

Tab 1	SB 160 by Perry (CO-INTRODUCERS) Hooper; Peer-to-peer Support for First Responders					
191422	A	S	WD	JU, Perry	btw L.52 - 53:	11/06 09:30 AM
Tab 2	SB 162 by Perry; Public Records					
Tab 3	SB 248 by Hooper; (Identical to H 00063) Public Records/County Attorneys and Assistant County Attorneys					
Tab 4	SB 344 by Bradley; (Identical to H 00211) Courts					
386350	A	S	RCS	JU, Bradley	Delete L.42 - 69:	11/05 05:36 PM
Tab 5	SB 358 by Berman; (Identical to H 00505) Decedents' Property					
665556	A	S	RCS	JU, Berman	Delete L.86 - 133:	11/05 05:36 PM
Tab 6	SB 374 by Rouson; (Identical to H 00175) Housing Discrimination					
Tab 7	SB 468 by Brandes; Mandatory Sentences					
Tab 8	SJR 176 by Rodriguez; Single-subject Limitation for Constitution Revision Commission Proposals					
Tab 9	SJR 396 by Rodriguez; Single-subject Limitation for Taxation and Budget Reform Commission					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Tuesday, November 5, 2019**TIME:** 2:00—4:00 p.m.**PLACE:** *Toni Jennings Committee Room, 110 Senate Building***MEMBERS:** Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 160 Perry	Peer-to-peer Support for First Responders; Prohibiting a person who is not a health care practitioner and who provides peer-to-peer support to a first responder from testifying or divulging specified information under certain circumstances, etc. CF 10/22/2019 Favorable JU 11/05/2019 Temporarily Postponed RC	Temporarily Postponed
2	SB 162 Perry	Public Records; Requiring a court to assess the reasonable costs of enforcement against an agency upon the court's determination in an action for a declaratory judgment that certain records are not subject to a public records exemption, etc. GO 10/14/2019 Favorable JU 11/05/2019 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 248 Hooper (Identical H 63)	Public Records/County Attorneys and Assistant County Attorneys; Providing an exemption from public records requirements for the personal identifying and location information of current and former county attorneys and assistant county attorneys and the names and personal identifying and location information of the spouses and children of such attorneys; providing a statement of public necessity, etc. JU 11/05/2019 Favorable GO RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, November 5, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 344 Bradley (Identical H 211)	Courts; Specifying that certain exemptions from court-related fees and charges apply to certain entities; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; providing that a certain examination report related to annual guardianship plans may be prepared by a physician assistant or an advanced practice registered nurse under certain circumstances, etc. JU 11/05/2019 Fav/CS CF RC	Fav/CS Yeas 6 Nays 0
5	SB 358 Berman (Similar H 231, Identical H 505)	Decedents' Property; Specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; specifying that a personal representative has the exclusive right to maintain an action to recover possession of property or determine the title to property; specifying that certain attorneys and persons are not entitled to compensation for serving as a personal representative unless the attorney or person is related to the testator or unless certain disclosures are made before a will is executed, etc. JU 11/05/2019 Fav/CS CF RC	Fav/CS Yeas 6 Nays 0
6	SB 374 Rouson (Identical H 175)	Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice, etc. JU 11/05/2019 Favorable GO RC	Favorable Yeas 6 Nays 0
7	SB 468 Brandes (Compare S 346)	Mandatory Sentences; Authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record, etc. JU 11/05/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, November 5, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SJR 176 Rodriguez	Single-subject Limitation for Constitution Revision Commission Proposals; Proposing an amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Constitution Revision Commission be limited to a single subject, etc. JU 11/05/2019 Favorable EE RC	Favorable Yeas 6 Nays 0
9	SJR 396 Rodriguez	Single-subject Limitation for Taxation and Budget Reform Commission; Proposing an amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject, etc. JU 11/05/2019 Favorable EE RC	Favorable Yeas 6 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 160

INTRODUCER: Senators Perry and Hooper

SUBJECT: Peer-to-peer Support for First Responders

DATE: October 25, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.	Ravelo	Cibula	JU	Pre-meeting
3.			RC	

I. Summary:

SB 160 generally prohibits the disclosure of communications made by a first responder for the purposes of receiving “peer-to-peer support” from a person who is not a healthcare practitioner.

Under the bill, a person is qualified to provide peer-to-peer support if the person “has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder’s employment.”

The bill protects the confidentiality of the communications by prohibiting the person providing support from divulging the communications or from testifying in civil, criminal, administrative, and disciplinary proceedings regarding the communications.

The bill, however, allows peer support communications to be disclosed if: the first responder provides written consent, the first responder files a complaint against the person providing peer support, or if the person providing peer support has reason to believe that the first responder is a threat to themselves or others.

The bill is effective July 1, 2020.

II. Present Situation:

First Responders

Under Florida law, a first responder is either a (1) law enforcement officer, (2) firefighter, or (3) emergency medical technician or paramedic, employed, or volunteering, with a state or local

government. Florida has an estimated 50,000 law enforcement officers,¹ 22,000 firefighters,² and over 60,000 emergency medical technicians and paramedics.³

A study of 1,500 Florida first responders revealed that 60 percent displayed low levels of secondary traumatic stress, 39 percent displayed moderate levels, and 1 percent displayed high levels.⁴ A 2017 study of first responders nationwide found that 84 percent experienced a traumatic event on the job, while 34 percent received a formal diagnosis for a mental health disorder such as depression or post-traumatic stress disorder.⁵ It is estimated that 30 percent of first responders develop behavioral health conditions such as post-traumatic stress disorder and depression, in comparison to 20 percent for the general population.⁶

Peer Support Programs

Some law enforcement agencies offer peer support programs, available either during crisis events or through full-time staff. In 2018, a study published by the *Journal of Police and Criminal Psychology* analyzed 110 different law enforcement agencies' suicide prevention strategies for their employees.⁷ Thirty-one of these agencies had formal peer support programs. These agencies used peers as "para-professionals within the agency to address concerns officers had in using formal mental health/EAP services."⁸ Some of these agencies likewise worked under a policy, or law within their jurisdiction, that assured confidentiality with these services.

Usually, officers apply and train to become a part of the program, and are overseen either by a mental health professional or agency leadership. While the officers can be officially recognized as "peer supporters," they typically perform their roles informally without routine duties or office hours to provide support.

Similar to peer support, some agencies offer embedded services such as agency-affiliated chaplains and social workers to provide support to employees. Twelve of the 110 agencies studied used a method similar to this.

Large law enforcement agencies may have offices responsible for mental and emotional support for employees. The Psychological Services Section of the Miami-Dade Police Department, for

¹ Florida Department of Law Enforcement, *Criminal Justice Agency Profile Report 2016*, <https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP-2016/Statewide-Ratios.aspx> (last visited Oct 29, 2019).

² Bureau of Labor Statistics, United States Department of Labor, *Occupational Employment and Wages, May 2018: 33-2011 Firefighters*, <https://www.bls.gov/OES/Current/oes332011.htm> (last visited Oct 29, 2019).

³ Florida Department of Health, *Emergency Medical Services System*, <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Oct 29, 2019).

⁴ University of Central Florida, *UCF Study Examines First Responder Stress & Support Needs UCF Today*, <https://www.ucf.edu/news/ucf-study-examines-first-responder-stress-support-needs/> (last visited Oct 29, 2019).

⁵ University of Phoenix, *Majority of First Responders Face Mental Health Challenges in the Workplace* (Apr. 18, 2017), https://www.phoenix.edu/about_us/media-center/news/uopx-releases-first-responder-mental-health-survey-results.html.

⁶ Abbot, C., Barber, E., Burke, B., Harvey, J., Newland, C., Rose, M., & Young, A., Ambulance Service Manager Program, *Reviving Responders, What's killing our medics?* (Apr. 2015), <http://www.revivingresponders.com/originalpaper>.

⁷ Rajeev Ramchand et al., *Suicide Prevention in U.S. Law Enforcement Agencies: a National Survey of Current Practices*, 34(1) *Journal of Police and Criminal Psychology*, 55–66 (2019).

⁸ *Id.*

example, offers consultation and referral services to employees.⁹ Officers and staff are on call 24 hours a day for officer-involved shootings, suicide interventions, and other crises. The office likewise supervises Police Chaplain Volunteers who provide support services to employees. Employees may also refer themselves to the county Employee Support Services, who provide a variety personal and mental health services and referrals with strict confidentiality.¹⁰

The Baltimore Police Department¹¹ and New York Police Departments¹² have similar divisions incorporating mental health and suicide prevention programs. New York currently includes a peer-support program with confidentiality protections. While the Baltimore program does not, the Baltimore Police Commissioner has introduced a draft policy proposal to incorporate one.¹³

Privileged Communications

When communications are protected from disclosure, typically, these protections are created by an evidentiary privilege codified in chapter 90, F.S., the Florida Evidence Code. Evidentiary privileges allow individuals to refuse to disclose certain protected information and conversations. These privileges are meant to promote honest communications between individuals involved. The Legislature recognizes the existence of an evidentiary privilege when it “judges that the protection of an interest or relationship is sufficiently important to society to justify the sacrifice of facts that might be needed for the administration of justice.”¹⁴

On the other hand, “[t]he public ‘has a right to every man’s evidence.’”¹⁵ As such, evidentiary privileges are not favored, and the privilege not to disclose relevant evidence is an extraordinary exception to the duty to testify.¹⁶

Florida has a few examples of evidentiary privileges that have some similarities peer support privileges.

Domestic Violence Advocate-Victim Privilege

Under the domestic violence advocate-victim privilege, a victim of domestic violence has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the

⁹ Miami-Dade Police Department, *Department Review, 2018 ed.*, 15, <https://www.miamidade.gov/police/library/2018-mdpd-review.pdf>.

¹⁰ Miami-Dade County, *Employee Support Services*, https://www8.miamidade.gov/global/service.page?Mduid_service=ser1544819611878399 (last visited Oct 30, 2019).

¹¹ Baltimore Police Department, *Officer Safety & Wellness Section*, <https://www.baltimorepolice.org/organization/officer-safety-wellness-section> (last visited Oct 30, 2019).

¹² New York City Police Department, Employee Assistance Unit: Sometimes You Just Need Someone to Listen..., <https://www1.nyc.gov/site/nypd/careers/human-resources-info/employee-assistance-unit.page> (last visited Oct 30, 2019).

¹³ Baltimore Police Department, *Policy 1711: Draft Peer Support Team Policy* (Aug. 21, 2019), <https://www.powerdms.com/public/BALTIMOREMD/documents/575672>.

¹⁴ 21 FLA. JUR. 2D *Evidence and Witnesses* s. 672 (2019) (citing *Miami Herald Pub. Co. v. Morejon*, 561 So. 2d 577, 581 (Fla. 1990)).

¹⁵ *Miami Herald Pub. Co. v. Morejon*, 561 So. 2d 577, 581 (Fla. 1990) (quoting 8 Wigmore, *Evidence* § 2192, at 70 (McNaughten rev.1961)).

¹⁶ *Id.*

course of advising, counseling, or assisting the victim.”¹⁷ A victim advocate must be an employee of a domestic violence program or volunteer who has at least 30 hours of training in assisting victims of domestic violence.

Sexual assault counselor-victim privilege

Under the sexual assault counselor-victim privilege, a victim of a sexual assault has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim.”¹⁸ A sexual assault counselor must be an employee of a rape crisis center or a trained volunteer. A trained volunteer must be supervised by a rape crisis center and have at least 30 hours of training in assisting victims of sexual violence and other related topics.

Psychotherapist-Patient Privilege

Under the psychotherapist patient privilege, “a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient’s mental or emotional condition.”¹⁹

Privilege with Respect to Communications to Clergy

“A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.”²⁰ A communication is confidential if it is made privately for the “purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.”²¹

Florida law, however, does not offer an evidentiary privilege or confidentiality for peer support communications not involving health care practitioners. As such, first responder agencies may offer confidentiality for services administrated internally, but that confidentiality would not supersede state or federal laws requiring disclosure.

When dealing with civil claims or defenses based on a state law, the Federal courts can interpret the privilege of evidence and witnesses in accordance with state law.²² This does not apply, however, to cases based solely on federal claims, or to cases based on both state and federal claims.²³

¹⁷ Section 90.5036, F.S.

¹⁸ Section 90.5035, F.S.

¹⁹ Section 90.503, F.S.

²⁰ Section 90.505(2), F.S.

²¹ Section 90.505(1)(b), F.S.

²² [Fed. R. Evid. 501](#)

²³ *Von Bulow by Auersperg v. Von Bulow*, 811 F.2d 136, 141 (2d Cir. 1987).

The Florida Supreme Court and Evidentiary Privileges

The Florida Evidence Code as enacted by the Legislature contains both procedural and substantive law for the courts to apply. However, rules of evidence that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.²⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.²⁵

Peer Support Laws

Several states including Oregon, Hawaii, Colorado, Washington, and Mississippi offer evidentiary privileges for peer support personnel covering communications between first responders and peer support personnel. Oregon,²⁶ Hawaii,²⁷ Colorado,²⁸ and Washington²⁹ require peer supporters to be trained in providing emotional and moral support to first responders and must be designated by the agency for their role(s). Peer supporters in Mississippi must be a law enforcement officer, fireman, or emergency medical technician with a peer support certification from the State Board of Health or the Department of Public Safety.³⁰

In four of the five example states, all but Washington, the peer support privilege does not cover admissions to criminal conduct, information relating to the abuse of spouses, children, or the elderly, or threats of suicide or homicide. Mississippi adds that the privilege does not apply if the peer supporter was a witness, party, or responder to the incident that lead to the peer support event, which is Washington's only exception to the privilege.

Mississippi is the only state of the five example states that makes it a criminal act to reveal or attempt to coerce another to reveal the privileged communication.³¹

III. Effect of Proposed Changes:

The bill allows first responders to have privileged communications with individuals who provide peer-to-peer support to them. As defined by the bill, a first responder is law enforcement officers, fire fighters, emergency medical technicians, public communications officers, dispatchers, 911

²⁴ In re Amendments to the Fla. Evidence Code, 782 So. 2d 339, 341 (Fla. 2000) The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

²⁵ In re: Amendments to the Fla. Evidence Code, 144 So. 3d 536, 537 (Fla. 2014).

²⁶ Or. Rev. Stat. Ann. § 181A.835.

²⁷ Haw. Rev. Stat. Ann. § 78-52.

²⁸ Colo. Rev. Stat. § 13-90-107.

²⁹ Wash. Rev. Code Ann. § 5.60.060. The Washington peer support privilege also applies to jail staff.

³⁰ Miss. Code Ann. § 13-1-22.1.

³¹ A misdemeanor in Mississippi is punishable by up to 6 months in jail and a \$500 fine.

operators and other phone system operators whose job duties include providing support or services to first responders. The individuals who provide this peer-to-peer support must have experience working as or with a first responder regarding physical or emotional conditions associated with their employment.

The person providing peer-to-peer support may not testify in any civil, criminal, administrative, or disciplinary proceeding regarding information obtained during their peer-to-peer support. Additionally, people who provide peer-to-peer support may not divulge information regarding their support of first responders. However, a person providing peer support may testify or divulge information if:

- The person providing peer support is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder.
- The first responder agrees, in writing, to allow the person to testify or divulge information related to the peer-to-peer support.
- The person providing peer support has reason to fear for the safety of the first responder, another person, or society. The person providing peer support may relay information based on this fear to the potential victims, appropriate family members, or law enforcement or other authorities. If a person providing peer support discloses information based on the above, there is no liability or cause of action based on the disclosure.

The bill is effective July 1, 2020

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or received states-shared revenues.

B. Public Records/Open Meetings Issues:

Article 1, s. 24 of the Florida Constitution requires exemptions from public records to state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law. The Legislature may adopt exemptions from public records and public meetings by a general law that is passed by two-thirds vote of each house.

To the extent that peer support communications are made in a record, those records may be public records that must be disclosed under the public records law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill exempts communications between first responders and peer supporters from being used in any criminal proceeding. The Confrontation Clause of the 6th amendment to the United State Constitution grants criminal defendants a right to confront their accusers. Criminal defendants have a right to cross examine prosecution witnesses for bias and impeachment purposes.

There is conflicting case law on this. Criminal defendants have a right to confront, and impeach, witnesses based on their juvenile records if they are relevant, despite any law regarding strict confidentiality of those records.³² However, criminal defendants are not entitled to inspect confidential records, and courts must use a balancing approach to protect the interests of the defendant and verify any relevant exculpatory evidence while likewise protecting the confidentiality of the information.³³

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may limit the availability of evidence in civil trials against first responder agencies.

C. Government Sector Impact:

The bill may limit the availability of information to first responder agencies when engaging in disciplinary functions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 111.09 of the Florida Statutes.

³² *Davis v. Alaska*, 415 U.S. 308, 320, 94 S. Ct. 1105, 1112 (1974).

³³ *Pennsylvania v. Ritchie*, 480 U.S. 39, 60, 107 S. Ct. 989, 1002-03 (1987).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



191422

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
11/06/2019	.	
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The Committee on Judiciary (Perry) recommended the following:

Senate Amendment

Between lines 52 and 53
insert:

(d) The first responder admits during such peer-to-peer support to committing a criminal act. There is no liability on the part of, and no cause of action of any nature may arise against, the person for disclosing information under this paragraph.

By Senator Perry

8-00235A-20

2020160__

A bill to be entitled

An act relating to peer-to-peer support for first responders; creating s. 111.09, F.S.; defining terms; prohibiting a person who is not a health care practitioner and who provides peer-to-peer support to a first responder from testifying or divulging specified information under certain circumstances; providing exceptions; prohibiting liability and a cause of action under certain circumstances; providing an effective date.

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

Section 1. Section 111.09, Florida Statutes, is created to read:

111.09 Peer-to-peer support for first responders.—

(1) For purposes of this section, the term:

(a) "First responder" has the same meaning as provided in s. 112.1815 and includes public safety communications officers, dispatchers, and 911 or other phone system operators whose job duties include providing support or services to first responders.

(b) "Health care practitioner" has the same meaning as provided in s. 456.001.

(c) "Peer-to-peer support" means any conversation or communication between a first responder and a person who is not a health care practitioner but who has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder's

8-00235A-20

2020160__

employment.

(2) A person who is not a health care practitioner and who provides peer-to-peer support to a first responder may not testify in any civil, criminal, administrative, or disciplinary proceeding or otherwise divulge information obtained during such peer-to-peer support, except when any of the following occur:

(a) The person providing peer-to-peer support is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder, in which case such information may be divulged but is limited to the scope of the proceeding.

(b) The first responder agrees, in writing, to allow the person to testify about or divulge information related to the peer-to-peer support.

(c) There are articulable facts or circumstances that would lead a reasonable, prudent person to fear for the safety of the first responder, another person, or society, and the person providing peer-to-peer support communicates the information only to the potential victims, appropriate family members, or law enforcement or other appropriate authorities. There is no liability on the part of, and no cause of action of any nature may arise against, the person for disclosing information under this paragraph.

Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 23, 2019

I respectfully request that **Senate Bill #160**, relating to Peer-to-peer Support for First Responders, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11-5-19

Meeting Date

SB 160

Bill Number (if applicable)

Topic PEER to PEER

Amendment Barcode (if applicable)

Name Wayne "Bernie" BERNOSKA

Job Title PRESIDENT

Address 343 W. MADISON ST
Street

Phone 321-231-9116

Tallahassee FL 32301
City State Zip

Email BERNIE @ FPPF.ORG

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA PROFESSIONAL FIRE FIGHTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19

Meeting Date

160

Bill Number (if applicable)

Topic

Peer to Peer Support

Amendment Barcode (if applicable)

Name

George Wallace

Job Title

Address

5561 NE 5 Place

Phone

352 895 7255

Street

Ocala FL

34470

Email

hgzdawg84@gmail.com

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5

Meeting Date

SB 160

Bill Number (if applicable)

Topic Peer-to-Peer Support for First Responders

Amendment Barcode (if applicable)

Name Meredith Brock Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 17, The Capitol

Phone (850) 413-2890

Street

Tallahassee

FL

32399

City

State

Zip

Email Meredith.Stanfield@myFloridaCFO.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

10/5/19
Meeting Date

SB 1600
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Steve Zona

Job Title President FOP Lodge 530

Address 5530 Beach Blvd

Phone 398-2010

City JAX State FL Zip 32207

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida FOP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19

Meeting Date

SB160

Bill Number (if applicable)

Topic PEER TO PEER

Amendment Barcode (if applicable)

Name MICK McHALE

Job Title LOBBYIST

Address 300 E BREVARD STREET

Phone _____

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA PBA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/05/2019

Meeting Date

SB160

Bill Number (if applicable)

Topic Peer-to-peer Support for First Responders

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 162

INTRODUCER: Senator Perry

SUBJECT: Public Records

DATE: November 4, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2. <u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 162 requires that, if an agency seeks declaratory relief that certain public records are exempt from inspection and copying (or are confidential and exempt from inspection and copying), and the court determines that the records are not exempt or not confidential and exempt, the court must assess the reasonable costs of enforcement, including attorney's fees, against the agency that sought the declaratory relief and in favor of the named respondent to the action.

II. Present Situation:

Every person has the right, under the Florida Constitution, to "inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf," except exempt or confidential records.¹

Generally, "all state, county, and municipal records are open for personal inspection and copying by any person."² "Public records" are "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."³

An agency is "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including ... the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business

¹ Fla. Const. art I, s. 24.

² Section 119.01(1), F.S.

