 required by this subsection to the Governor within 30 days after  
325 the date of rendition. A sanctuary policymaker identified in a  
326 final judgment may be suspended or removed from office pursuant  
327 to general law and s. 7, Art. IV of the State Constitution.

328 (5) This chapter does not create a private cause of action  
329 against a state entity, local governmental entity, or law  
330 enforcement agency that complies with this chapter.

331 908.0010 Implementation.—This chapter shall be implemented  
332 to the fullest extent permitted by federal law regulating  
333 immigration and the legislative findings and intent declared in  
334 s. 908.001.

335 Section 3. A sanctuary policy, as defined in s. 908.002,  
336 Florida Statutes, as created by this act, that is in effect on  
337 the effective date of this act must be repealed within 90 days  
338 after that date.



CS/CS/HB 675, Engrossed 1

2016

339           Section 4. Sections 908.007 and 908.009, Florida Statutes,  
340 as created by this act, shall take effect October 1, 2016, and,  
341 except as otherwise expressly provided in this act, this act  
342 shall take effect July 1, 2016.  
343