

June 23, 2004

Ms. Glenda E. Hood
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Dear Secretary Hood:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby withhold my approval of and transmit to you with my objections, House Bill 461, enacted during the 106th Session of the Legislature of Florida, since statehood in 1845, during the Regular Session of 2004 and entitled:

An act related to liens on commercial real estate . . .

House Bill 461 would authorize commercial real estate brokers, without the consent of the seller or the buyer, to encumber commercial property with a lien in the amount of any commission alleged to be due in connection with licensed brokerage, consulting or management services provided by the broker. This lien could then be enforceable against the buyer of the property even if the sales contract was entered into with the seller of the property, as is traditionally the case.

As a general principle, I am opposed to increased state interference with commercial transactions in the absence of a compelling reason. Brokerage commissions are, and traditionally have been, a matter of contract; as such, brokers can bring an action in court to obtain payment if there is a dispute over payment. If this bill became law, it would remove commission agreements from the contract law arena and elevate commercial real estate brokers' fees to lien status. Unlike a contract that has been freely entered into, this bill does not provide for full disclosure to the buyer or lessee. This could make an unknowing purchaser liable for any liens on the property, which can add uncertainty and drive up transaction costs. And, unlike other statutory liens, the law prohibits the broker from voluntarily waiving the lien.

While I am not unsympathetic to the desire of commercial real estate brokers to increase their leverage in obtaining payment of commissions, I am unaware of anything that justifies providing preferential treatment for brokers fees, over the fees of the myriad others that may be involved in commercial real estate transactions. Almost every commercial real estate transaction that involves brokers would involve attorneys, title companies, loan brokers, accountants, insurers, appraisers and other professionals, yet

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none of these professionals receives preferential treatment in obtaining payment of their fees.

There is a provision of House Bill 461 that merits further study. This provision protects the broker's right to receive future accruing leasing commissions from a successor owner of the leased commercial property. A broker adds value to property when the broker's efforts increase the rent roll. A transfer of that property to a new owner could deprive the broker of future leasing commissions that come due from future occupancy, lease renewals or lease expansions by tenants procured as a result of the broker's efforts. In previous years, legislation has been introduced to this effect but has not been passed by the Legislature. I am willing to support legislation that adequately addresses this issue in the future.

For the above reasons, I withhold my approval of House Bill 461 and do hereby veto the same.

Sincerely,

Jeb Bush