³ Section 119.011(12), F.S.

entity acting on behalf of any public agency.”⁴ “Providing access to public records is a duty of each agency.”⁵

Custodians of public records are required to allow inspection and copying of public records “at any reasonable time, under reasonable conditions, and under” the custodian’s supervision.⁶ The custodian must acknowledge all requests to inspect or copy records and respond to those requests in good faith.⁷ A good faith response includes making reasonable efforts to determine whether the requested records exist and the records’ location.⁸ If the custodian contends that the requested records are exempt from inspection and copying, the custodian must state the basis for the exemption, including a citation to the statute creating the exemption, and provide the explanation in writing if requested by the person seeking to inspect or copy the records.⁹

Section 16.60., F.S., creates a public records mediation program, requiring the Office of the Attorney General to employ one or more mediators to mediate disputes involving access to public records. This mediation is voluntary and nonadversarial, and is aimed at assisting parties in “exploring settlement alternatives,” although “decisionmaking authority rests with the parties.”¹⁰ “Section 16.60, F.S., says nothing about when mediation is appropriate or required. It appears to concern disputes that have not reached the stage of a court action.”¹¹

An agency seeking guidance on the exempt or confidential status of requested records may seek an Attorney General Opinion on the issue. The Attorney General has a compulsory duty to give opinions if requested by the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate.¹² The Attorney General has the discretionary authority to give opinions if requested by a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision.¹³

An agency seeking guidance on the exempt or confidential status of requested records may also file a declaratory action seeking a declaration that the records in question are not public records subject to inspection and copying. A court’s decision in a declaratory action “has the force and effect of a final judgment.”¹⁴

If an agency denies a records request, the person making the request may file a complaint with a state attorney or file a civil action alleging that the agency’s failure to allow inspection or copying of the requested records is a violation of public records law. When such an action is

⁴ Section 119.011(2), F.S.

⁵ Section 119.01(1), F.S.

⁶ Section 119.07(1)(a), F.S.

⁷ Section 119.07(1)(c), F.S.

⁸ *Id.*

⁹ Section 119.07(1)(e)-(f), F.S.

¹⁰ Section 16.60(1), F.S.

¹¹ *Arezaga v. Board of Cty. Com’rs of Hillsborough Cty.*, 935 So. 2d 640, 642 (Fla. 2d DCA 2006).

¹² Section 16.01(3), F.S.

¹³ *Id.*

¹⁴ Section 86.011, F.S.

filed, the court is required to set an “immediate hearing.”¹⁵ If such a civil action against an agency is required to enforce the public records law, and the requestor gave 5 days’ notice before filing the civil action, the court is required to award the costs of enforcement, including reasonable attorney’s fees, against the agency, if the court finds that the agency “unlawfully refused” to release the records.¹⁶ Refusals needn’t be in bad faith to be “unlawful,” and the prevailing party is entitled attorney’s fees in any civil action against an agency “when the trial court finds that the public agency violated a provision of the Public Records Act in failing to permit a public record to be inspected or copied.”¹⁷

A willful and knowing violation of the public records laws subjects public officers to fines, suspension, removal, impeachment, or for certain violations, criminal liability.¹⁸

III. Effect of Proposed Changes:

This bill amends s. 119.07, F.S., requiring a court to impose the costs of enforcement, including reasonable attorney fees, upon an agency if that agency files a declaratory action seeking a declaration that certain records are exempt or confidential and exempt and the court determines that the requested records are not exempt or not confidential and exempt. The bill essentially grants to respondents to agency declaratory actions the same right to attorney fees and costs as are currently afforded by s. 119.12, F.S. This statute grants attorney fees and costs to those who prevail in a civil action against an agency to enforce the public records law.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁵ Section 119.11, F.S.

¹⁶ Section 119.12, F.S.

¹⁷ *Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 128 (Fla. 2016).

¹⁸ Section 119.10, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would decrease costs and fees for prevailing respondents to declaratory actions filed by agencies seeking declarations that requested public records are exempt from disclosure.

C. Government Sector Impact:

An analysis from the Department of Legal Affairs has been requested, though none yet completed. The bill would increase costs and fees for nonprevailing agencies filing declaratory actions seeking declarations that requested public records are exempt from disclosure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.07.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Perry

8-00230-20

2020162__

A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; requiring a court to assess the reasonable costs of enforcement against an agency upon the court's determination in an action for a declaratory judgment that certain records are not subject to a public records exemption; providing an effective date.

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

Section 1. Subsection (9) is added to section 119.07, Florida Statutes, to read:

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(9) If an agency files an action for declaratory judgment for a declaration that certain public records are exempt, or confidential and exempt, from subsection (1) and s. 24(a), Art. I of the State Constitution, and the court determines that the records are either not exempt or not confidential and exempt, the court must assess the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency for the benefit of the named respondent.

Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 15, 2019

I respectfully request that **Senate Bill #162**, relating to Public Records, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11.5.19

Meeting Date

80248

Bill Number (if applicable)

Topic COUNTY ATTORNEY PREEMPTION

Amendment Barcode (if applicable)

Name LAURA YOUNAUS

Job Title LEGISLATIVE COUNSEL

Address 100 N. MONROE ST
Street

Phone 294-1838

City

City

State

State

Zip

Zip

Email LYOUNAUS@floridacounties.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19
Meeting Date

248
Bill Number (if applicable)

Topic Pub. Records/County Attorneys + Assist. County Attys. Amendment Barcode (if applicable)

Name Edward G. Labrador, Esq.

Job Title Legislative Counsel

Address 100 S. Andrews Ave; Main Library 8th FL Phone 954-826-1155
Street

Ft. Lauderdale FL 33301 Email elabrador@broward.org
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Broward County Bd. of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19

Meeting Date

248

Bill Number (if applicable)

Topic Public Records Exemption County of Asst Amendment Barcode (if applicable)

Name RAULPH LAIR County Attorney

Job Title Intergovernmental Affairs Officer Pasco County

Address 38283 McDonald Street Phone 813-695-1378

Street

Dade City

City

FL

State

33525

Zip

Email rlair@pascocountyfl.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Pasco County Bocc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/2019

Meeting Date

SB 248

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Cari Roth

Job Title _____

Address 215 S. Monroe St. Suite 815
Street

Phone 850.999.4100

Tallahassee, FL 32301
City State Zip

Email Croth@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

☒ Waive Speaking ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Charlotte County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

11-5-19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 248

Bill Number (if applicable)

Topic ATTORNEY

Amendment Barcode (if applicable)

Name SEX & BUDS CLAY COUNTY FL. HOTELS - James Otto

Job Title OWNER

Address 2908 Hwy 21

Phone 904.415.3221

Street

Middleburg FL

State

32008

Zip

Email SEX BUDS 1@GMAIL.COM

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Clay County FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 248

INTRODUCER: Senator Hooper

SUBJECT: Public Records/County Attorneys and Assistant County Attorneys

DATE: November 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 248 creates a public record exemption for information that could identify or locate current or former county attorneys or assistant county attorneys and their spouses and children.

County attorneys are selected by the board of county commissioners and provide legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. They also draft and review contracts and initiate and defend civil actions in court on behalf of the county.

The bill exempts from public disclosure the following information that relates to current or former county attorneys or assistant county attorneys:

- Their home addresses, telephone numbers, dates of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2020.

II. Present Situation:

Public Records Law

Overview

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

Legislative and Judicial Records

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

Definition

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

Access

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Exemptions

The Legislature, alone, has the authority to create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹³ or
- It protects trade or business secrets.¹⁴

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

“Confidential and Exempt” or “Exempt” Designations

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁷ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁸

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² Section 119.15(6)(b)1., F.S.

¹³ Section 119.15(6)(b)2., F.S.

¹⁴ Section 119.15(6)(b)3., F.S.

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., art. I, s. 24(c) and FLA. CONST., art., X, s. 12(e).

¹⁷ If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁹ with specified exceptions.²⁰ It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²²

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.²³

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁴ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁵

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁶ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of

¹⁹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²³ Section 119.071(4)(a) and (b), F.S.

²⁴ Section 119.071(4)(a)1., F.S.

²⁵ Section 119.071(4)(a), F.S.

²⁶ Section 119.071(5)(a)5., F.S.

that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.²⁷

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.²⁸

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.²⁹

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.³⁰ Additionally, all of these exemptions have retroactive application.³¹

County Attorneys and Assistant County Attorneys

County attorneys are selected by the board of county commissioners to serve as the chief legal counsel for the county. They are authorized to appoint assistant attorneys to help in the performance of their duties and in the administration of the office. County attorneys provide legal advice to the commission, the county administrator, and various departments and boards organized under the authority of the board of county commissioners. They also draft and review contracts and ordinances and initiate and defend civil actions on behalf of the county in state and federal court.

Because county attorneys are often tasked with, or directly involved in, firing disgruntled employees, prosecuting code enforcement violations, and resolving other controversial matters involving the use of someone's land or the removal of animals for suspected neglect and abuse, they find themselves in difficult and emotionally-inflamed situations. Instances have been reported in which persons who felt that they were mistreated by the county attorney or who were angry with an outcome retaliated. Forms of retaliation included attempts to confront the attorney away from the office, posts of personal identifying information on social media in an effort to intimidate the attorney, and threats issued in person and online. As a result of one reported

²⁷ Section 119.071(5)(a)5.f. and g., F.S.

²⁸ Section 119.071(4)(b)1., F.S.

²⁹ Section 119.071(4)(b)2., F.S.

³⁰ Section 119.071(4)(d)3., F.S.

³¹ Section 119.071(4)(d)5., F.S.

instance, a law enforcement officer escorted a threatened county attorney for extended periods of time to ensure his protection while traveling to meetings and hearings.³²

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2., F.S., to exempt certain information pertaining to current or former county attorneys or assistant county attorneys from the public disclosure requirements of the public record laws. The following information for a current or former county attorney or assistant county attorney will be exempt:

- The county attorney or assistant county attorney's home addresses, telephone numbers, dates of birth, and photographs.
- The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

Section 2 contains the public necessity statement which explains why the exemption is necessary. The public necessity statement provides that the release of the personal identifying and location information could place current or former county attorneys or assistant county attorneys in danger of being physically and emotionally harmed or stalked by a defendant or other person. Accordingly, the statement asserts that the harm that may result from releasing the information outweighs any public benefit that may be realized from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions in the State Constitution do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for final passage of a bill creating an exemption to the public records requirements.³³

Because this bill creates an exemption for current or former county attorneys or assistant county attorneys, it requires a two-thirds vote of each house to be enacted.

³² Telephone interviews with the Florida Association of County Attorneys in Tallahassee, the Charlotte County Attorney's Office in Port Charlotte, and the St. Johns County Attorney in St. Augustine (October 30, 2019).

³³ Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a "Vote or other action of a legislative house . . . means the vote or action of a majority or other specified percentage of those members voting on the matter." Accordingly, this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement notes that this exemption is necessary to protect current or former county attorneys or assistant county attorneys and their families from being physically and emotionally harmed or stalked and is narrowly drawn to protect them. For this reason, the exemption does not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual or business that requests location information that is covered by the definition of “home address” in the bill will not be able to readily obtain that information from the records custodian. If the employee or the employee’s agency has taken the initiative and requested that the home address information be exempted from disclosure, the protected person will need to sign a waiver granting permission to the records custodian to release the information to the requestor.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on agencies that hold identifying information exempted by this bill. The agencies may need to train staff in order for them to be able to comply with public records requests and perform any necessary redactions

before releasing a record. However, the costs could be absorbed by the agencies as part of their day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the *5th* year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the *4th* year after enactment instead of the *5th* year. It can be reasoned, however, that advancing the scheduled review and repeal by 1 year is not problematic because the deviation is supported by the reasoning that a previous Legislature cannot bind this Legislature.

VIII. Statutes Affected:

This bill substantially amends section 119.071, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Hooper

16-00442-20

2020248__

A bill to be entitled

An act relating to public records; amending s.

119.071, F.S.; providing an exemption from public

records requirements for the personal identifying and

location information of current and former county

attorneys and assistant county attorneys and the names

and personal identifying and location information of

the spouses and children of such attorneys; providing

a statement of public necessity; providing an

effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal

Page 1 of 12

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16-00442-20

2020248__

communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

Page 2 of 12

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16-00442-20

2020248__

from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are

Page 3 of 12

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16-00442-20

2020248__

exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Page 4 of 12

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16-00442-20

2020248__

117 Constitution.

118 h. The home addresses, telephone numbers, dates of birth,
 119 and photographs of current or former human resource, labor
 120 relations, or employee relations directors, assistant directors,
 121 managers, or assistant managers of any local government agency
 122 or water management district whose duties include hiring and
 123 firing employees, labor contract negotiation, administration, or
 124 other personnel-related duties; the names, home addresses,
 125 telephone numbers, dates of birth, and places of employment of
 126 the spouses and children of such personnel; and the names and
 127 locations of schools and day care facilities attended by the
 128 children of such personnel are exempt from s. 119.07(1) and s.
 129 24(a), Art. I of the State Constitution.

130 i. The home addresses, telephone numbers, dates of birth,
 131 and photographs of current or former code enforcement officers;
 132 the names, home addresses, telephone numbers, dates of birth,
 133 and places of employment of the spouses and children of such
 134 personnel; and the names and locations of schools and day care
 135 facilities attended by the children of such personnel are exempt
 136 from s. 119.07(1) and s. 24(a), Art. I of the State
 137 Constitution.

138 j. The home addresses, telephone numbers, places of
 139 employment, dates of birth, and photographs of current or former
 140 guardians ad litem, as defined in s. 39.820; the names, home
 141 addresses, telephone numbers, dates of birth, and places of
 142 employment of the spouses and children of such persons; and the
 143 names and locations of schools and day care facilities attended
 144 by the children of such persons are exempt from s. 119.07(1) and
 145 s. 24(a), Art. I of the State Constitution.

Page 5 of 12

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16-00442-20

2020248__

146 k. The home addresses, telephone numbers, dates of birth,
 147 and photographs of current or former juvenile probation
 148 officers, juvenile probation supervisors, detention
 149 superintendents, assistant detention superintendents, juvenile
 150 justice detention officers I and II, juvenile justice detention
 151 officer supervisors, juvenile justice residential officers,
 152 juvenile justice residential officer supervisors I and II,
 153 juvenile justice counselors, juvenile justice counselor
 154 supervisors, human services counselor administrators, senior
 155 human services counselor administrators, rehabilitation
 156 therapists, and social services counselors of the Department of
 157 Juvenile Justice; the names, home addresses, telephone numbers,
 158 dates of birth, and places of employment of spouses and children
 159 of such personnel; and the names and locations of schools and
 160 day care facilities attended by the children of such personnel
 161 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 162 Constitution.

163 l. The home addresses, telephone numbers, dates of birth,
 164 and photographs of current or former public defenders, assistant
 165 public defenders, criminal conflict and civil regional counsel,
 166 and assistant criminal conflict and civil regional counsel; the
 167 names, home addresses, telephone numbers, dates of birth, and
 168 places of employment of the spouses and children of current or
 169 former public defenders, assistant public defenders, criminal
 170 conflict and civil regional counsel, and assistant criminal
 171 conflict and civil regional counsel; and the names and locations
 172 of schools and day care facilities attended by the children of
 173 current or former public defenders, assistant public defenders,
 174 criminal conflict and civil regional counsel, and assistant

Page 6 of 12

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16-00442-20 2020248__

175 criminal conflict and civil regional counsel are exempt from s.
 176 119.07(1) and s. 24(a), Art. I of the State Constitution.
 177 m. The home addresses, telephone numbers, dates of birth,
 178 and photographs of current or former investigators or inspectors
 179 of the Department of Business and Professional Regulation; the
 180 names, home addresses, telephone numbers, dates of birth, and
 181 places of employment of the spouses and children of such current
 182 or former investigators and inspectors; and the names and
 183 locations of schools and day care facilities attended by the
 184 children of such current or former investigators and inspectors
 185 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 186 Constitution.
 187 n. The home addresses, telephone numbers, and dates of
 188 birth of county tax collectors; the names, home addresses,
 189 telephone numbers, dates of birth, and places of employment of
 190 the spouses and children of such tax collectors; and the names
 191 and locations of schools and day care facilities attended by the
 192 children of such tax collectors are exempt from s. 119.07(1) and
 193 s. 24(a), Art. I of the State Constitution.
 194 o. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former personnel of the Department
 196 of Health whose duties include, or result in, the determination
 197 or adjudication of eligibility for social security disability
 198 benefits, the investigation or prosecution of complaints filed
 199 against health care practitioners, or the inspection of health
 200 care practitioners or health care facilities licensed by the
 201 Department of Health; the names, home addresses, telephone
 202 numbers, dates of birth, and places of employment of the spouses
 203 and children of such personnel; and the names and locations of

Page 7 of 12

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16-00442-20 2020248__

204 schools and day care facilities attended by the children of such
 205 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 206 the State Constitution.
 207 p. The home addresses, telephone numbers, dates of birth,
 208 and photographs of current or former impaired practitioner
 209 consultants who are retained by an agency or current or former
 210 employees of an impaired practitioner consultant whose duties
 211 result in a determination of a person's skill and safety to
 212 practice a licensed profession; the names, home addresses,
 213 telephone numbers, dates of birth, and places of employment of
 214 the spouses and children of such consultants or their employees;
 215 and the names and locations of schools and day care facilities
 216 attended by the children of such consultants or employees are
 217 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 218 Constitution.
 219 q. The home addresses, telephone numbers, dates of birth,
 220 and photographs of current or former emergency medical
 221 technicians or paramedics certified under chapter 401; the
 222 names, home addresses, telephone numbers, dates of birth, and
 223 places of employment of the spouses and children of such
 224 emergency medical technicians or paramedics; and the names and
 225 locations of schools and day care facilities attended by the
 226 children of such emergency medical technicians or paramedics are
 227 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 228 Constitution.
 229 r. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former personnel employed in an
 231 agency's office of inspector general or internal audit
 232 department whose duties include auditing or investigating waste,

Page 8 of 12

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16-00442-20

2020248

fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual

16-00442-20

2020248

abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, dates of birth, and photographs of current or former county attorneys or assistant county attorneys; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former county attorneys or assistant county attorneys; and the names and locations of schools and day care facilities attended by the children of current or former county attorneys or assistant county attorneys are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the

16-00442-20 2020248__
 291 custodial agency. The written request must be notarized and must
 292 specify the information to be released and the party that is
 293 authorized to receive the information. Upon receipt of the
 294 written request, the custodial agency shall release the
 295 specified information to the party authorized to receive such
 296 information.

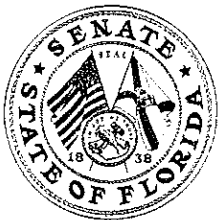
297 5. The exemptions in this paragraph apply to information
 298 held by an agency before, on, or after the effective date of the
 299 exemption.

300 6. This paragraph is subject to the Open Government Sunset
 301 Review Act in accordance with s. 119.15 and shall stand repealed
 302 on October 2, 2024, unless reviewed and saved from repeal
 303 through reenactment by the Legislature.

304 Section 2. The Legislature finds that it is a public
 305 necessity that the home addresses, dates of birth, telephone
 306 numbers, and photographs of current or former county attorneys
 307 and assistant county attorneys be made exempt from s. 119.07(1),
 308 Florida Statutes, and s. 24(a), Article I of the State
 309 Constitution. The Legislature further finds that it is a public
 310 necessity that the names, home addresses, telephone numbers,
 311 photographs, dates of birth, and places of employment of the
 312 spouses and children, and the names and locations of schools and
 313 day care facilities attended by such children, of current or
 314 former county attorneys and assistant county attorneys be made
 315 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 316 Article I of the State Constitution. The Legislature finds that
 317 the release of such personal identifying and location
 318 information could place such persons in danger of being
 319 physically and emotionally harmed or stalked by a defendant or

16-00442-20 2020248__
 320 other person. The Legislature finds that the harm that may
 321 result from the release of such personal identifying and
 322 location information outweighs any public benefit that may be
 323 derived from the disclosure of the information.

324 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

October 14th, 2019

The Honorable David Simmons, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that SB 248, Public Records/County Attorneys and Assistant County Attorneys, be placed on the agenda to be heard in the Judiciary Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a horizontal line.

Ed Hooper

Cc: Staff Director, Tom Cibula
Administrative Assistant, Joyce Butler

REPLY TO:

- ☐ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

11/05/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 162

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

NOV. 5 2019
Meeting Date

SB 762
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name SEX BUDS (CLAY COUNTY) FL HOTELS

Job Title SEX TOYS OF CLAY COUNTY

Address 2908 HWY 21
Street

Phone

City

State

Zip

Email SEXBUDS10@barricade.net

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/12
Meeting Date

162
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name CASEY COOK

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 858 701 5701

Tallahassee
City

FL
State

32302
Zip

Email ccook@flcities.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 344

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Courts

DATE: November 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 344 clarifies ambiguities in current law to better enable public guardians to meet the needs of their incapacitated wards.

The bill clarifies that public guardians are exempted from paying any court-related fees or charges normally assessed by clerks for accessing public records. The bill also requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian's ward. Currently, courts have the discretion to waive those costs and fees.

Finally, the bill allows a physician assistant or advanced practice registered nurse to complete a ward's annual medical evaluation and prepare and sign the report for the court, when the physician delegates that responsibility. Currently, only physicians are allowed to conduct the annual medical exams and prepare the reports.

The bill takes effect July 1, 2020.

II. Present Situation:

Public Guardians

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.¹ Public guardians generally and primarily serve incapacitated people who have limited financial means.^{2,3}

According to the Department of Elder Affairs, which houses the Office of Public and Professional Guardians, the 17 public guardian programs in the state served 3,816 wards in Fiscal Year 2018-19.⁴ A program cost and activities report issued in March, 2019, stated that 42.00% of wards lived in nursing facilities, 22.99% lived in assisted living facilities, 15.40% lived in group homes, 6.31% were in hospitals, 5.55% lived in intermediate care facilities, and 4.04% were cared for in private homes. The remaining wards, who account for less than 4% of that population, were cared for in other living arrangements.⁵

Circuit Court Clerks' Duty to Provide Access to Public Records and Waive Fees

The clerks of the circuit courts are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request.⁶ Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.⁷ While these two provisions make clear that public guardians are entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges “apply only to state agencies and state entities and the party represented by the agency or entity.” Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

¹ Section 744.2007(1), F.S.

² Section 744.2007(3), F.S.

³ The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.

⁴ Telephone interview with Scott Read, Legislative Affairs Director for the Department of Elder Affairs, in Tallahassee, Fla. (October 31, 2019).

⁵ Pamela B. Teaster, Wen You, and Saman Mohsenirad, *Florida Public Guardian Programs: Program Costs and Activities, Report for the Office of Public and Professional Guardians, Florida Department of Elder Affairs* (March 2019) (on file with the Senate Committee on Judiciary).

⁶ Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf Section 28.345(1), F.S.

⁷ Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.

Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians

Florida's extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the budget of the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward.⁸ An additional statute provides that a court *may* waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward for whom a public guardian has been appointed.⁹ The court's ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

Annual Guardianship Plan and Physician's Report

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward's condition, including the ward's current needs and how those needs will be met in the coming year.¹⁰ The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A resume of any professional medical treatment received during the preceding year.
- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period and which contains an evaluation of the ward's condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.¹¹

As noted above, the majority of public guardians' wards live in facilities where physicians seldom visit. However, because the statute specifically requires a physician's report, courts will not accept the signature of a physician's assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

III. Effect of Proposed Changes:

Clarifying Language for Court-related Fees and Charges

The bill adds language to s. 28.345(3), F.S., to clarify that public guardians are exempted from the clerks' assessment of fees and charges. This is accomplished by stating that the "entities listed in subsections (1) and (2)," the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

⁸ Section 744.2008(1), F.S.

⁹ Section 744.2008(2), F.S.

¹⁰ Section 744.3675, F.S.

¹¹ Section 744.3675(1)(b), F.S.

Court's Discretion to Waive Court Costs and Filing Fees

Section 744.2008(1), F.S., is also amended for consistency to clarify that filing fees will not be assessed against a public guardian as a cost of administration. By deleting the phrase “including filing fees” the language makes clear that filing fees are not to be charged against the public guardian, which is consistent with the changes made to s. 28.345(3), F.S., If the phrase remained in the statute, it could create ambiguity as to whether filing fees may be assessed.

Section 744.2008(2), F.S., is amended to mandate that a court “shall” waive any court costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward for whom a public guardian has been appointed. Accordingly, courts will be prohibited from imposing court costs or filing fees under those circumstances.

Annual Guardianship Plan and Physician's Report

The requirements for the annual guardianship plan that details a ward's needs and how those needs will be met is amended to expand the type of medical professionals who may be involved. If a guardian requests a ward's physician to complete the medical evaluation and prepare the report and the physician delegates that responsibility, a physician assistant or an advanced practice registered nurse may complete the examination and prepare and sign the report. The physician assistant must be acting pursuant to s. 458.347(4)(h), F.S., or s. 459.022(4)(g), F.S., by performing services delegated by a supervising physician in the physician assistant's practice in accordance with his or her education and training, unless expressly prohibited by law or rule. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.¹²

By increasing the type of medical professionals who may complete the examination and determine a ward's level of capacity for the annual report, the public guardian will be better able to meet the ward's needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Clerks of Court Operations Corporation (CCOC) states in its fiscal summary¹³ that the bill will have a slight indeterminate negative fiscal impact for some clerks who currently charge filing fees based on their interpretation of a statute requiring public guardians to pay filing fees from the budget of the office of public guardian.¹⁴ The analysis concludes by stating that the CCOC estimates the impact of the bill will be relatively small because many of the public guardian filings are accompanied by an affidavit demonstrating indigency such that most clerks currently waive those filing fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹³ Florida Clerks of Court Operations Corporation, *Senate Bill 344 Fiscal Analysis*, (Oct. 2019) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29337>.

¹⁴ Section 744.2008(1), F.S., provides that “All costs of administration, including filing fees, shall be paid from the budget of the office of public guardian. No costs of administration, including filing fees, shall be recovered from the assets or the income of the ward.”

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on November 5, 2019:

The committee substitute differs from the underlying bill by:

- Deleting a reference to filing fees in s. 744.2008(1), F.S., that could create ambiguity as to whether clerks may charge public guardians for filing fees; and
- Clarifying that a physician assistant or advanced practice nurse practitioner may complete the ward's annual exam and prepare and sign the report when those responsibilities are delegated by the ward's physician in s. 744.3675(1)2., F.S.

B. Amendments:

None.



386350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/05/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 69
and insert:

Section 2. Section 744.2008, Florida Statutes, is amended
to read:

744.2008 Costs of public guardian.—

(1) All costs of administration, ~~including filing fees,~~
shall be paid from the budget of the office of public guardian.
No costs of administration, including filing fees, shall be
recovered from the assets or the income of the ward.



386350

(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward for whom a public guardian has been appointed guardian, the court shall ~~may~~ waive any court costs or filing fees.

Section 3. Paragraph (b) of subsection (1) of section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.

2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. If the guardian has requested a physician to complete the examination and prepare the report and the physician has delegated that responsibility, the examination may be performed and the report may be prepared and signed by a physician assistant acting pursuant to s. 458.347(4)(h) or s. 459.022(4)(g), or by an advanced practice registered nurse

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



386350

41 Delete lines 8 - 9
42 and insert:
43 F.S.; providing that certain examinations may be
44 performed and reports prepared

By Senator Bradley

5-00462-20

2020344__

1 A bill to be entitled
 2 An act relating to courts; amending s. 28.345, F.S.;
 3 specifying that certain exemptions from court-related
 4 fees and charges apply to certain entities; amending
 5 s. 744.2008, F.S.; requiring the court to waive any
 6 court costs or filing fees for certain proceedings
 7 involving public guardians; amending s. 744.3675,
 8 F.S.; providing that a certain examination report
 9 related to annual guardianship plans may be prepared
 10 by a physician assistant or an advanced practice
 11 registered nurse under certain circumstances;
 12 providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Section 28.345, Florida Statutes, is amended to
 17 read:
 18 28.345 State access to records; exemption from court-
 19 related fees and charges.—
 20 (1) Notwithstanding any other provision of law, the clerk
 21 of the circuit court shall, upon request, provide access to
 22 public records without charge to the state attorney, public
 23 defender, guardian ad litem, public guardian, attorney ad litem,
 24 criminal conflict and civil regional counsel, and private court-
 25 appointed counsel paid by the state, and to authorized staff
 26 acting on their behalf. The clerk of court may provide the
 27 requested public record in an electronic format in lieu of a
 28 paper format if the requesting entity is capable of accessing
 29 such public record electronically.

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-00462-20

2020344__

30 (2) Notwithstanding any other provision of this chapter or
 31 law to the contrary, judges and those court staff acting on
 32 behalf of judges, state attorneys, guardians ad litem, public
 33 guardians, attorneys ad litem, court-appointed private counsel,
 34 criminal conflict and civil regional counsel, public defenders,
 35 and state agencies, while acting in their official capacity, are
 36 exempt from all court-related fees and charges assessed by the
 37 clerks of the circuit courts.
 38 (3) The exemptions from fees or charges provided in this
 39 section apply only to entities listed in subsections (1) and
 40 (2), state agencies and state entities, and the party
 41 represented by the agency or entity.
 42 Section 2. Subsection (2) of section 744.2008, Florida
 43 Statutes, is amended to read:
 44 744.2008 Costs of public guardian.—
 45 (2) In any proceeding for appointment of a public guardian,
 46 or in any proceeding involving the estate of a ward for whom a
 47 public guardian has been appointed guardian, the court shall ~~may~~
 48 waive any court costs or filing fees.
 49 Section 3. Paragraph (b) of subsection (1) of section
 50 744.3675, Florida Statutes, is amended to read:
 51 744.3675 Annual guardianship plan.—Each guardian of the
 52 person must file with the court an annual guardianship plan
 53 which updates information about the condition of the ward. The
 54 annual plan must specify the current needs of the ward and how
 55 those needs are proposed to be met in the coming year.
 56 (1) Each plan for an adult ward must, if applicable,
 57 include:
 58 (b) Information concerning the medical and mental health

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-00462-20

2020344

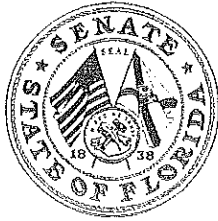
conditions and treatment and rehabilitation needs of the ward,
including:

1. A resume of any professional medical treatment given to
the ward during the preceding year.

2. The report of a physician who examined the ward no more
than 90 days before the beginning of the applicable reporting
period. If the guardian has requested the primary physician to
complete the evaluation and the physician has delegated the
responsibility, the report may be prepared and signed by a
physician assistant acting pursuant to s. 458.347(4)(d) or s.
459.022(4)(d), or by an advanced practice registered nurse
acting pursuant to s. 464.012(3). The report must contain an
evaluation of the ward's condition and a statement of the
current level of capacity of the ward.

3. The plan for providing medical, mental health, and
rehabilitative services in the coming year.

Section 4. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY
5th District

October 15, 2019

Senator David Simmons, Chairman
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 344 be placed on the agenda for the Judiciary Committee at your earliest convenience. The bill allows physician assistants and advanced registered nurse practitioners to complete evaluation paperwork required in guardianship plans under s. 744.3675, Florida Statutes. The bill also waives court and filing fees in guardian cases.

Thank you for your kind consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Bradley", with a large checkmark-like flourish at the end.

Rob Bradley

REPLY TO:

- ☐ 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- ☐ 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

FLORIDA PUBLIC GUARDIAN PROGRAMS: PROGRAM COSTS AND ACTIVITIES

**Report for the
Office of Public and Professional Guardians
Florida Department of Elder Affairs**

March 2019

Pamela B. Teaster, Ph.D., Professor and Director, Center for Gerontology
Wen You, Ph.D., Associate Professor, Department of Agricultural and Applied Economics
Saman Mohsenirad, Ph.D. Student, Department of Economics
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Florida Department of Elder Affairs, Office of Public and Professional Guardians

FLORIDA PUBLIC GUARDIAN PROGRAMS: PROGRAM COSTS AND ACTIVITIES

EXECUTIVE SUMMARY

In 1999, Sections 744.1012-744.2111 of the Florida Statutes established the Office of Public and Professional Guardians (OPPG), formerly the Statewide Public Guardianship Office. The OPPG is administratively housed in the Department of Elder Affairs (a social services agency model of public guardian service delivery), and covers approximately 100% (67) of the counties in the state. The Office of Public and Professional Guardian (OPPG) contracts for public guardian services with 17 local not-for-profit programs that utilize a variety of methods of operation (Department of Elder Affairs, 2018). Since 2016, the program expanded its responsibilities to include regulating approximately more than 550 professional guardians statewide, which includes investigating, and if deemed appropriate, the discipline of guardians deemed in violation of the law. In 2018, the OPPG filed its first case where revocation of the guardian's registration was recommended to the Florida Division of Administrative Hearings.

The purpose of this study was to examine all 17 state public guardian programs in Florida by using provider models; characteristics, needs, and outcomes of wards served; cost savings realized; and allocation of funds by the programs and the Department of Elder Affairs.

Program Administration

The 17 state public guardian programs were serving a total of 3,846 wards, with each program serving between 14 and 1,598 wards at the time of this study. A total of 778 wards are reported on waiting lists. Some programs have waiting lists, while other programs do not. The programs that do not have waiting lists receive sufficient supplemental dollars from supplemental funding sources, have openings available in the program, or executed agreements with supplemental funding sources require that the program serve on appointed cases. Programs have a mix of full-time and part-time staff. Programs report a total of 153 full-time staff and 30 part-time staff members. Eight programs have attorneys either as the program supervisor or as part of the staff.

Program Administration Time

Across activities, 9 programs recorded an average of 1,844 administrative hours per month. The greatest amount of time was spent on ward case management (mean = 65.73/ hours per week/262.90 hours per month). Being on call (mean = 59.82 hours per week/239.26 hours per month) was the second most time-demanding task, followed by clerical work (mean = 59.66 hours per week/238.65 hours per month).

Costs of Operating Programs

From July 1, 2017 to June 30, 2018, the 17 state public guardian programs report a state allotment of \$5,842,313.57 for operating expenses. In addition to the state allotment, programs receive additional dollars from other sources such as the county funding, the United Way, Social Security Administration Representative Payee funding, FIG funding, private donations, and other funding. Programs supplemented their state allocation with private donations totaling \$3,218,271.19. Within these funding parameters, the actual average yearly cost of serving a ward was \$5,084.72, a 51.6% increase from the previously determined cost to serve a ward of \$2,625.38. This increased number is consistent with other published costs per year of serving a ward: \$2,857 in Florida in 1983 (Schmidt, Miller, Peters, & Lowenstein, 1988); \$2,662 in Virginia in 1997 (Teaster, Schmidt, Abramson, & Almeida, 1999); and \$2,955 in Virginia in 2002 (Teaster & Roberto, 2003). Overall, during the period June 1, 2018 to December 31, 2018, the programs' estimated total cost savings to the state of Florida was \$23,197,672.67.

Characteristics, Needs, and Outcomes of Wards

As of June 30, 2018, the guardians were serving a total of 3,846 wards. The programs serve as plenary guardian (77.20%), limited guardian (11.40%), and guardian advocate (5.01%). Slightly less than half of wards are female (47.89%). Wards are significantly older than the general population of Florida: 76.28% are 55 years of age and older. Wards range in age

from 18 to 99 years and have an average age of 65.43 years. Most wards live in a skilled nursing facility (42%) followed by an assisted living facility (22.99%). Only 4.04% of wards live in a private residence.

Nature of Incapacity

For the 17 programs, 42.70% of the wards had a developmental disability, 43.21% had a problem with mental illness, and 39.56% had a neuro-cognitive disability. For 44.67%, these conditions and others constituted multiple diagnoses.

Recommendations

This study of the costs of the Florida public guardian programs using data from 2018-2019 uses repeatedly published state-of-the-art analysis. This evaluation builds on earlier research and provides a model of examination for future work. Based on the findings, the following recommendations should enhance program operations and ward outcomes:

- Increased fiscal support by the State of Florida is critical to the success of the programs. The programs should not have to depend upon volunteers, donated services, or their own fundraising.
- Some programs have no persons on their waiting list because the programs are running at or near capacity, an agreement exists with a supplemental funding source that limits the programs' ability to maintain a waiting list, or the program is exceeding its statutory staff to ward ratio of 1 to 40. Ways to circumvent the ratio are ways to decrease the quality of services to the wards of the public guardian. It is critical to maintain the 1:40 ratio in all jurisdictions, regardless of incentive.
- Thoroughly document tangible and intangible cost savings by all programs. The programs produce substantial cost savings to the state--more than 3 ½ times the amount allocated— or **\$29,039,986.24** for one year. If the programs were provided with stable, recurring funding, they would still produce a cost savings to the state of **\$14,311,954.93**.
- Programs should provide standardized administrative information (e.g., the administrative profile) at least annually, especially information regarding quality of life improvement and cost savings. Programs should document all cost savings activities as accurately as possible.
- Programs' lack of funding has resulted in donated services in case management, temporarily addressed by using social work and law interns and pro bono attorneys to meet the funding deficiencies created by serving the present client population. This practice, while understandable, is neither sustainable nor advisable.
- The most recent national study of public guardianship confirms the increasing complexity of public guardian cases and a 1:20 ratio (Teaster, et al., 2010). Programs should comply with this evidence-based standard, and dollars should be allocated appropriately.
- Inconsistency in guardianship case management in the courts has been noted by programs, who report that not all circuits waive filing fees for public guardianship, which, by definition, must be paid out of the program's budget. This practice should be stopped.
- Some circuits require that a program's Executive Director be named personally on guardianship orders and appointments, leading to a difficulty in program day-to-day administration and signing authority/responsibility. This practice, which overlooks an important feature of public guardianship, should end. The agency, not an individual, should be the named public guardian on orders.

Note: Although the term *ward* is not the preferred term to describe persons subject to guardianship, we use this term because it is still the term used in Florida statutes.

FLORIDA PUBLIC GUARDIAN PROGRAMS: PROGRAM COSTS AND ACTIVITIES

INTRODUCTION

Public guardianship refers to the appointment and responsibility of a public official or publicly funded entity to serve as a legal guardian in the absence of willing and responsible family members and friends to serve, or without resources to employ a private guardian (Schmidt, Miller, Bell, & New, 1981). In 2010, the first national study of public guardianship in over 25 years was published (Teaster, Schmidt, Wood, Lawrence, & Mendiondo, 2010). Findings revealed that nearly all programs were inadequately staffed and funded, that personnel are undertrained and undercompensated, and that data collection systems were limited and often poorly managed.

A number of interlocking factors are increasing the (unmet) need for public guardians: the “graying” of the population the aging of individuals with disabilities, the aging of caregivers, advancements in medical technologies affording new choices for chronic conditions and end of life care, rising reports of elder abuse, and growing mobility that has increased distances between and among family members (Teaster, et al., 2010). The national study by Teaster et al. (2010) revealed that wards¹ of the public guardian were far complex than were wards over 25 years earlier. This is borne out in a study by Chamberlain (unpublished dissertation), indicating that public guardianship wards in long-term care facilities who were without friends or family had significant differences in instances of mental health issues, including a diagnosis of depression (unadjusted OR: 1.21), bipolar disorder (unadjusted OR: 1.80), and schizophrenia (unadjusted OR: 3.9) than their friended counterparts. Residents without family or friend contact had significantly higher means scores (higher is worse) on the depression rating scale, pain, and aggressive behavior scale). They had significantly lower scores on social engagement (lower is worse).

The impact of guardianship abuse is also considerable. In November 2016, the GAO reported that in just eight cases it examined in six states, guardians were found to have stolen more than \$600,000 from the elderly whom they were entrusted to protect. The 2010 GAO report found that, from 1990 to 2010, guardians in 20 cases stole \$5.4 million. Maltreatment of vulnerable older adults by guardians is a serious and growing problem that has been documented by reports, studies, government testimony, and the press (Aviv, 2017; GAO, 2010, 2016; Senate Special Committee on Aging Hearing 18 April 2018; *NPR on Point*, 2017). In response to these trends, most states are reforming their adult guardianship laws. Paid professional and not for profit guardianship service providers often operate along with public guardians.

These developments are positioned against a backdrop of societal changes including the development of managed health care and other new forms of health care delivery; changes in long-term care, including the rise of assisted living; recent and massive state budgetary constraints forcing cutbacks in social programs; escalating litigation in the health and long-term care arenas; and moves to deinstitutionalize people with disabilities and identify community-based care (mandated by the 1999 U.S. Supreme Court decision in the *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581).

In response to a documented need for guardians of last resort (Schmidt & Peters, 1987; Moye et al., 2016; Teaster & Roberto, 1997), the Florida Statewide Public Guardianship Office was established in 1999 by Sections 744.701-744.715 of the Florida Statutes. Public guardianship in the state of Florida was examined more than 25 years ago (Schmidt, Miller, Bell, & New, 1981) and more recently by Schmidt et al. (2017) and Teaster et al. (2010). Although many important changes have occurred, the state, home to a burgeoning aging population, still does not have statewide coverage for public guardianship. From the 1981 Schmidt study, it took 18 years to establish a potential statewide system of public guardianship. That span of time is surprising, given that a clear foundation was established through published assessment of unmet need (Schmidt & Peters, 1987) and scholarly and legislative activity at the time.

The Florida public guardian programs are now administratively housed in the Department of Elder Affairs and cover all of 67 counties in the state. The funding model established is the social services agency model and is identified as the “conflict of interest model” (Schmidt, Miller, Bell, & New, 1981; Teaster, et al., 2010). The local public guardian

¹ Although the term *ward* is not the preferred term to describe persons subject to guardianship, we use this term because it is still the term used in Florida statutes.

programs, typically non-profit entities, have contracts with the Office of Public and Professional Guardians (OPPG) and utilize a variety of methods of operation. At the time of this study, 17 programs are in existence (Department of Elder Affairs, 2019). The OPPG also has oversight of Florida's private professional guardians.

An examination of the public programs in Florida, building upon work conducted on a national level by Teaster, et al., (2010) and in Florida (Schmidt, et al., 2017), was commissioned by the Florida Department of Elder Affairs due to the rising adult ward population, as well as the influx into the state of younger adults and their families. Florida is also home to a substantial number of racial and ethnic groups. The purpose of this study is to identify program costs and activities of the public guardian programs in Florida. To accomplish this task, aspects of the public programs are examined: costs and cost savings realized, allocation of funds for the public guardian programs and activities conducted in order to serve the wards.

The present examination was conducted by the Center for Gerontology at Virginia Tech working in concert with staff members from the OPPG, Florida Department of Elder Affairs. Virginia Tech provided a doctoral level student who assisted with data analysis as well as a health economist and applied econometrician and a nationally recognized scholar on guardianship.

METHODOLOGY

Examination of the Florida public guardian programs was modeled upon previous research (Burley, 2011; Moye et al., 2016; Schmidt, Miller, Peters, & Lowenstein, 1988; Schmidt et al., 2017; Teaster & Roberto, 2003; Teaster, Schmidt, Abramson, & Almeida, 1999; Teaster, et al., 2010). Individual public guardian programs and the Florida Department of Elder Affairs provided important information and feedback during the study period. In addition to time study data gathered by the programs, the researchers used state programmatic data and national data on wages for occupations.

Data Collection Measures

1. **Analysis of the program models.** Programs gathered information on wards served, activities of the program, and associated program total costs (including program non-labor cost and labor cost).
2. **Allocation of programmatic and state funds.** Recommendations for the allocation of state funds for public guardianship are made based on information from individual public guardian programs as well as from the staff from the Florida Department of Elder Affairs, Office of Public and Professional Guardians.
3. **Cost savings.** Labor costs to the state and cost savings for the state were calculated from information gathered through an online data collection instrument and literature reviews on relevant cost parameters.
4. **Characteristics of the wards.** Demographic and incapacity nature of the wards served, including their past, present, and future needs, were based on data provided by the programs and from the database of the Florida Department of Elder Affairs.

Data Collection Procedures

The study of the costs of the Florida public guardian programs took place in 2018-2019, with data collected on-line during the summer of 2018 and with participation by all programs. A collection instrument was developed by the Department of Elder Affairs in order to gather information on program activities and costs. The report estimated labor costs for 9 programs specifically due to data readiness; the 9 program average was used to estimate the rest of the programs' labor costs.

Data Analysis

The first step in the analysis process was to review the data for accuracy. The data set was examined to identify inappropriate values and outliers. Preliminary data analyses examined distributions, means, and standard deviations among variables for data cleaning purposes only. Descriptive statistics were used to create a profile of the programs and the wards and to assess program activities and associated costs. Differences in the characteristics between the ward

population and general population of Florida were assessed using Chi-Square analysis. Analyses were performed on the population of active wards as of June 30, 2018. Wards were considered active if documented by both the Florida Department of Elder Affairs, Office of Public and Professional Guardians and the individual public guardian programs.

FINDINGS

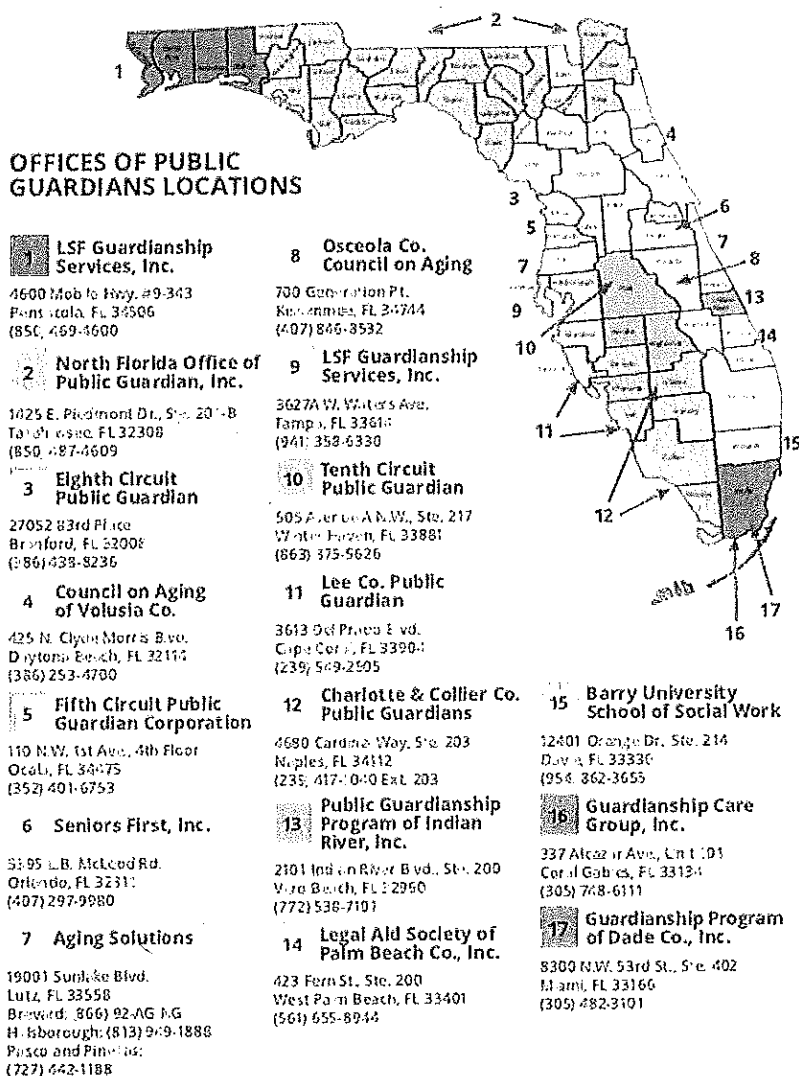
Findings are organized into two broad sections: program administration and characteristics of the wards served. The first section is a description of the programs, data on program staffing and administrative duties, an accounting of program administrative time, and program costs. The second section provides an in-depth examination of the wards enrolled in the programs and their associated costs and cost savings.

PROGRAM ADMINISTRATION

Description of the Programs

Seventeen public guardian programs serve people needing guardians of last resort. Eleven programs serve more than three counties. Brief program descriptions follow (i.e., program organization, client census on June 30, 2018).

Figure 1. Public Guardian Programs in Florida^a



County coloring represents area served by the corresponding office location.

^aSource: Florida Department of Elder Affairs, Annual Report Fiscal Year 2017-2018.

1. **North Florida Office of Public Guardian, Inc.,** Florida law requires that each office of public guardian maintain a staff or contract with professionally qualified individuals to carry out guardianship functions, including an attorney experienced in probate areas and at least one other person who has a master's degree in social work, a gerontologist or a nurse. OPG has on staff one attorney and three Master's level social workers. The social work staff has more than 75 years of experience in social work and human services. There is also an accounts manager, paralegal, programs manager, fiscal/administrative assistant and file clerk on staff. Collectively, the staff has over 40 years of public guardianship experience. North Florida Office of Public Guardian, Inc. served 387 wards in the FY 17-18. There are currently 76 wards on the waitlist. SEMS application is the management software used to manage the wards. United Way Grants, fundraising and the 40-Hour Professional Guardianship Classes are supplemental funding sources.
2. **Eighth Circuit Public Guardian** is comprised of 2 full time staff, including 2 part time staff, and an Executive Director who also serves as the program's attorney. The program is entirely state-funded, with previous assistance being provided by the Executive Director's law firm. The program serves wards cross disability groups and age ranges, including those with mental illness-related incapacity, persons with developmental disabilities, and the elderly. The office covers six counties, and hundreds of square miles. Although funded for less, the program serves in excess of 70 to 80 wards in each fiscal year, and is presently running at capacity.
3. **Council on Aging of Volusia County, Inc.** Council on Aging of Volusia County Inc. has served as a Public Guardian since 2003. Through June 2014, Volusia County and in-kind legal representation by Community Legal Services of Mid Florida (CSMF) provided the only sources of funding for this program. With this funding arrangement, we have served 40 to 50 clients per year. In 2014 we received State funding to serve an additional 25 clients with continued legal representation from CSMF at a discounted rate for the additional 25 State funded clients. In 2018, CSMF advised us they could no longer provide representation due to their lack of funding. We currently have 38 on our waiting list and are proactively searching for Attorneys who will work on a Pro Bono basis to meet the State and local contract requirements to serve this population. We also are appointed as the Public Guardian for Flagler, Putnam and St. John's County. However, without additional funding or legal representation, the program is unable to serve these counties.
4. **Fifth Circuit Public Guardian Corporation.** The program serves Marion, Citrus, Lake, Sumter, and Hernando counties, covering 4700 square miles and 130 wards per year. The program has a wait list of 48 persons. In almost all cases, the program serves as the plenary guardian. The staff consists of eight people. The Executive Director is also the program's in-house attorney. There are two full-time case managers who carry a caseload of 40 wards each and also do the court-required paralegal work for the agency. The full-time financial manager also prepares all of the mandatory Annual Plans and Accountings for all of the wards. The full-time bookkeeper pays all the wards bills and reconciles the bank statements. Both the bookkeeper and the financial manager also act as case manager for 10 to 15 wards each. The part-time Medicaid specialist handles all of the compliance issues for the program including Medicaid applications, renewals and monthly spend-down rules, facility licensing, evacuation plans for each ward and weekly census reports. The program's college-graduate nurses must personally assess the wards once a quarter and review and update our records on current meds and treatment and update the information in the SEMS Applications, Inc. system and make recommendations to the case managers for future care and treatment. The community support includes three offices in the Marion County courthouse with rent, utilities, phone and computer at no charge, a local company that provides free background/skip trace checks for all new wards, pro bono attorneys who represent the petitioners to have the public guardian appointed for the ward, and nurses who are working at below-market pay. This community support totals approximately \$68,000 per year donation.
5. **Seniors First, Inc.,** The program is part of a senior citizen agency. Seniors First is supported from the county and state funds and also has a grant writer assigned through the agency for ward's needs not covered. The program has a strong Development Department which helps to fund the public guardian program through their fundraising projects. All public guardian staff persons have college degrees. The program works with over 42 different attorneys who receive credit through Legal Aid. The Executive Director, who is also a paralegal, does all legal pleadings in-house. All work is then sent to various attorneys to file on behalf of the program. Budget and financials are overseen by the agency CFO and the support staff to give the guardian program staff the ability to focus on day-to-day business to meet wards' needs.

6. **Aging Solutions, Inc.** has 23 employees with one FTE coming on board the first of March 2019. The program served over 300 wards in FY 17-18; however, due to the large geographic area and the demand for public guardian services, the program has 310 people currently on the waiting list for services. Aging Solutions uses SEMS Applications, Inc. for software, as required by the state contract. The Executive Director of Aging Solutions is the sole owner of Adult Advocacy & Representation, Inc. (AAR) as allowed by statute, a for profit corporate guardian. AAR supplements funding to Aging Solutions when funds are not available or have run out. The program has also created a foundation so that it can accept funds that can be distributed to Aging Solutions at its discretion.
7. **Osceola Council on Aging.** The Osceola Council on Aging has 2 full time employees in the guardianship department. The program currently has opening to provide guardianship services to more Osceola residents, and has 15 people on the waiting list; however, the program is in need of legal assistance. The funding is not sufficient to pay an attorney for services, and the program has exhausted the amount of pro bono work that the attorneys currently supporting the program for the past 8 years can maintain. The program is in desperate need of attorneys to take pro bono cases or for funding to help pay for legal fees. Despite the limitations, the program works diligently to ensure the needs of all the wards in the program are met, including psycho-social, financially, and physically.
8. **Lutheran Services of Florida, Inc. (Sarasota)** has 10 fulltime staff and 2 part time staff. Two members of the staff sit on the Florida State Guardianship Association Board. Lutheran Services of Florida does maintain both a public and private side guardianship program to supplement state funding. In FY 7-18, the program served a total of 220 wards, with 38 on the waitlist. Lutheran Services of Florida –Sarasota currently uses SEMS Applications, Inc. for the client management software for both the public and private programs. The program receives funding from Sarasota County to supplement the indigent wards served.
9. **Tenth Circuit Public Guardian** has a total of 7 part time staff: Four are care managers; one is an office manager; and two co-executive directors. The Tenth Circuit Public Guardian served 66 indigent vulnerable adults for FY 17-18, which exceeded the program's allotted funding. The program also has a charity division called The Guardianship Office that provides guardianship services for some of our indigent unfunded clients in the Tenth Circuit Public Guardian. The operating budget for the Guardianship Office is raised by private donation and time is also donated from professional guardians in the community.
10. **Lutheran Services of Florida, Inc. (Pensacola)** This program serves wards in the First Judicial Circuit, which is comprised of four counties. Currently there are 5 full time employees working an average of 40 hours per week. The program served 51 wards in the FY 17-18. All staff, with the exception of one, are registered guardians (the one non-professional guardian staff person having been hired in October of 2018). The goal is for the non-professional guardian employee is to be registered as a professional guardian within one year of hire. All staff fully utilizes SEMS Applications, Inc. on-line, per the state contract. The only additional funding received by the is from collecting Representative Payee fees from those who receive Social Security benefits; however, the program currently compensates low-bono attorneys in the area at a prorated rate, receiving in-kind donations from the local attorneys to meet the needs of the program.
11. **Lee County Public Guardianship Program** serves as public guardian to approximately 180 indigent wards in FY 17-18, with another approximately 55 on the waiting list. The program has 2 part time and 1 full time program assistants, which answer phones, organize documents, and maintain ward case files. The program has a full time Executive Director who is also an attorney, 1 staff person who is an MSW, 1 who is an MACG, and 2 registered nurses. The program works closely with the hospital system, Baker Act providers, other residential care providers, as well as state and local agencies (APD, DCF, law enforcement). The program also works with private organizations and individuals. The program has developed an in-house database which allows for easy access to ward information. The majority of the wards served by the Lee County Public Guardian are wards with intellectual disabilities and the elderly. Lee County Public Guardian's Executive Director is required to be named personally in guardianship appointment letters, requiring that all major decisions in those areas be made by the individual program director and be available on an on-call basis.
12. **The Collier County and Charlotte County Public Guardian** consists of one program covering five counties. A private attorney, with a total of 4 fulltime staff members currently staffs this program. An additional staff person

provides in-kind staff hour donations weekly, at no cost to the public guardian program. During FY 17-18, the program served nearly 200 wards, with 22 on a waiting list. The program uses SEMS Applications, Inc. for client management, as per the state contract, and receives most of its funding from the county. Additional cost savings include pro bono work provided by the Executive Director, who is an attorney, including serving as attorney for the AIP in guardianship cases, when appointed.

13. **The Public Guardian Program of Indian River County, Inc.** is a small program due to budget constraints. Currently, the program has one full time staff person and one part time. The Executive Director (full time) is required to seek alternate funding sources via community grants and comply with reporting requirements. Currently the program utilizes SEMS Applications, Inc. to maintain ward documentation as well as financial data. In FY 17-18 the program served 17 clients and currently maintains a waiting list of 5. The program seeks alternate funding from John's Island Community Service League and the Indian River County Hospital Taxing District.
14. **Legal Aid Society of Palm Beach County, Inc.,** The Legal Aid Society of Palm Beach County, Inc. provides services through the work of 1.5 FT staff members for fiscal matters; 4.25 FT staff members for case management (2 with Masters of Social Work degrees and 2 are Nationally Certified Guardians); 1.0 FT paralegal; .17 FT administration/fiscal and 1.0 FT attorney/program director. The program served 163 wards for FY 17-18 and has 42 persons on the waiting list. The program documents its work through the EMS guardianship case management system and finances are tracked with quick books and excel. Funding is provided by the State of Florida in the amount of \$270,878.00, Palm Beach County in the amount of \$246,775.00 and supplemental funding by the Legal Aid Society in the amount of \$ 152,982.00.
15. **The Barry University School of Social Work, Office of the Public Guardian.** The Barry University d/b/a OPG currently has a total staff of five social workers, one paralegal, one fiscal assistant, one associate director, and one executive director. Currently the office has two position openings for two social workers and one opening for an administrative assistant. When fully staffed, the total OPG staff members will be 12 staff members. Total wards served for FY 17-18 was 274 wards. The wait list is composed of 43 AIP's waiting adjudication. The client management software used for case notes and ward information is the SEMS Applications web-based database. The software used for the wards' financial monitoring is a web-based QuickBooks application. The program's legal representation is pro-bono representation by Shutts & Bowen LLC/Edward O'Sheehan, Esq. The program serves as a practicum site for one master's candidate social work student intern who assists with the ward monitoring by providing 280 hours per practicum assignment usually lasting 6 months.
16. **The Guardianship Care Group, Inc.,** uses private attorneys and limits their hourly rate. Staff members include 1 Administrator, 1 Clinical Director/Case Manager, 1 FT Case Manager, and 2 PT Case Managers. The program served approximately 75 wards during the fiscal year 17-18, and does not currently have any people awaiting services. It should be noted that Guardianship Care Group, Inc. serves in the same geographic area as Guardianship Program of Dade County, Inc. The program primarily serves those with developmental disabilities and does not receive supplemental funding from the county.
17. **Guardianship Program of Dade County** uses 56 FT staff dedicated to program efforts. GPDC utilizes a proprietary and copyrighted client management software, Guardianship Management Software (GMS), built by and for the public guardian program. GMS allows for live ward fiscal reconciliation, case management and tracking, e-filing, and file management. The GPDC has Letters of Understanding and a close working partnership with Jackson Memorial Hospital (Jackson Health System) that has assisted in the placement of indigent wards. GPDC also works closely with Florida International University's Department of Social Work's Internship Program to provide hands-on experience for FIU students while providing the program with additional staff support.

Although most programs are not-for-profit, Barry University Office of the Public Guardian is housed within a School of Social Work, two programs are housed within Councils on Aging, and one program is housed within a Legal Aid program.

Supplemental Funding

Seven programs receive supplemental funding from counties. Programs have noted that deficiencies in funding have led to the use of available donated community services. Programs have been receiving pro bono or low bono legal work, but the continuation of such donated legal work is burdensome to the community, and sustainability is questionable, particularly as the programs expand and serve additional clients. Some programs have accounted for this need by appointing an Executive Director who also serves as the staff attorney, a designated staff attorney, or a legal department, but funding limitations prohibit all programs from following this model. Programs' lack of funding has resulted in donated services in case management, temporarily addressed by using social work and law interns to meeting the funding deficiencies created by serving the present client population. This practice, while understandable, is neither sustainable nor advisable.

Inconsistency in guardianship case management in the courts has been noted by programs, stating that not all circuits waive filing fees for public guardianship, which, by definition, must be paid out of the program's budget. Additionally, some circuits have required that the program's Executive Director be named personally on guardianship orders and appointments, leading to a difficulty in program day-to-day administration and signing authority/responsibility.

Program Features

Staff to client ratio. It is highly commendable that the state of Florida mandates a 1:40 staff to ward ratio. Florida is one of only eight states to mandate a ratio. Previous research in Florida 28 years ago established a ratio of 1:30 (Schmidt, Miller, Bell, & New, 1981). Subsequent research in Virginia and Washington, the only other states in which a cost analysis was conducted and states with an administrative structure similar to Florida, established an updated ratio of 1:20 (Schmidt, Teaster, Abramson, & Almeida, 1997). *The most recent national study of public guardianship confirms the increasing complexity of public guardian cases and a 1:20 ratio (Teaster, et al., 2010). Programs should comply with this evidence-based standard, and dollars should be allocated appropriately.*

The Office of Public and Professional Guardian (OPPG) awards contracts for local offices in accordance with 744.2006(1), Florida Statutes, a co-recommendation between the OPPG and the Chief Judge of each judicial circuit. Parties must meet the following qualifications for OPPG appointment as a public guardian:

1. A Florida resident and at least 18 years of age
2. Completed the approved forty-hour professional guardianship-training course as well as any applicable approved continuing education credits
3. Passed the Florida Professional Guardianship Competency Examination or have been granted a waiver
4. Completed OPPG registration
5. Knowledge of the legal process and knowledge of the social services available to meet the needs of incapacitated persons
6. Staff levels to meet Florida Statutes governing public guardianship, including an attorney who has experience in probate and another person who has a master's degree in social work, or a gerontologist, psychologist, registered nurse, or nurse practitioner
7. If a non-profit corporate guardian, a tax exempt status from the United States Internal Revenue Service is required
8. Verification that the interested party does not hold a position that would create a conflict of interest.

Serving as a public guardian requires an appointment and contract from the OPPG. Appointment by the OPPG is for a term of four years; however, the contract with the funding source may be subject to annual appropriation.

Programs and Program Administration

As of June 30, 2018, Florida's 17 public guardian programs were asked to provide the numbers of wards they were serving (Table 1). On that day, the programs were serving 3,846 wards, with the number of wards per program ranging from 14 (Public Guardian Program of Indian River County, Inc.) to a high of 1,598 wards (Guardianship Program of Dade County). The total number of 778 wards on waiting lists ranged from a low of 0 (i.e., Eighth Circuit Public Guardian, Guardianship Program of Dade County) to a high of 310 (Aging Solutions, Inc.). Some programs have no persons on their

waiting list because the programs are running at or near capacity, an agreement exists with a supplemental funding source that limits the programs' ability to maintain a waiting list, or the program is exceeding its statutory staff to ward ratio of 1 to 40. Any program exceeding the staff to ward ratio must do so with the written approval of the OPPG.

Table 1. Program Catchment Areas and Number of Wards Served as of June 30, 2018

Program	Catchment Area	Wards Served	Waiting List
Aging Solutions, Inc.	Brevard, Hillsborough, Manatee, Pasco, and Pinellas Counties	329	310
Barry University, Office of the Public Guardian	Broward County	274	43
Charlotte & Collier County Public Guardian	Charlotte, Collier, DeSoto, Glades, and Monroe Counties	198	5
Council on Aging of Volusia County	Volusia, Flagler, Putnam, and St. Johns Counties	68	38
Eighth Circuit Public Guardian	Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties	64	0
Fifth Circuit Public Guardian Corporation	Marion, Citrus, Hernando, Lake, and Sumter Counties	141	48
Guardianship Program of Dade County	Miami-Dade County	1,598	0
The Guardianship Care Group, Inc.	Miami-Dade County	81	0
Lee County Public Guardianship Program	Lee, Hendry, and Sarasota Counties	179	53
Legal Aid Society of Palm Beach County, Inc.	Palm Beach, Martin, Okeechobee, and St. Lucie Counties	151	42
Public Guardian Program of Indian River County, Inc.	Indian River County	14	5
North Florida Office of the Public Guardian, Inc.	Bay, Calhoun, Clay, Columbia, Dixie, Duval, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Liberty, Leon, Madison, Nassau, Suwannee, Taylor, Wakulla, and Washington Counties	387	76
Osceola Council on Aging	Osceola County	30	15
Seniors First, Inc.	Orange County	111	22
Lutheran Services of Florida, Inc. (Pensacola)	Escambia, Okaloosa, Santa Rosa, and Walton Counties	52	68
Lutheran Services of Florida, Inc. (Sarasota)	DeSoto, Manatee, and Sarasota Counties	104	38
Tenth Circuit Public Guardian	Hardee, Highlands, and Polk Counties	65	15
TOTALS		3,846	778

Program Staffing

Paid Staff. The programs use a mix of full-time and part-time staff (Table 2). Part-time staff members are reported as working a total of 30 or fewer hours in one week. Programs report a total of 153 full-time staff and 30 part-time staff. Ward Managers/Professional Guardians are the most frequently reported staff members. Program descriptions indicate that eight programs have attorneys either as the executive director or as part of the staff.

Table 2. Paid Staff Members

Position Title	Full Time	Part Time
Executive Director (Attorney/J.D.)	7	0
Executive Director (Not Attorney)	8	3
Chief Financial Officer/Financial Director	5	0
General Counsel/Senior Attorney	1	0
Staff Attorney	2	1
Program Area Director (Operations/Grants/Enrollments/Entitlements/IT)	8	0
Case Management Director/Clinical Director	4	0
Case Manager (Professional Guardian)	56	14
Case Manager (Non-Professional Guardian)	14	0
Office Manager	2	1
Health/Financial/Benefits/Inventory/Entitlements Staff	13	0
Legal Assistant	5	0
Financial Support Staff	8	2
Accounting Staff	9	0
Administrative Assistant/Receptionist (Operations/Financial/Case Management)	4	5
File Clerk/Intern	3	0
Contracted Professional Staff (Nurse/Gerontologist/LCSW/MSW/CPA)	4	4
Total	153	30

Rates of Payment for Staff Positions

Rates of Payment for Guardianship Program Staff Compared to Program Staff Positions Using Bureau of Labor Statistics Wages. For a variety of commensurate positions above, the Bureau of Labor Statistics ranges for hourly wages are captured below for Business Managers (\$69.01-\$33.71), Case Managers (\$65.00), Executive Directors and Staff Support (\$94.95-\$28.56), Legal Assistants (\$47.25-\$24.61), Office Managers and Staff Support (\$70.01-\$18.24), General Administrative Support Staff (\$55.87-\$15.51), Attorneys and Law Clerks (\$68.22-\$27.84).

Table 3. Occupations in Guardianship Programs and Corresponding Wages of Similar Occupations in the Bureau of Labor Statistics (BLS)

Guardianship Programs Occupation	BLS Occupations	Hourly Wage	Resources
Business Managers	Accountants and Auditors	\$37.46	https://www.bls.gov/oes/current/oes132011.htm
	Financial Specialists	\$33.71	https://www.bls.gov/oes/current/oes_nat.htm#13-0000
	Financial Specialists, All Other	\$36.84	https://www.bls.gov/oes/current/oes132099.htm
	Financial Managers	\$69.01	https://www.bls.gov/oes/current/oes113031.htm
	Business and Financial Operations Occupations	\$36.7	https://www.bls.gov/oes/current/oes130000.htm
	Financial Analysts and Advisors	\$39.79	https://www.bls.gov/oes/current/oes_nat.htm#13-0000
	Financial Examiners	\$44.12	https://www.bls.gov/oes/current/oes132061.htm
Case Manager	Public Guardian Ward Case Manager/Professional Guardian	\$65.00	http://www.elderaffairs.state.fl.us/doea/SPGO/rulemaking/Revised_Statement_of_Estimated_Regulatory_Costs.pdf
Executive Director	Top Executives	\$49.58	https://www.bls.gov/oes/current/oes_nat.htm
	Chief Executives	\$94.25	https://www.bls.gov/oes/current/oes111011.htm
	Executive Secretaries and Executive Administrative Assistants	\$28.56	https://www.bls.gov/oes/current/oes436011.htm
	Producers and Directors	\$43.64	https://www.bls.gov/oes/current/oes272012.htm
Legal Assistant	Paralegals and Legal Assistants	\$25.92	https://www.bls.gov/oes/current/oes232011.htm
	Administrative Law Judges, Adjudicators, and Hearing Officers	\$47.25	https://www.bls.gov/oes/current/oes231021.htm
	Arbitrators, Mediators, and Conciliators	\$35.11	https://www.bls.gov/oes/current/oes231022.htm
	Legal Support Workers	\$24.34	https://www.bls.gov/oes/current/oes_nat.htm#23-0000

	Miscellaneous Legal Support Workers	\$24.66	https://www.bls.gov/oes/current/oes_nat.htm#23-0000
	Court Reporters	\$28.88	https://www.bls.gov/oes/current/oes232091.htm
	Title Examiners, Abstractors, and Searchers	\$24.61	https://www.bls.gov/oes/current/oes232093.htm
Office Manager	General and Operations Managers	\$59.35	https://www.bls.gov/oes/current/oes111021.htm
	Advertising, Marketing, Promotions, Public Relations, and Sales Managers	\$59.19	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Advertising and Promotions Managers	\$59.56	https://www.bls.gov/oes/current/oes112011.htm
	Marketing and Sales Managers	\$60.24	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Marketing Managers	\$70.01	https://www.bls.gov/oes/current/oes112021.htm
	Sales Managers	\$66.18	https://www.bls.gov/oes/current/oes112022.htm
	Operations Specialties Managers	\$55.62	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Administrative Services Managers	\$49.70	https://www.bls.gov/oes/current/oes113011.htm
	Office and Administrative Support Occupations	\$18.24	https://www.bls.gov/oes/current/oes430000.htm
Admin Support Staff	First-Line Supervisors of Office and Administrative Support Workers	\$28.14	https://www.bls.gov/oes/current/oes431011.htm
	Communications Equipment Operators	\$14.02	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Telephone Operators	\$18.47	https://www.bls.gov/oes/current/oes432021.htm
	Information and Record Clerks	\$15.51	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Information and Record	\$19.56	https://www.bls.gov/oes/current/oes434199.htm

	Clerks, All Other		
Attorney	Lawyers, Judges, and Related Workers	\$55.87	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Lawyers and Judicial Law Clerks	\$56.26	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Lawyers	\$68.22	https://www.bls.gov/oes/current/oes231011.htm
	Judicial Law Clerks	\$27.84	https://www.bls.gov/oes/current/oes231012.htm
	Judges, Magistrates, and Other Judicial Workers	\$50.89	https://www.bls.gov/oes/current/oes_nat.htm#43-0000
	Judges, Magistrate Judges, and Magistrates	\$58.20	https://www.bls.gov/oes/current/oes231023.htm

Table 4 shows the average weekly time by occupation in the programs as well as average total time. The hourly inputs per program are a function of size, such that exceptionally large programs, such as Dade, have large time inputs across staff positions, while smaller ones, such as Indian River County, have smaller inputs of total time.

Table 4. Average Weekly Time Inputs by Occupations in Guardianship Programs and the average of total time spent Per Week for Each Occupation*

Program Occupation	Barry Univ.	Charlotte --Collier	Dade	Guard Care Group	Indian River Co.	Legal Aid Soc. of PB	Osc. COA	Seniors First	10th Cir.	Avg. Hrs/ Wk ¹
Accountant/ Financial Specialist	32.00		283.25	-	-	2.97	1.00	-	-	79.8
Admin Support Staff	-		204.68	-	4.75	-	-	23.50	10.60	60.88
Attorney	-		102.71	-	3.80	-	4.50	-	-	37
Case Manager	221.36	91.75	929.31	59.00	29.95	172.78	35.00	214.50	55.07	200.97
Executive Director	47.50	47.00	31.97	22.00	15.25	35.00	36.00	27.50	31.56	32.64
Legal Assistant	27.25		49.12	-	0.50	26.75	-	-	-	25.9
Office Manager	-	42.75		30.75	-	-	-	-	-	36.75

1. Average across programs with those occupations only.

*Table 4 denotes the time spent by staff in 9 of the Guardianship programs of Florida due to data availability. The 9 programs are: Barry University, Charlotte-Collier, Dade, Guardianship Care Group, Indian River County, Legal Aid Society of PB, Osceola COA, Seniors First, and Tenth Circuit.

Time study data were collected from nine guardianship programs that collect work time efforts for all staff within the programs for a week. Those weekly time input per occupation information is then multiplied by the hourly wage rates listed in Table 3 to estimate the weekly labor costs per program. The monthly labor costs is calculated by assuming constant weekly costs per month. The presented labor costs do not contain fringe and benefits therefore are lower bound estimates of the program labor costs. Due to data limitations, we assumed that non-labor program costs are constant over years. The labor costs are the major components of the program operation that are generally under-budgeted. These estimated labor costs therefore will provide a necessary estimation of the program needs financially.

Table 5. Estimated Labor Costs by Programs and by Occupation

Programs	Hourly Wage Based on BLS	Accountant/ Financial Specialist	Admin Support Staff	Attorney	Case Manager	Executive Director	Legal Assistant	Office Manager	Total Labor Cost Per Program
Barry Univ.	Hours/Week	42.52	18.99	52.88	65	54.01	30.11	59.98	
	Cost/Week	32.00	-	-	221.36	47.50	27.25	-	
	Cost/Month	\$1,360.64	-	-	\$14,388.40	\$2,565.48	\$820.50	-	\$19,135.01
Charlotte-Collier	Hours/Week	\$5,442.56	-	-	\$57,553.60	\$10,261.90	\$3,281.99	-	\$76,540.05
	Cost/Week	-	-	-	91.75	47.00	-	42.75	
	Cost/Month	-	-	-	\$5,963.75	\$2,538.47	-	\$2,564.15	\$11,066.37
Dade	Hours/Week	283.25	204.68	102.71	929.31	31.97	49.12	-	
	Cost/Week	\$12,043.68	\$3,886.92	\$5,431.04	\$60,405.31	\$1,726.56	\$1,478.85	-	\$84,972.37
	Cost/Month	\$48,174.73	\$15,547.68	\$21,724.16	\$241,621.25	\$6,906.26	\$5,915.41	-	\$339,889.50
Guardian Care Group	Hours/Week	-	-	-	59.00	22.00	-	30.75	
	Cost/Week	-	-	-	\$3,835.00	\$1,188.22	-	\$1,844.39	\$6,867.61
	Cost/Month	-	-	-	\$15,340.00	\$4,752.88	-	\$7,377.54	\$27,470.42
Indian River Co.	Hours/Week	-	4.75	3.80	29.95	15.25	0.50	-	
	Cost/Week	-	\$90.20	\$200.94	\$1,946.75	\$823.65	\$15.06	-	\$3,076.60
	Cost/Month	-	\$360.81	\$803.78	\$7,787.00	\$3,294.61	\$60.22	-	\$12,306.42
Legal Aid Soc. of PB	Hours/Week	2.97	-	-	172.78	35.00	26.75	-	
	Cost/Week	\$126.28	-	-	\$11,230.70	\$1,890.35	\$805.44	-	\$14,052.78
	Cost/Month	\$505.14	-	-	\$44,922.80	\$7,561.40	\$3,221.77	-	\$56,211.11
Osceola COA	Hours/Week	1.00	-	4.50	35.00	36.00	-	-	
	Cost/Week	\$42.52	-	\$237.96	\$2,275.00	\$1,944.36	-	-	\$4,499.84
	Cost/Month	\$170.08	-	\$951.84	\$9,100.00	\$7,777.44	-	-	\$17,999.36
Seniors First	Hours/Week	-	23.50	-	214.50	27.50	-	-	
	Cost/Week	-	\$446.27	-	\$13,942.50	\$1,485.28	-	-	\$15,874.04
	Cost/Month	-	\$1,785.06	-	\$55,770.00	\$5,941.10	-	-	\$63,496.16
Tenth Circuit	Hours/Week	-	10.60	-	55.07	31.56	-	-	
	Cost/Week	-	\$201.29	-	\$3,579.55	\$1,704.56	-	-	\$5,485.40
	Cost/Month	-	\$805.18	-	\$14,318.20	\$6,818.22	-	-	\$21,941.60
Total Monthly Cost Per Occupation		\$54,292.51	\$18,498.73	\$23,479.78	\$470,267.85	\$63,467.69	\$12,479.39	\$17,634.12	\$660,120.07

Note: The labor cost here does not include fringe and benefits. Therefore the estimated costs here are lower-bounds of labor costs of the programs.

Program Administration Time

Across activities, 9 programs recorded an average of 1,844 administrative hours per month (Table 6). The greatest amount of time was spent on ward case management (mean = 65.73/ hours per week/262.90 hours per month). Being on call (mean = 59.82 hours per week/239.26 hours per month) was the second most time-demanding task, followed by Clerical Work (mean = 59.66 hours per week/238.65 hours per month), followed by time visiting the ward (mean= 50.54 hours per week /202.17 hours per month), fiscal management of wards' funds (mean = 46 hours per week/184.11 hours per month), preparing filings (mean = 36.18 hours per week/144.72 hours per month), and case file management (mean= 27.80 hours per week/111.21 hours per month).

Table 6. Program Administration Time

Task	Mean of Hours (per week)	Mean of Hours (per month)
Ward Case Management	65.73	262.90
On Call	59.82	239.26
Clerical Work	59.66	238.65
Ward Visit	50.54	202.17
Ward Fiscal Management	46.03	184.11
Prepare Filings	36.18	144.72
Case File Management	27.80	111.21
Other	23.94	95.75
Phone Calls	17.45	69.81
Inventory Management	14.99	59.97
Email to/from Facility, Exec. Director, etc.	11.94	47.76
Doctors' Appointments or Hospital Visits	10.69	42.75
Travel	6.83	27.32
Staff Meeting	5.60	22.40
Hearing or Court Appearance	3.44	13.76
Public Guardian Office Meeting	3.00	12.00
Waitlist Procedures	2.88	11.50
Consult	2.80	11.20
Telephone Calls	2.25	9.00
Client Visit	1.74	6.96
Office Work	1.10	4.40
Visit with Supervisor	1.00	4.00
Ward Report	1.00	4.00
Call to/from Facility, Exec. Director, Nurse, etc.	0.90	3.60
Annual Plan/Annual Inventory	0.69	2.76
Memory Unit Tour	0.58	2.32
Receipt and Review of Mail	0.50	2.00
Review of Ward Management System	0.50	2.00
Record data	0.40	1.60
Care Plan Review	0.40	1.60
Shredding Obsolete Documents	0.33	1.32
Birth Certificate Application	0.30	1.20

Note: The nine programs are Barry University, Charlotte-Collier, Dade, Guardianship Care Group, Indian River County, Legal Aid Society of PB, Osceola COA, Seniors First, and Tenth Circuit.

Table 7 indicates the ratio of public guardian staff to ward. When including all FTE staff members in the ratio, two programs exceed the 1:40 ratio of ward to public guardian staff exceed the ratio. Permission is granted at the request of the public guardian offices. Programs have requested increases due to supplemental funding, such as county agreements for waiting list limitations. Other programs have requested that the ward ratio be exceeded to meet the growing needs in the circuit, despite the program maintaining a waiting list. It is not the preference of the Office of Public and Professional Guardians that the public guardian programs maintain caseloads exceeding the 1 to 40 ratio.

Table 7. Staff to Ward Ratio

Programs	Wards	# FTE (Any)	# Staff (Any): Ward
Aging Solutions, Inc.	329	21.5	1:15.3
Barry University, Office of the Public Guardian	274	8	1:34.3
Charlotte & Collier County Public Guardian	198	4	1:49.5
Council on Aging of Volusia County	68	5	1:13.6
Eighth Circuit Public Guardian	64	3	1:26.6
Fifth Circuit Public Guardian Corporation	141	7.5	1:18.8
Guardianship Program of Dade County	1,598	55	1:45
The Guardianship Care Group, Inc.	81	4.5	1:18
Lee County Public Guardianship Program	179	5.5	1:32.5
Legal Aid Society of Palm Beach County, Inc.	151	9	1:16.8
Public Guardian Program of Indian River County, Inc.	14	4	1:3.5
North Florida Office of the Public Guardian, Inc.	387	12.5	1:31
Osceola Council on Aging	30	2	1:15
Seniors First, Inc.	111	6	1:18.5
Lutheran Services of Florida, Inc. (Pensacola)	52	5	1:10.4
Lutheran Services of Florida, Inc. (Sarasota)	104	12	1:8.7
Tenth Circuit Public Guardian	65	3.5	1:18.6
TOTAL	3,846	168	

Operating Programs Budget and Estimated Actual Costs

From July 1, 2017 to June 30, 2018, the public guardian programs reported an OPPG state allotment \$5,842,313 to operate the 17 programs (Table 8a), which is 98.57% of the total program operating budget. The average yearly state contribution per program was \$343,665.50. The average monthly budget per program was \$66,692.10 and the average actual yearly budget of serving a ward in the sample is \$5,084.72 (Table 8b). The average yearly budget of serving a ward in Florida was \$2,625.38 in 2018, \$2,648 in 2008, and \$2,857 in 1983 (Schmidt, Miller, Peters, & Lowenstein, 1988). For the state of Virginia, the average yearly cost per ward was \$2,955 in 2002 (Teaster & Roberto, 2003). It should be noted that the low cost to operate a public program are likely the result of the too-high, 1:40 ward to staff ratio in Florida.

Some programs are serving at a ratio lower than 1:40 ratio. This is likely due to limited state allocation and supplemental funding. While the program has the capacity, written in Florida Statute, to serve up to 40 wards per full-time staff person, limited state resources and unstable non-recurring funding have not allowed programs to remove additional persons off their waiting lists.

Table 8a. Program Yearly Operating Budget by Funding Sources

Program	Recurring Yearly Funding			Unstable Non-Recurring Yearly Funding/In-kind Services/Other Recurring		TOTAL
	OPPG State Funding	County Funding	SSA Rep Payee	Other Recurring and Non-Recurring	Donated/Contracted Services	
Aging Solutions, Inc.	\$813,231.34	\$0	\$0	\$124,172.29	\$1,535,000.00	\$2,472,403.63
Barry University, Office of the Public Guardian	\$628,580.00	\$0	\$14,305.00	\$38,809.81	\$16,206.40	\$697,901.21
Charlotte & Collier County Public Guardian	\$206,337.00	\$384,000.00	\$0	\$0	\$75,000.00	\$665,337.00
Council on Aging of Volusia County	\$87,430.78	\$126,000.00	\$6,932.00	\$92,343.27	\$53,618.00	\$366,324.05
Eighth Circuit Public Guardian	\$187,238.00	\$0	\$0	\$0	\$20,000.00	\$207,238.00
Fifth Circuit Public Guardian Corporation	\$334,661.67	\$0	\$3,902.00	\$35,600.00	\$137,400.00	\$511,563.67
Guardianship Program of Dade County	\$1,245,776.00	\$2,428,000.00	\$0	\$10,933.29	\$0	\$4,084,719.29
The Guardianship Care Group, Inc.	\$196,375.00	\$0	\$0	\$0	\$92,102.00	\$288,477.00
Lee County Public Guardianship Program	\$189,631.33	\$233,511.00	\$0	\$0	\$60,000.00	\$483,142.33
Legal Aid Society of Palm Beach County, Inc.	\$270,878.00	\$246,775.00	\$0	\$0	\$152,982.00	\$670,635.00
Public Guardian Program of Indian River County, Inc.	\$36,226.00	\$0	\$0	\$30,000.00	\$98,437.10	\$164,663.10
North Florida Office of the Public Guardian, Inc.	\$800,134.56	\$0	\$0	\$100,073.00	\$18,235.00	\$918,442.56
Osceola Council on Aging	\$102,091.11	\$0	\$0	\$0	\$360,000.00	\$462,091.11
Seniors First, Inc.	\$172,601.11	\$95,418.00	\$0	\$42,700.00	\$48,000.00	\$358,719.11
Lutheran Services of Florida, Inc. (Pensacola)	\$137,989.44	\$0	\$15,190.00	\$4,214.00	\$10,378.00	\$137,719.11
Lutheran Services of Florida, Inc. (Sarasota)	\$260,229.34	\$46,000.00	\$21,416.30	\$74,350.41	\$478,142.69	\$880,138.74
Tenth Circuit Public Guardian	\$172,902.89	\$0	\$0	\$0	\$62,770.00	\$235,672.89
Yearly Totals	\$5,842,313.57	\$3,559,704.00	\$461,755.30	\$553,196.07	\$3,218,271.19	\$13,605,458.13
Yearly Operating Budget Per Program	\$343,665.50	\$209,394.35	\$3,632.08	\$32,540.95	\$189,310.07	\$800,305.16

Table 8b. Program Operating Budget (Labor Budget, Nonlabor Budget) by Program

Program	# Wards (1)	Yearly Budget by Program from All Funding Sources (2)	Monthly Budget by Program (3) = (2) /12	Monthly Budget per Client by Program (4) = (3)/(1)	Yearly Budget per Client by Program (5) = (4)*12	Total Yearly Labor Budget (6) = x% * Total yearly recurring funding in Table 8a	Total Yearly Non-labor Budget (7) = (2) - (6)
Aging Solutions, Inc.	329	\$2,472,404	\$206,033.64	\$626.24	\$7,514.90	\$755,329.27	\$1,717,074.36
Barry University, Office of the Public Guardian	274	\$697,901	\$58,158.43	\$212.26	\$2,547.08	\$520,736.85	\$177,164.36
Charlotte & Collier County Public Guardian	198	\$665,337.00	\$55,444.75	\$280.02	\$3,360.29	\$383,719.05	\$281,617.95
Council on Aging of Volusia County	68	\$366,324.05	\$30,527.00	\$448.93	\$5,387.12	\$210,256.05	\$156,068.00
Eighth Circuit Public Guardian	64	\$207,238.00	\$17,269.83	\$269.84	\$3,238.09	\$161,024.68	\$46,213.32
Fifth Circuit Public Guardian Corporation	141	\$511,563.67	\$42,630.31	\$302.34	\$3,628.11	\$287,779.12	\$223,784.55
Guardianship Program of Dade County	1598	\$4,084,719.29	\$340,393.27	\$213.01	\$2,556.14	\$3,340,504.52	\$744,214.77
The Guardianship Care Group, Inc.	81	\$288,477.00	\$24,039.75	\$296.79	\$3,561.44	\$137,462.50	\$151,014.50
Lee County Public Guardianship Program	179	\$483,142.33	\$40,261.86	\$224.93	\$2,699.12	\$405,370.35	\$77,771.98
Legal Aid Society of Palm Beach County, Inc.	151	\$670,635.00	\$55,886.25	\$370.11	\$4,441.29	\$450,358.11	\$220,276.89
Public Guardian Program of Indian River County, Inc.	14	\$164,663.10	\$13,721.93	\$980.14	\$11,761.65	\$6,680.07	\$157,983.03
North Florida Office of the Public Guardian, Inc.	387	\$918,442.56	\$76,536.88	\$197.77	\$2,373.24	\$613,226.57	\$305,215.99
Osceola Council on Aging	30	\$462,091.11	\$38,507.59	\$1,283.59	\$15,403.04	\$82,693.80	\$379,397.31
Seniors First, Inc.	111	\$358,719.11	\$29,893.26	\$269.31	\$3,231.70	\$226,289.33	\$132,429.78
Lutheran Services of Florida, Inc. (Pensacola)	52	\$137,719.11	\$11,476.59	\$220.70	\$2,648.44	\$101,098.43	\$36,891.01
Lutheran Services of Florida, Inc. (Sarasota)	104	\$880,138.74	\$73,344.90	\$705.24	\$8,462.87	\$176,928.65	\$703,210.09
Tenth Circuit Public Guardian	65	\$235,672.89	\$19,639.41	\$302.14	\$3,625.74	\$122,761.05	\$112,911.84
Average Over All Programs	226.24	\$800,305.16	\$66,692.10	\$423.73	\$5,084.72	\$469,542.26	\$330,778.81

The percentage of total yearly labor budget of the public guardian programs was collected in March 2019 survey by OPPG.

Table 8c reflects the unmet funding needs of each program by using the time study information provided by nine of the programs. The estimation of unmet programmatic funding needs was calculated by subtracting the total yearly recurring funding by program (Column 6) from the total estimate yearly cost needs for operation (Column 5). Added with the state funding figure in Table 8a, Column 1, which is \$5,842,313.5.7 and the total unmet need of \$8,885,717.74 (Table 8c, 7), the resulting figure is a budget shortfall of \$14,728, 031.31.

Table 8c. Estimated Unmet Program Cost Needs Based on Total Recurring Funding and Estimated Labor Costs

Program	# Wards (1)	Total Yearly Labor Budget (2)	Total Yearly Non-labor Budget (3)	Total Yearly Estimated Labor Cost (4)	Total Estimated Yearly Operation Cost Needs (5) = (3) + (4)	Total Yearly Recurring Funding (6)	Total Estimated Unmet Program Cost Needs (7) = (5)-(6)
Aging Solutions, Inc.	329	\$755,329.27	\$1,717,074.36	\$999,023.89*	\$2,716,098.25	\$813,231.34	\$1,902,866.91
Barry University, Office of the Public Guardian	274	\$520,736.85	\$177,164.36	\$918,480.60	\$1,095,644.96	\$642,885.00	\$452,759.96
Charlotte & Collier County Public Guardian	198	\$383,719.05	\$281,617.95	\$531,185.52	\$812,803.47	\$590,337.00	\$222,466.47
Council on Aging of Volusia County	68	\$210,256.05	\$156,068.00	\$363,007.76*	\$519,075.76	\$220,362.78	\$298,712.98
Eighth Circuit Public Guardian	64	\$161,024.68	\$46,213.32	\$353,260.39*	\$399,473.71	\$187,238.00	\$212,235.71
Fifth Circuit Public Guardian Corporation	141	\$287,779.12	\$223,784.55	\$540,897.33*	\$764,681.88	\$338,563.67	\$426,118.21
Guardianship Program of Dade County	1598	\$3,340,504.52	\$744,214.77	\$4,078,674.00	\$4,822,888.77	\$3,673,776.00	\$1,149,112.77
The Guardianship Care Group, Inc.	81	\$137,462.50	\$151,014.50	\$329,645.04	\$480,659.54	\$196,375.00	\$284,284.54
Lee County Public Guardianship Program	179	\$405,370.35	\$77,771.98	\$633,497.38*	\$711,269.36	\$423,142.33	\$288,127.03
Legal Aid Society of Palm Beach County, Inc.	151	\$450,358.11	\$220,276.89	\$674,533.32	\$894,810.21	\$517,653.00	\$377,157.21
Public Guardian Program of Indian River County, Inc.	14	\$6,680.07	\$157,983.03	\$147,677.04	\$305,660.07	\$36,226.00	\$269,434.07
North Florida Office of the Public Guardian, Inc.	387	\$613,226.57	\$305,215.99	\$1,140,360.80*	\$1,445,576.79	\$800,134.56	\$645,442.23
Osceola Council on Aging	30	\$82,693.80	\$379,397.31	\$215,992.32	\$595,389.63	\$102,091.11	\$493,298.52
Seniors First, Inc.	111	\$226,289.33	\$132,429.78	\$761,953.92	\$894,383.70	\$268,019.11	\$626,364.59
Lutheran Services of Florida, Inc. (Pensacola)	52	\$101,098.43	\$36,891.01	\$324,018.26*	\$360,909.27	\$153,179.44	\$207,729.83
Lutheran Services of Florida, Inc. (Sarasota)	104	\$176,928.65	\$703,210.09	\$450,734.12*	\$1,153,944.21	\$327,645.64	\$826,298.57
Tenth Circuit Public Guardian	65	\$122,761.05	\$112,911.84	\$263,299.20	\$376,211.04	\$172,902.89	\$203,308.15
Average Over All Programs	226.2353	\$469,542.26	\$330,778.81	\$748,602.40	\$1,079,381.21	\$556,691.93	\$522,689.28
Total Unmet Cost Needs							\$8,885,717.74

Notes: Estimated labor costs were predicted from regression models using the available time study information from nine of the programs.

Table 8d shows total labor costs for the programs should a 1:20 ratio of full-time staff for wards be implemented across the programs. Under this scenario, the total yearly labor cost per program is calculated by multiplying the labor cost per ward (Column 5) by the number of wards applied to a 1:20 ratio. The total yearly labor costs per program range from a low of \$283,553.20 (Tenth Circuit Public Guardian), serving 70 wards, to a high of \$2,807,596.00 (Guardianship Program of Dade County), serving 1,100 wards. The average programmatic cost per year when programs maintain a 1:20 ratio is **\$735,496.68**.

Table 8d. Total Labor Costs Under a 1:20 Staff-Ward Ratio Scenario

Programs	Actual # of Wards (1)	Actual # FTE (Any) (2)	# Staff (Any) Ward (3)	Total Yearly Estimated Labor Cost (4)	Labor Cost per Ward (5)	# of Wards for 1:20 Ratio (6)	Total Yearly Estimated Labor Cost (7) = (5)*(6)
Aging Solutions, Inc.	329	21.5	01:15.3	\$999,023.89	\$3,036.55	430	\$1,305,716.50
Barry University, Office of the Public Guardian	274	8	01:34.3	\$918,480.60	\$3,352.12	160	\$536,339.20
Charlotte & Collier County Public Guardian	198	4	01:49.5	\$531,185.52	\$2,682.76	80	\$214,620.80
Council on Aging of Volusia County	68	5	01:13.6	\$363,007.76	\$5,338.35	100	\$533,835.00
Eighth Circuit Public Guardian	64	3	01:26.6	\$353,260.39	\$5,519.69	60	\$331,181.40
Fifth Circuit Public Guardian Corporation	141	7.5	01:18.8	\$540,897.33	\$3,836.15	150	\$575,422.50
Guardianship Program of Dade County	1,598	55	1:45	\$4,078,674.00	\$2,552.36	1100	\$2,807,596.00
The Guardianship Care Group, Inc.	81	4.5	1:18	\$329,645.04	\$4,069.69	90	\$366,272.10
Lee County Public Guardianship Program	179	5.5	01:32.5	\$633,497.38	\$3,539.09	110	\$339,299.90
Legal Aid Society of Palm Beach County, Inc.	151	9	01:16.8	\$674,333.32	\$4,467.11	180	\$804,079.80
Public Guardian Program of Indian River County, Inc.	14	4	01:03.5	\$147,677.04	\$10,548.36	80	\$843,868.80
North Florida Office of the Public Guardian, Inc.	387	12.5	1:31	\$1,140,360.80	\$2,946.67	250	\$736,667.50
Osceola Council on Aging	30	2	1:15	\$215,992.32	\$7,199.74	40	\$287,989.60
Seniors First, Inc.	111	6	01:18.5	\$761,953.92	\$6,864.45	120	\$823,734.00
Lutheran Services of Florida, Inc. (Pensacola)	52	5	01:10.4	\$324,018.26	\$6,231.12	100	\$623,112.00
Lutheran Services of Florida, Inc. (Sarasota)	104	12	01:08.7	\$450,734.12	\$4,333.98	240	\$1,040,155.20
Tenth Circuit Public Guardian	65	3.5	01:18.6	\$263,299.20	\$4,050.76	70	\$283,553.20
Average	226.24	9.88	01:22.9	\$748,602.41	\$4,739.35	197.65	\$735,496.68

Note: The labor cost per ward (Column 5) is assumed to be a constant value for each program.

Tangible Cost Savings

Programs report conducting numerous actions and activities for wards that resulted in substantial cost savings (Table 9). Facilitating the discharge of wards from medical hospitals to nursing homes resulted in the greatest cost savings (\$12,293,316.00). Other cost saving measures include foster transition for youths, followed by discharge from a state hospital to an assisted living facility or a nursing home, discharge from a medical hospital to a nursing home, and securing community-based services for wards. In addition to these cost saving activities, the state makes arrangements for pre-paid funerals. Cost savings for pre-paid funerals was not included in the report. However, for each 100 pre-paid funeral arranged in a year's time, the state could realize \$600,000 in savings.

Table 9. Cost Savings Activities Conducted by the Guardianship Programs

Results from Re-analysis	For a one-month period		Projected Actions for one Year	Estimated Cost Savings for 1 Year
Action/Activity	Programs	WARDS	WARDS	Cost Savings
Discharge from state hospital to assisted living facility	7	11	132	\$760,834.80
Discharge from state hospital to nursing home	4	8	96	\$112,694.40
Discharge from medical hospital to nursing home	17	147	1764	\$12,293,316.00
Discharge from medical hospital to assisted living facility	12	70	840	\$6,239,520.00
Secure comm.-based service (to prevent moving to more restrictive environ)	11	79	948	\$110,916.00
Multiple Baker Acts prior to placement in programs	16	78	936	\$118,357.20
Multiple arrests or APS referral	14	48	576	\$439,539.84
Foster transition youth	10	40	480	\$8,964,808.00
TOTALS				\$29,039,986.24

Notes:

^a The number of wards per program is found in Table 1.

^b All funding resources are found in the last column of Table 8a.

^c Monthly cost per program is calculated as: All Funding Sources/12.

^d Monthly cost per ward is calculated as: Monthly Cost per Program/# wards.

^e Yearly cost per ward is calculated as: Monthly cost per ward x 12.

^f Information on the calculation of cost-savings is found in Appendix A.

Overall Cost Savings

Overall, during the period June 1, 2018 to December 31, 2018, the programs' estimated total cost savings to the state of Florida was **\$23,197,672.67** (Table 10). Table 11 shows that funding the programs to meet the needs of providing services currently met through unstable or non-recurring funding would still result in a tangible cost savings to the state of **\$14,311,954.93**.

Table 10. Overall Cost Savings

Year	Total State Funding	Program Cost Savings	Cost Savings to the State ^a
2018	\$5,842,313.57	\$29,039,986.24	\$23,197,672.67

^a Represents reported cost savings minus total state funding.

Table 11. Cost Savings with Adequate State Funding

Year	Actual Program Shortfall	Program Cost Savings	Cost Savings to the State ^b
2018	\$14,728,031.31	\$29,039,986.24	\$14,311,954.93

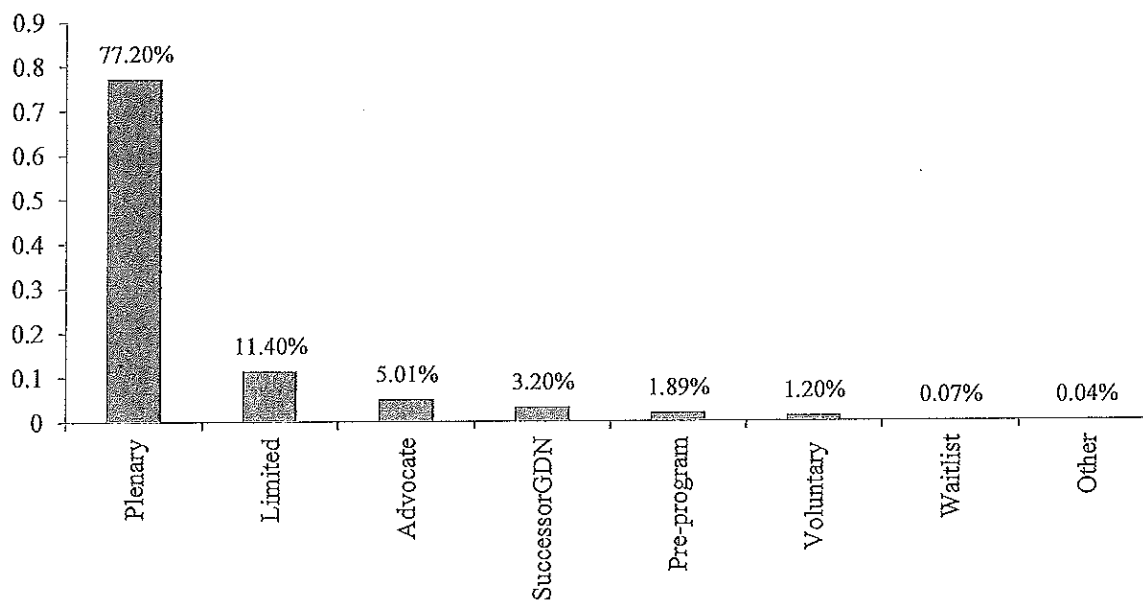
^b Represents reported costs savings minus actual operating budget.

CHARACTERISTICS OF THE WARDS

This portion of the report provides information about the wards served by the OPPG programs as of June 30, 2018. Information is provided about the demographic characteristics of the wards as well as their health and functional abilities.

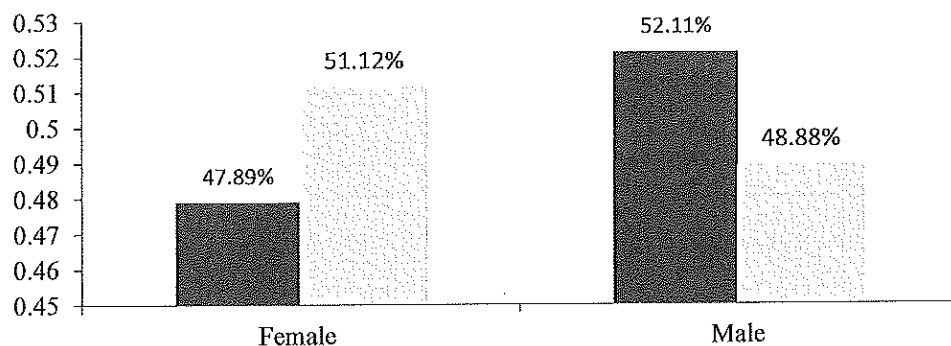
Demographic Characteristics

Figures 2 through 4 provide specific details about demographic characteristics of the wards. The distribution of the types of guardianship provided for the wards is shown in Figure 2. The majority of guardianships constitutes plenary guardianships (77.20%), followed by limited guardianships (11.40%), and guardian advocates (5.01%).

Figure 2. Type of Guardianship Provided for the Wards (n=2,754)

The distribution of the sex of the wards is similar to that seen in the 2010 Florida census data, consisting of slightly less than half females (47.89%) and slightly more than half males (52.11%) (Figure 3).

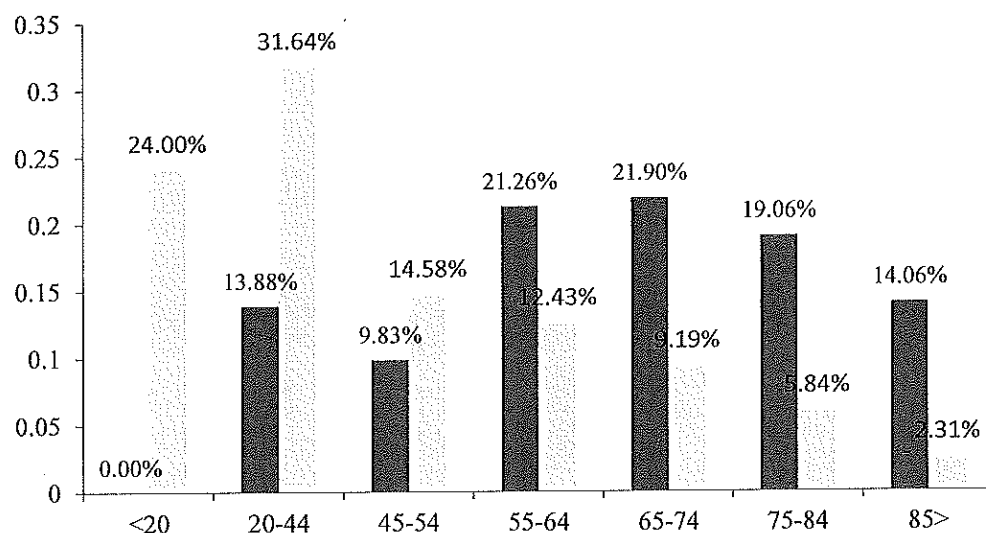
Figure 3. Sex (n=2,988)



*Left (blue) denotes the IP population served by the Guardianship programs of Florida and right (yellow) denotes the 2010 Florida census data².

The wards have an average age of 65.43 years. The ward population is a significantly older one, with 76.28% of the wards being 55 years of age and older as compared to 29.77% who are 55 years of age and older in the general population of Florida (Figure 4).

Figure 4. Age of Wards (n=2,817)



*Left (blue) denotes the ward population served by the Guardianship programs of Florida and right (yellow) denotes the 2010 Florida census.

Nature of Incapacity

Across the 17 programs (Table 12), 42.70% of wards had a developmental disability, 43.21% had a problem with mental illness, and 39.56% had a neuro-cognitive disability. For 44.67% of the wards, these conditions and others constituted multiple diagnoses.

² <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

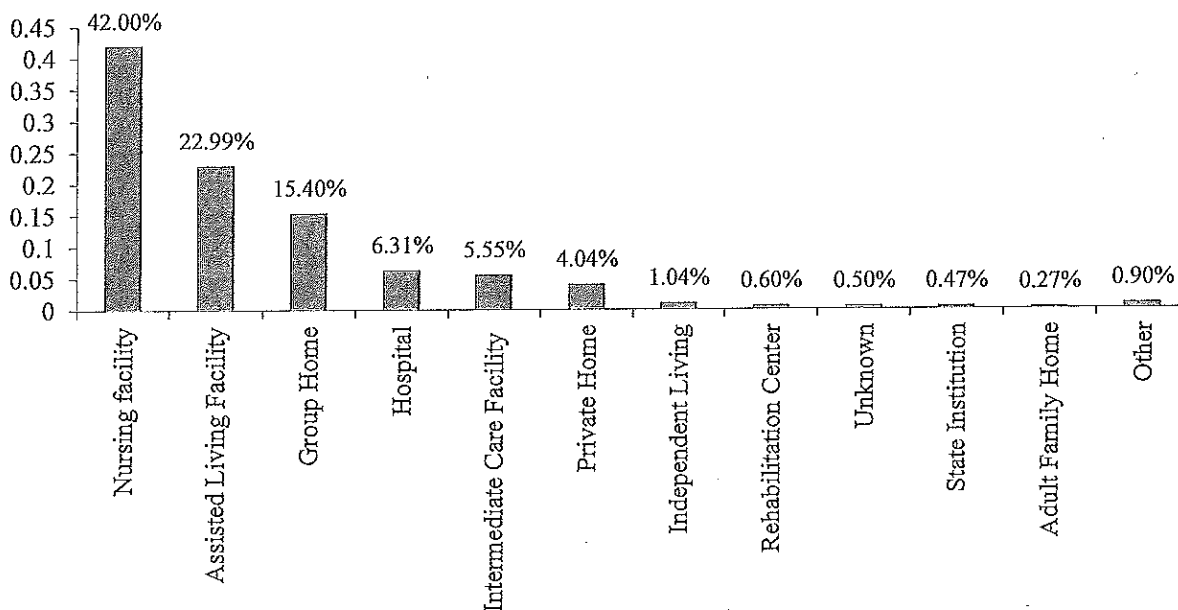
Table 12. Ward Counts Across All 17 Programs by Nature of Incapacity^{1,2}

Nature of Incapacity	Number of Wards with the Incapacity	Percentage of Wards with the Incapacity
Developmental Disability	761	42.70%
Mental Illness	770	43.21%
Nero-Cognitive Disability	705	39.56%
Traumatic Brain Injury	181	10.16%
Multiple Diagnosis	796	44.67%

¹Table 11 denotes number of wards with different types of incapacity, in all 17 of the guardianship programs of Florida.

² A ward may suffer from more than one incapacity; therefore, the total ward count across incapacity is greater than the total number of wards (n=1,782) and percentage of wards by incapacity is summed to be greater than 100%.

Wards most commonly reside in facilities providing an increased level of supervision and assistance with activities of daily living, such as nursing facilities (42.00%), assisted living facilities (22.99%), or group homes (15.40%) with a very small percentage (4.04%) of the population living in a private residence (4.30%) or independent living (1.04%) (Figure 5). Only 6.31% of the wards live in hospitals, and 6.89% of the ward population lives in other types of residences such as an intermediate care facility, rehabilitation center, state institution, or adult family home.

Figure 5. Type of Residence of the Wards (n=2,993)

Key Points: Program Administration

- Seventeen public guardian programs are contracted to serve 3,846 wards, with each program serving between 14 and 1,598 wards.
- The average yearly state contribution is \$5,842,313.57 and contribution per program is \$343,665.50.
- As of June 20, 2018, programs had 153 full-time staff and 30 part-time staff.
- The majority of programs' monthly administrative time is spent on ward case management (mean = 65.73/ hours per week/262.90 hours per month), followed by on-call hours and case file management/ward visits.
- The average yearly cost of serving a ward is \$5,084.72.
- Estimated total cost savings of the programs is \$29,039,986.24.
- The overall cost savings to the state of Florida (cost savings minus total state funding) is \$23,197,672.67.

Key Points: Ward Characteristics

- Slightly less than half of wards are women (48.88%), with an average age of 65.43 years.
- The majority of wards lives in skilled nursing facilities (42%) and assisted living facilities (22.99%) as the most common type of living arrangements.
- More than one-third (42.7%) of wards have diagnosed developmental disabilities leading to incapacity, mental illness (43.2%), and neuro-cognitive disabilities (39.56%).

Public Guardian Success Stories

The Florida public guardians' activities result in tangible cost savings every year. In addition to tangible cost savings activities, Florida public guardians positively impact the lives of the wards served, including social, financial, medical, and emotional aspects of life.

The Fifth Circuit Public Guardian served a ward named "Becky." Becky was living in her own home under hospice. While visiting her, hospice staff noticed that her husband seemed to be having a hard time assisting with her care. Hospice requested the assistance of the program as Emergency Temporary Guardian to see if Becky and her husband could have more help. The program staff was able to assist and resolve problems that Becky and her husband were having with some providers and the Department of Children and Families. The program worked with Becky's home health provider to have services in her home 7 days a week. In the end, the court was satisfied that Becky's husband could act as her primary caregiver with services in the house daily. Thanks to the help of the Fifth Circuit Public Guardian program serving as Becky's Emergency Temporary Guardian, Becky is now able to remain in her home without further need for a permanent guardian.

The North Florida Office of Public Guardian, Inc. served an elderly disabled adult who was in need of cataract surgery. Prior to the public guardian's appointment, the ward was living in a group home that was not meeting the ward's needs, not providing the necessary food and nutrition, and the public guardian staff worked tirelessly with the provider to ensure that the safety of all of the residents in the group home were being met; however, due to malnutrition, the elderly ward was not able to receive the much needed cataract surgery, a surgery which would positively impact the ward's life and independence. With the public guardian staff's hard work, the program was able to find the ward a new group home placement that the ward adores, and with proper nutrition, the ward finally received the cataract surgery that he needed. The public guardian staff noted that the ward has a greatly improved quality of life and really enjoys his new home.

A ward from the Lutheran Services of Florida, Inc. (Sarasota) office, "E.," suffered serious injury in an automobile accident which lead to a debilitating stroke. "E." was in and out of the hospital when the program first was involved. The ward had no primary care physician and no health insurance. All of the ward's bills were far past due and her finances were in disarray. Thanks to the hard work of the public guardian program staff, "E." is now in a stable environment and receives all the medications she needs. The ward sees her new primary care doctor frequently, and the program has noted a significant decrease in hospital stays. "E." is now eligible for supportive home and community-based services which have enabled her to live at home with her family.

Recommendations

Based on the information above, the research team makes the following recommendations.

- Increased fiscal support by the State of Florida is critical to the success of the programs. The programs should not have to depend upon volunteers, donated services, or their own fundraising.
- Some programs have no persons on their waiting list because the programs are running at or near capacity, an agreement exists with a supplemental funding source that limits the programs' ability to maintain a waiting list, or the program is exceeding its statutory staff to ward ratio of 1 to 40. Ways to circumvent the ratio are ways to decrease the

quality of services to the wards of the public guardian. It is critical to maintain the 1:40 ratio in all jurisdictions, regardless of incentive.

- Thoroughly document tangible and intangible cost savings by all programs. The programs produce substantial cost savings to the state—more than 3 ½ times the amount allocated— or **\$29,039,986.24** for one year. If the programs were provided with stable, recurring funding, they would still produce a cost savings to the state of **\$14,311,954.93**.
- Programs should provide standardized administrative information (e.g., the administrative profile) at least annually, especially information regarding quality of life improvement and cost savings. Programs should document all cost savings activities as accurately as possible.
- Programs' lack of funding has resulted in donated services in case management, temporarily addressed by using social work and law interns and pro bono attorneys to meet the funding deficiencies created by serving the present client population. This practice, while understandable, is neither sustainable nor advisable.
- The most recent national study of public guardianship confirms the increasing complexity of public guardian cases and a 1:20 ratio (Teaster, et al., 2010). Programs should comply with this evidence-based standard, and dollars should be allocated appropriately.
- Inconsistency in guardianship case management in the courts has been noted by programs, who report that not all circuits waive filing fees for public guardianship, which, by definition, must be paid out of the program's budget. This practice should be stopped.
- Some circuits require that a program's Executive Director be named personally on guardianship orders and appointments, leading to a difficulty in program day-to-day administration and signing authority/responsibility. This practice, which overlooks an important feature of public guardianship, should end. The agency, not an individual, should be the named public guardian on orders.

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Appendix A: Cost Savings Calculation Explanation

Note: (→) indicate the inflation-adjusted values, according to CPI inflation rate.³

1. Nursing home (NH) day = (2018) \$268.⁴
2. Assisted living facility (ALF) day = (2018) \$115.⁵
3. Acute Hospital Day (AH) = (2015) \$2,446.⁶ → (2018) \$2,591.4.
4. State Hospital Day (SH), Northeast Florida State Hospital) = (2016) \$293.55.⁷ → (2018) \$307.13
5. Pre-paid Funeral = (2017) \$7,360 → (2018) \$7,540.⁸
6. Cost per client for securing community-based service to prevent moving to more restrictive environment = (2008) \$100⁹ → (2018) \$117
7. Cost saving of “Multiple Baker Act” = (2014) \$118.71 → (2018) \$126.45.¹⁰
8. Cost saving of “Multiple Arrest or APS” = \$763.09.¹¹
9. Cost-Saving per child adopted = (2011) \$ 15,480¹² → (2018) \$17,280.85

Action	Calculation	Cost
From SH to ALF	(SH) \$307.13/day - (ALF) \$115/day = \$192.13 x 30 days	\$5,763.9
From SH to NH	(SH) \$307.13/day - (NH) \$268/day = \$39.13 x 30 days	\$1,173.9
From AH to ALF	(AH) \$2,591.4/day - (ALF) \$115/day = \$1728 x 3 days	\$7,428
From AH to NH	(AH) \$2,591.4/day - (SH) \$268/day = \$1626 x 3 days	\$6,969

Assumptions:

- a. Patient would have stayed in state hospital for 30 days if not otherwise moved.
- b. Patient would have stayed in acute hospital for 3 days if not otherwise moved.
- c. For cost savings related to the Baker Act, we considered an inflation-adjusted average of the actual costs by representing the cost of mental health treatments reimbursed by Medicaid. Assuming that placement in programs lowers the cost of mental treatment under the Baker Act to zero, the cost savings of the program can be estimated as the average cost of mental health treatment. Thus, the value calculated for the cost savings per ward is \$126.45.
- d. Based on the APS cost savings that was calculated from data provided by Florida APS, the cost per unit was equal to \$763.09.

³ The following online inflation calculator is implemented in order to adjust values according to CPI:

<https://www.usinflationcalculator.com/>

⁴ <https://www.genworth.com/aging-and-you/finances/cost-of-care.html>

⁵ *ibid.*

⁶

<https://hcupnet.ahrq.gov/#query/eyJBTkFMWVNJU19UWVBFIjpbIkFUX1EiXSwiWUVBUiMiOlsiWVJmJmAxNSJdLCJlQVRFR09SSVpBVEIPTi9UWVBFIjpbIkNlU0FMTTCjdlCjRvUjdlR0kxRXZUEUjOlsiUVRUX09BII0sIkRBVEFTRVRfU09VUkNFIjpbIkRTX05JUyJdfQ==>

⁷

<https://www.google.com/url?q=http://www.dcf.state.fl.us/programs/samh/FASAMS/library/reports/examples/SMHTFs%2520Annual%2520Report%2520FY%252015-16,%2520Final.docx&sa=U&ved=0ahUKEwiHmNXuurvgAhVrUd8KHY8ZBTsQFggEMAA&client=internal-uds-cse&cx=008503041933476338818:uddc80mgfdo&usq=AOvVaw02q5wIRntSUycIF7uJ0S1->

⁸ <http://www.nfda.org/news/statistics>

⁹ We considered inflated value of \$100 in 2008 in 2018. To calculate the inflation rate of US between 2008-2018.

¹⁰ Average of the actual costs of mental health treatment according to (slide#6):

<http://www.namiflorida.org/storage/MikeHansenNAMIPresentation.pptx>

¹¹ The unit cost is calculated based on APS core budget divided by last number of FY Investigations.

¹² <https://www.adoptioncouncil.org/files/large/c29246a29debe09>

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19
Meeting Date

344
Bill Number (if applicable)

Topic Courts

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AARFP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11-5-19
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

344
Bill Number (if applicable)

Topic SB 344-Courts

Amendment Barcode (if applicable)

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Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Public Guardian Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

NOV/5 2019
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 344
Bill Number (if applicable)

Topic COURTS
Amendment Barcode (if applicable)

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Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CLAY COUNTY FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 358

INTRODUCER: The Committee on Judiciary and Senator Berman

SUBJECT: Decedents' Property

DATE: November 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 358 amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, which persons may sue to recover property for the estate, conflicts of interest by personal representatives, and notice in probate proceedings. The bill also amends the trust code regarding compensation of attorneys who serve as trustees.

More specifically, the bill:

- Prohibits an attorney who prepared or supervised the preparation of a will from being compensated as a personal representative of the estate unless the attorney is a relative of the decedent or makes specified disclosures to the testator before the will is prepared;
- Prohibits an attorney who prepared or supervised the preparation of a trust from being compensated as a trustee unless the attorney is a relative of the "settlor" (trust creator) or makes specified disclosures to the settlor before the trust is created;
- Provides that causes of action that a decedent held at death are estate property, and therefore subject to the control and possession of the personal representative (not the beneficiaries);
- Brings more types of transactions involving a personal representative's conflict of interest under the statute that renders these transactions voidable by an interested person;
- Clarifies what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding; and
- Categorizes as tangible property bullion and coins, such as collectible coins, that are not used as money.

II. Present Situation:

Conflict of Interests by Personal Representatives

Several types of transactions that involve a conflict of a personal representative's interests are avoidable by an interested person, except one who has consented after fair disclosure.¹ However, transactions that involve a conflict of the personal representative's interests are not avoidable if the will or a contract entered into by the decedent expressly authorized the transaction, or if it is authorized by a court after notice to interested persons.²

Compensation of Attorney Who Also Serves as Personal Representative or Trustee

An attorney licensed by The Florida Bar who serves as a personal representative of an estate and has rendered legal services in connection with the administration of the estate is allowed a fee for the legal services in addition to his or her fee as personal representative.³ However, the fee for legal services must be taken into account when determining the attorney's compensation for non-legal services as personal representative.⁴

Similarly, an attorney who provides legal services in his or her administration of the trust may accept reasonable compensation for the legal services in addition to his or her reasonable compensation as a trustee.⁵

Acquiring Jurisdiction Over a Person by Service of Formal Notice

Section 731.301(2), F.S., provides that, in a probate proceeding, "formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate or in the decedent's protected homestead." The courts have interpreted this to include jurisdiction over a person in an adversarial proceeding, including one in which an out-of-state law firm providing legal services for a Florida estate may be forced to pay money back to the estate.⁶

However, the Real Property, Probate, and Trust Law Section of The Florida Bar asserts that the personal jurisdiction contemplated in s. 731.301(2), F.S., does not include this type of proceeding.⁷ Rather, the Section asserts that formal notice is sufficient for the court to acquire jurisdiction over a person for the purpose of determining the person's rights to estate property.⁸

¹ Section 733.610, F.S.

² *Id.*

³ Section 733.617, F.S.

⁴ Section 733.612(19), F.S.

⁵ Section 733.0708(3), F.S.

⁶ *See, e.g., Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995).

⁷ Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient* (2019) (on file with the Senate Committee on Judiciary).

⁸ *Id.*

Precious Metals and Collectible Coins as Probate Assets

Florida law does not specify whether bullion or coins that are not commonly used as currency constitute tangible personal property. And according to the Real Property, Probate and Trust Law Section of The Florida Bar, there is a lack of consensus among practitioners regarding this issue.⁹ Accordingly, it is unclear whether certain directions given in a will would apply to collectible coins and bullion. Moreover, it is unclear whether certain provisions of law apply to these items. For example, s. 732.515, F.S., requires that “items of tangible property” be “specifically disposed of” by the will or by a separate writing. Because it is unclear whether bullion and collectible coins are tangible property, it is unclear whether they must be specifically disposed of pursuant to this statute.

Notice of Administration

Upon being appointed, a personal representative must serve a notice of administration on a surviving spouse, beneficiaries, and other interested parties.¹⁰ This document advises them of important rights and responsibilities relating to the estate.¹¹

Notice of Right to Take Elective Share

Section 733.212(2)(e), F.S., requires that a notice of administration include a statement alerting a surviving spouse that he or she has a specified time to choose the elective share. However, the notice need not alert the spouse that he or she has the option to ask the court to extend this time.¹² Accordingly, the notice of administration might lead a spouse to believe he or she does not have the option to move for the extension.

Notice of Right to Contest Trust Incorporated in a Will

A 2012 District Court of Appeal opinion appears to indicate that a person who wants to contest a trust that is incorporated by reference into a will must contest the will itself.¹³ Nonetheless, the law does not expressly require a personal representative to include this fact in the notice of administration. Moreover, there are different timeframes for contesting wills and trusts, and the timeframes for contesting a will might conclude sooner than those for contesting a trust.¹⁴ Accordingly, a person might have no idea that he or she must contest a will to contest a trust incorporated in the will, and might therefore fail to timely do so.

⁹ Probate Law and Procedure Committee, Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed Addition of § 731.1065, Florida Statutes* (2019) (on file with the Senate Committee on Judiciary).

¹⁰ Section 733.212(1), F.S.

¹¹ Section 733.212(2), F.S.

¹² See s. 732.2135(2), F.S.

¹³ See *Pasquale v. Loving*, 82 So. 3d 1205, 1207 (Fla. 4th DCA 2012) (stating “We note, first, that the Pasquales could not challenge the validity of the trust without also contesting the will. The trust was incorporated into the 2005 will.”)

¹⁴ A person may file a will contest within 3 months after receiving a notice of administration. Section 733.212(3), F.S. However, a challenge to a revocable trust within 6 months after receiving notice of the trust, or within the timeframes set forth within ch. 95, F.S., which can equate to 4 years from when a person learned of undue influence or some other basis for invalidating the trust. See s. 736.0604, F.S.; *Flanzer v. Kaplan*, 230 So. 3d 960 (Fla. 2d DCA 2017) (stating that the 4-year period begins to run when a beneficiary learns or should have learned of the wrongful conduct). Similarly, an action to challenge an irrevocable trust must be filed within 4 years after the person filing the action learned of or should have learned of the wrongful conduct. *Id.* at 961-62.

Actions for Recovery of Property Transferred Inter Vivos

The Florida Statutes grant a personal representative the right to sue to recover property for the estate.¹⁵ However, several Florida appellate courts have repeatedly indicated that this right is not exclusive, and thus that a beneficiary may also sue to recover property for the estate.¹⁶ Moreover, the personal representative is not an indispensable party to every action to recover property to the estate.¹⁷

III. Effect of Proposed Changes:

Additional Information Required in a Notice of Administration

Under the bill, just as under current law, the notice of administration must inform the surviving spouse of the standard timeframes within which he or she must choose the elective share or waive his or her right to it. However, under the bill the notice must also advise the surviving spouse that he or she may move the court for an extension of time to choose the elective share.

The bill also requires that the notice of administration state, “under certain circumstances and by failing to contest the will,” an interested person might waive his or her right to contest a *trust* that is incorporated by reference into the will.

Formal Notice in a Probate Proceeding

The bill provides that formal notice is sufficient notice to a person for a court to adjudicate the person’s interest in the estate property or in the decedent’s protected homestead. However, the bill specifies, this service of formal notice is not sufficient for the court to “acquire personal jurisdiction over [the] person.” So, for instance, a person given (only) formal notice could not be forced into court and made to pay damages in a probate litigation proceeding.¹⁸

Causes of Action that are Subject to Possession and Control of the Personal Representative

Under the bill, the definition of “property” in the probate code is broadened to include “causes of action of the estate and causes of action the decedent had at the time of death.” Therefore, these causes of action are subject to the “possession and control” of the personal representative, just as

¹⁵ Section 733.607, F.S. For example, a personal representative might sue to recover a car from a person who tricked an incapacitated testator into giving him or her the car *inter vivos*, thus precluding a beneficiary from inheriting the car unless the wrongful transfer is reversed.

¹⁶ See, e.g., *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016); but see *All Children’s Hospital, Inc. v. Owens*, 754 So. 2d 802, 806 (Fla. 2d DCA 2000) (stating that the “personal representative has specific statutory authority to recover estate assets,” and that the court “saw little value” in allowing beneficiaries to pursue their own actions to recover assets that were wrongfully transferred *inter vivos*).

¹⁷ See, e.g., *Id.*; *DeWitt v. Duce*, 408 So. 2d 216 (Fla. 1981).

¹⁸ According to the Real Property, Probate and Trust Law Section, the changes to s. 731.301(2), F.S., are intended to overrule *Rogers and Wells v. Winston*, 662 So. 2d 1303 (Fla. 4th DCA 1995) in which the Fourth DCA found that formal notice to a New York law firm handling Florida probate proceedings gave the trial court jurisdiction over the firm with respect to a payment dispute. See Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient* (2019) (on file with the Senate Committee on Judiciary). The law firm objected to the trial court’s assertion of jurisdiction because it had not been served with process.

other items of estate property are, such as the decedent's timepiece or automobile.¹⁹ Thus, it appears that the personal representative would be an indispensable party to these cases.²⁰

Personal Representative's Conflict of Interest

The bill renders voidable more types of sales, transactions, and encumbrances that involve a personal representative's conflict of interest than current law. Subject to exceptions, current law renders voidable a sale or encumbrance of estate assets to any corporation or trust in which the personal representative has a substantial beneficial interest. The bill also renders voidable any sale or encumbrance to a corporation, trust, *or other entity* in which the personal representative or his or her *spouse, agent, or attorney* has a substantial beneficial or *ownership* interest.

Compensation of a Personal Representative or Trustee Who is also an Attorney

The bill prohibits an attorney from being compensated as a personal representative if the attorney prepared or supervised the execution of a will that nominated the attorney or person related to the attorney as personal representative. However, the prohibition does not apply if the attorney or person nominated is related to the testator. The prohibition also does not apply if the attorney discloses the following information prior to the execution of the will:

- Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;
- Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and
- Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the personal representative.

However, for these disclosures to be sufficient, the testator must execute a written statement acknowledging that the disclosures were made before the will was executed. And the written statement must substantially be in the form set forth in the bill.

The bill provides virtually identical requirements for disclosures and acknowledgements regarding an attorney who serves as a trustee and desires to be compensated both in his or her role as attorney and as a trustee.

Precious Metals

The bill provides that for the purposes of the probate code, precious metals in any tangible form, including bullion or coins kept for purposes such as collecting and not for use as legal tender for

¹⁹ Section 733.607, F.S. *See also* s. 733.612, F.S. (granting a personal representative broad and specific authority to control estate property).

²⁰ Assuming the bill makes the personal representative indispensable in "causes of action of the estate and causes of action the decedent had at the time of death," the bill effectively abrogates *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016) and cases cited by the *Parker* court. In *Parker*, the Court held that the personal representative was *not* indispensable to several causes of action that were held by the decedent at death or that were otherwise causes of action of the estate, such as undue influence and replevin.

payment are tangible personal property. The bill provides that this classification of bullion and coins clarifies current law. Accordingly, the bill states that these clarifying provisions apply to all written instruments, as well as to all probate proceedings except those proceedings in which a disposition of these items has not been finally determined.

The bill takes effect October 1, 2020, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill includes two sections that are expressly intended to apply retroactively. The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively.²¹ First, there must be “clear evidence of legislative intent to apply the statute retrospectively.”²² If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.”²³ Retroactive application is unconstitutional if it deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated.²⁴

²¹ See, e.g., *Florida Ins. Guar. Ass’n, Inc. v. Devon Neighborhood Ass’n, Inc.*, 67 So. 3d 187, 194 (Fla. 2011).

²² *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494 (Fla. 1999).

²³ *Id.*

²⁴ *Id.* at 503 (citing *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949)).

Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.²⁵ Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”²⁶ Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.²⁷

The bill’s provisions that are intended for retroactive application do not appear to be likely to impair vested rights. However, this analysis is inherently fact-specific, and therefore difficult to perform in the abstract. Accordingly, as these provisions are applied to myriad unique circumstances, it is possible that a court may find that one or more of the provisions has destroyed a vested right in a given case, and therefore cannot be applied retroactively in that case.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 731.201, 731.301, 733.212, 733.610, 733.612, 733.617, and 736.0708.

The bill creates section 731.1065 of the Florida Statutes.

²⁵ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

²⁶ *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n., Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

²⁷ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on November 5, 2019

The committee substitute removes a provision of the bill that expressly stated that a personal representative has the exclusive right to maintain an action to recover estate property.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/05/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 86 - 133
and insert:

(2) In a probate proceeding, formal notice to a person is sufficient notice for the court to exercise its in rem ~~to~~ acquire jurisdiction over the ~~person receiving formal notice to~~ the ~~extent of the~~ person's interest in the estate property or in the decedent's protected homestead. The court does not acquire personal jurisdiction over a person by service of formal notice.

Section 4. The amendment made by this act to s. 731.301,



665556

Florida Statutes, applies to all proceedings pending on or before, or commenced after, the date this act becomes a law.

Section 5. Paragraph (e) of subsection (2) of section 733.212, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

733.212 Notice of administration; filing of objections.—

(2) The notice shall state:

(e) That, unless an extension is granted pursuant to s. 732.2135(2), an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(f) That, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving his or her right to contest the validity of a trust or other writing incorporated by reference into a will.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 18

and insert:

An act relating to estates and trusts; creating s. 731.1065, F.S.; specifying that precious metals are tangible personal property for the purposes of the Florida Probate Code; providing for retroactive application; amending s. 731.201, F.S.; revising the definition of the term "property"; amending s.



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41 731.301, F.S.; specifying that formal notice is not
42 sufficient to invoke a court's personal jurisdiction
43 over a person receiving such formal notice; providing
44 applicability; amending s. 733.212, F.S.; revising the
45 required contents of a notice of administration;
46 amending s. 733.610, F.S.;

By Senator Berman

31-00015B-20

2020358__

1 A bill to be entitled
 2 An act relating to decedents' property; creating s.
 3 731.1065, F.S.; specifying that precious metals are
 4 tangible personal property for the purposes of the
 5 Florida Probate Code; providing for retroactive
 6 application; amending s. 731.201, F.S.; revising the
 7 definition of the term "property"; amending s.
 8 731.301, F.S.; specifying that formal notice is not
 9 sufficient to invoke a court's personal jurisdiction
 10 over a person receiving such formal notice; providing
 11 applicability; amending s. 733.212, F.S.; revising the
 12 required contents of a notice of administration;
 13 amending s. 733.607, F.S.; specifying that a personal
 14 representative has the exclusive right to maintain an
 15 action to recover possession of property or determine
 16 the title to property; specifying that a personal
 17 representative does not have a duty to maintain
 18 certain causes of action; amending s. 733.610, F.S.;
 19 expanding the list of sales or encumbrances that are
 20 voidable by interested persons under certain
 21 circumstances; amending s. 733.612, F.S.; revising the
 22 types of claims and proceedings a personal
 23 representative may properly prosecute or defend;
 24 amending s. 733.617, F.S.; specifying that certain
 25 attorneys and persons are not entitled to compensation
 26 for serving as a personal representative unless the
 27 attorney or person is related to the testator or
 28 unless certain disclosures are made before a will is
 29 executed; requiring the testator to execute a written

Page 1 of 13

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31-00015B-20

2020358__

30 statement that acknowledges that certain disclosures
 31 were made; providing requirements for the written
 32 statement; specifying when an attorney is deemed to
 33 have prepared or supervised the execution of a will;
 34 specifying how a person may be related to an
 35 individual; specifying when an attorney or a person
 36 related to the attorney is deemed to have been
 37 nominated in a will; providing construction; providing
 38 applicability; amending s. 736.0708, F.S.; specifying
 39 that certain attorneys and persons are not entitled to
 40 compensation for serving as a trustee unless the
 41 attorney or person is related to the settlor or unless
 42 certain disclosures are made before the trust
 43 instrument is executed; requiring a settlor to execute
 44 a written statement that acknowledges that certain
 45 disclosures were made; providing requirements for the
 46 written statement; specifying when an attorney is
 47 deemed to have prepared or supervised the execution of
 48 a trust instrument; specifying how a person may be
 49 related to an individual; specifying when an attorney
 50 or a person related to the attorney is deemed
 51 appointed in a trust instrument; providing
 52 construction; providing applicability; providing
 53 effective dates.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Effective July 1, 2020, section 731.1065,
 58 Florida Statutes, is created to read:

Page 2 of 13

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31-00015B-20

2020358__

731.1065 Precious metals.—

(1) For the purposes of the code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

(2) This section is intended to clarify existing law and applies retroactively to all written instruments executed before, on, or after July 1, 2020, as well as all proceedings pending or commenced before, on, or after July 1, 2020, in which the disposition of precious metals in any tangible form has not been finally determined.

Section 2. Subsection (32) of section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(32) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership, including causes of action of the estate and causes of action the decedent had at the time of death.

Section 3. Effective upon this act becoming a law, subsection (2) of section 731.301, Florida Statutes, is amended to read:

731.301 Notice.—

(2) In a probate proceeding, formal notice is sufficient to acquire in rem jurisdiction over the person receiving formal

31-00015B-20

2020358__

notice to the extent of the person's interest in the estate or in the decedent's protected homestead. Formal notice is not sufficient to invoke the court's personal jurisdiction over the person receiving formal notice.

Section 4. The amendment made by this act to s. 731.301, Florida Statutes, applies to all proceedings pending on or before, or commenced after, the date this act becomes a law.

Section 5. Paragraph (e) of subsection (2) of section 733.212, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

733.212 Notice of administration; filing of objections.—

(2) The notice shall state:

(e) That, unless an extension is granted pursuant to s. 732.2135(2), an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(f) That, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving his or her right to contest the validity of a trust or other writing incorporated by reference into a will.

Section 6. Subsection (1) of section 733.607, Florida Statutes, is amended to read:

733.607 Possession of estate.—

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the

31-00015B-20

2020358__

protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and has the exclusive right to ~~may~~ maintain an action to recover possession of property or to determine the title to it. The personal representative does not have a duty to maintain a cause of action that has been abandoned, assigned, distributed, or otherwise adjudicated by court order.

Section 7. Effective July 1, 2020, section 733.610, Florida Statutes, is amended to read:

733.610 Sale, encumbrance, or transaction involving conflict of interest.—Any sale or encumbrance to the personal representative or the personal representative's spouse, agent, or attorney, or any corporation, other entity, or trust in which the personal representative, or the personal representative's spouse, agent, or attorney, has a substantial beneficial or ownership interest, or any transaction that is affected by a conflict of interest on the part of the personal representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

31-00015B-20

2020358__

(1) The will or a contract entered into by the decedent expressly authorized the transaction; or

(2) The transaction is approved by the court after notice to interested persons.

Section 8. Subsection (20) of section 733.612, Florida Statutes, is amended to read:

733.612 Transactions authorized for the personal representative; exceptions.—Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, without court order, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate, of the decedent's property, and of the personal representative.

Section 9. Subsection (6) of section 733.617, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

733.617 Compensation of personal representative.—

(6) Except as otherwise provided in this section, if the personal representative is a member of The Florida Bar and has rendered legal services in connection with the administration of the estate, then in addition to a fee as personal representative, there also shall be allowed a fee for the legal services rendered.

(8) (a) An attorney serving as a personal representative, or a person related to the attorney, is not entitled to compensation for serving as a personal representative if the attorney prepared or supervised the execution of the will that

31-00015B-20

2020358

175 nominated the attorney or person related to the attorney as
 176 personal representative, unless the attorney or person nominated
 177 is related to the testator, or the attorney makes the following
 178 disclosures to the testator before the will is executed:

179 1. Subject to certain statutory limitations, most family
 180 members, regardless of their residence, and any other persons
 181 who are residents of Florida, including friends and corporate
 182 fiduciaries, are eligible to serve as a personal representative;

183 2. Any person, including an attorney, who serves as a
 184 personal representative is entitled to receive reasonable
 185 compensation for serving as a personal representative; and

186 3. Compensation payable to the personal representative is
 187 in addition to any attorney fees payable to the attorney or the
 188 attorney's firm for legal services rendered to the personal
 189 representative.

190 (b)1. The testator must execute a written statement
 191 acknowledging that the disclosures required under paragraph (a)
 192 were made prior to the execution of the will. The written
 193 statement must be in a separate writing from the will but may be
 194 annexed to the will. The written statement may be executed
 195 before or after the execution of the will in which the attorney
 196 or related person is nominated as the personal representative.

197 2. The written statement must be in substantially the
 198 following form:

199
 200 I, ...(Name)..., declare that:

201
 202 I have designated my attorney, an attorney employed in the
 203 same law firm as my attorney, or a person related to my attorney

Page 7 of 13

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31-00015B-20

2020358

204 as a nominated personal representative in my will or codicil
 205 dated ...(insert date)....

206
 207 Before executing the will or codicil, I was informed that:

208 1. Subject to certain statutory limitations, most family
 209 members, regardless of their residence, and any other
 210 individuals who are residents of Florida, including friends and
 211 corporate fiduciaries, are eligible to serve as a personal
 212 representative.

213 2. Any person, including an attorney, who serves as a
 214 personal representative is entitled to receive reasonable
 215 compensation for serving as a personal representative.

216 3. Compensation payable to the personal representative is
 217 in addition to any attorney fees payable to the attorney or the
 218 attorney's firm for legal services rendered to the personal
 219 representative.

220
 221 ...(Signature)...

222 ...(Testator)...

223 ...(Insert date)...

224
 225 (c) For purposes of this subsection:

226 1. An attorney is deemed to have prepared or supervised the
 227 execution of a will if the preparation or supervision of the
 228 execution of the will was performed by an employee or attorney
 229 employed by the same firm as the attorney at the time the will
 230 was executed.

231 2. A person is "related" to an individual if, at the time
 232 the attorney prepared or supervised the execution of the will,

Page 8 of 13

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31-00015B-20

2020358__

the person is:

a. A spouse of the individual;

b. A lineal ascendant or descendant of the individual;

c. A sibling of the individual;

d. A relative of the individual or of the individual's spouse with whom the attorney maintains a close, familial relationship;

e. A spouse of a person described in sub-subparagraphs b.-d.;

f. A person who cohabitates with the individual; or

g. An employee or attorney employed by the same firm as the attorney at the time the will is executed.

3. An attorney or a person related to the attorney is deemed to have been nominated in the will when the will nominates the attorney or the person related to the attorney as personal representative, co-personal representative, successor, or alternate personal representative in the event another person nominated is unable to or unwilling to serve, or provides the attorney or any person related to the attorney with the power to nominate the personal representative and the attorney or person related to the attorney was nominated using that power.

(d) Other than compensation payable to the personal representative, this subsection does not limit any rights or remedies that any interested person may have at law or in equity.

(e) The failure to obtain an acknowledgment from the testator under this subsection does not disqualify a personal representative from serving and does not affect the validity of a will.

31-00015B-20

2020358__

(f) This subsection applies to all nominations made pursuant to a will:

1. Executed by a resident of this state on or after October 1, 2020; or

2. Republished by a resident of this state on or after October 1, 2020, if the republished will nominates the attorney who prepared or supervised the execution of the instrument that republished the will, or a person related to such attorney, as personal representative.

Section 10. Subsection (4) is added to section 736.0708, Florida Statutes, to read:

736.0708 Compensation of trustee.—

(4)(a) An attorney serving as a trustee, or a person related to such attorney, is not entitled to compensation for serving as a trustee if the attorney prepared or supervised the execution of the trust instrument that appointed the attorney or person related to the attorney as trustee, unless the attorney or person appointed is related to the settlor or the attorney makes the following disclosures to the settlor before the trust instrument is executed:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of state of residence and including a family member, friend, or corporate fiduciary, is eligible to serve as a trustee;

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee; and

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney's firm

31-00015B-20

2020358__

for legal services rendered to the trustee.

(b)1. The settlor must execute a written statement acknowledging that the disclosures required under paragraph (a) were made prior to the execution of the trust instrument. The written statement must be in a separate writing from the trust instrument but may be annexed to the trust instrument. The written statement may be executed before or after the execution of the trust in which the attorney or related person is appointed as the trustee.

2. The written statement must be in substantially the following form:

I, ... (Name) ..., declare that:

I have designated my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney as a trustee in my trust instrument dated ... (insert date)

Before executing the trust, I was informed that:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of state of residence and including family members, friends, and corporate fiduciaries, is eligible to serve as a trustee.

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee.

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the trustee.

31-00015B-20

2020358__

... (Signature) ...

... (Settlor) ...

... (Insert Date) ...

(c) For purposes of this subsection:

1. An attorney is deemed to have prepared, or supervised the execution of, a trust instrument if the preparation, or supervision of the execution, of the trust instrument was performed by an employee or attorney employed by the same firm as the attorney at the time the trust instrument was executed.

2. A person is "related" to an individual if, at the time the attorney prepared or supervised the execution of the trust instrument, the person is:

a. A spouse of the individual;

b. A lineal ascendant or descendant of the individual;

c. A sibling of the individual;

d. A relative of the individual or of the individual's spouse with whom the attorney maintains a close, familial relationship;

e. A spouse of a person described in sub-subparagraphs b.-

d.;

f. A person who cohabitates with the individual; or

g. An employee or attorney employed by the same firm as the attorney at the time the trust instrument is executed.

3. An attorney or a person related to the attorney is deemed appointed in the trust instrument when the trust instrument appoints the attorney or the person related to the attorney as trustee, co-trustee, successor, or alternate trustee

31-00015B-20

2020358

in the event another person nominated is unable to or unwilling to serve, or provides the attorney or any person related to the attorney with the power to appoint the trustee and the attorney or person related to the attorney was appointed using that power.

(d) Other than compensation payable to the trustee, this subsection does not limit any rights or remedies that any interested person may have at law or equity.

(e) The failure to obtain an acknowledgment from the settlor under this subsection does not disqualify a trustee from serving and does not affect the validity of a trust instrument.

(f) This subsection applies to all appointments made pursuant to a trust agreement:

1. Executed by a resident of this state on or after October 1, 2020; or

2. Amended by a resident of this state on or after October 1, 2020, if the trust agreement nominates the attorney who prepared or supervised the execution of the amendment or a person related to such attorney as trustee.

Section 11. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect October 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 15, 2019

I respectfully request that **Senate Bill #358**, relating to Decedents' Property, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script, appearing to read "Lori Berman", is written over a horizontal line.

Senator Lori Berman
Florida Senate, District 31

Cc: Senator Jose Javier Rodriguez, Vice Chair
Tom Cibula, Staff Director

REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

WHITE PAPER

Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient.

I. SUMMARY

Appellate court opinions in several cases have determined that service by formal notice under the Florida Probate Rules is sufficient for a probate court to acquire *in personam* jurisdiction over persons deemed to be “interested persons” under the Florida Probate Code. There is no authority in statutes or the probate rules suggesting that to be the law, and the Ad Hoc Jurisdiction & Service of Process Committee, although acknowledging that it is possible to provide such authority in a manner that complies with due process, believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure.

II. CURRENT SITUATION

In a series of decisions, the Second District Court of Appeal has held that those who are deemed to be “interested persons” within the meaning of F.S. 731.201(23) (i.e., those who may reasonably be expected to be affected by the outcome of a particular proceeding) may be subjected to personal jurisdiction by the service of formal notice pursuant to F.S. 731.301(2). Payette v. Clark, 559 So.2d 630 (2d DCA 1990); Kountze v. Kountze, 20 So.3d 428 (2d DCA 2009); Hall v. Tungett, 980 So.2d 1289 (2d DCA 2008); Galego v. Robinson, 695 So.2d 443 (2d DCA 1997). The Fourth District Court of Appeal has agreed, at least in cases where law firms or attorneys have rendered legal services to a Florida probate estate, that they are interested persons and that *in personam* jurisdiction (for the purpose of reviewing and potentially ordering refund of fees paid) could be acquired by service of formal notice. Rogers & Wells v. Winston, 662 So.2d 1303 (4th DCA 1995); Simmons v. Est. of Baranowitz, 189 So.3d 819 (4th DCA 2015).

Prior to October 1, 2010, when all of the foregoing cases except Baranowitz were decided, F.S. 731.301(2) read as follows:

(2) Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate.

Effective October 1, 2010, the subsection was amended to read as it does today:

(2) *In a probate proceeding*, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the

person's interest in the estate or in the decedent's protected homestead.
[Emphasis added].

By statute, probate proceedings are *in rem*, meaning that the court has jurisdiction over the will, if any, the tangible and intangible assets of the decedent's estate (wherever located), and real estate located in Florida, all without the necessity of any original process. F.S. 731.105; *Also see In re: Estate of Williamson*, 95 So.2d 244 (Fla. 1957). Service by formal notice is one method of complying with due process requirements necessary to invoke the court's *in rem* jurisdiction over those receiving the notice to the extent of their interest in the estate. Even without addition of the phrase, "in a probate proceeding," the statute is easily read to be addressing only a means of notice to persons subject to the court's *in rem* jurisdiction that is calculated to effect due process over those receiving the notice.

Formal notice is not judicial process, and is not the equivalent of a summons. For example, nowhere in the Florida Probate Code does it provide that a default may be entered after service of Formal Notice, as would be the case with judicial process. Formal notice does not support *in personam* jurisdiction because formal notice is not judicial process, is not issued under the seal of the court, nor is it typically served as provided in Chapter 48. If the clerk's seal is not affixed to judicial process, it is void and cannot be used to obtain personal jurisdiction. 12A FLA.JUR2d *Courts and Judges* §§ 53-55 and 61-62. While acknowledging that it is possible to provide such authority in a manner that complies with due process, the Committee believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other judicial process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure. By requiring compliance with the existing procedural rules for acquiring personal jurisdiction, the safeguards that assure actual notice by the person over whom personal jurisdiction is sought are preserved.

Personal jurisdiction is neither contemplated nor required in a majority of adversary proceedings in probate. Of those specific adversary proceedings listed in Probate Rule 5.025(a) that require service of formal notice, only surcharge of a personal representative or guardian requires *in personam* jurisdiction, and those fiduciaries have submitted to the court's personal jurisdiction by instituting or participating in the court proceedings. See *Payette v. Clark*, 559 So.2d 630 (2d DCA 1990) (filing of a petition for administration subjects the personal representative to *in personam* jurisdiction "for all purposes related to the administration").

Thus the formal notice procedure was never intended to be a method of obtaining personal jurisdiction over persons having an interest in the probate estate. *In Re Estate of Black*, 528 So.2d 1316 (Fla. 2d DCA 1988); *In Re Estate of Vernon*, 608 So.2d 510 (Fla. 4th DCA 1992). Formal notice is a method of service of notice to a person subject to the court's *in rem* jurisdiction. It is not a summons or judicial process that confers *in personam* jurisdiction over the recipient.

The notion that any person determined to be an “interested person” can be subjected to personal jurisdiction by service of formal notice is incorrect and can be made clear by the proposed amendment to F.S. 731.301.

III. EFFECT OF PROPOSED CHANGES

The proposed amendment to section 7331.301(2) provides:

In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead. Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving notice regardless of the manner in which it is served.

The proposed amendment would change the result in each of the cases cited in the first paragraph of Section II above. In those factual situations it would be necessary for the petitioners to obtain personal jurisdiction over the adverse parties by traditional means such as service of a summons pursuant to Chapter 48, Florida Statutes.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

Florida Justice Association, Inc.

A bill to be entitled

An act relating to personal jurisdiction of probate courts over persons having an interest in an estate; amending s. 731.301, F.S.; providing that in personam jurisdiction over interested persons cannot be acquired by service of formal notice.

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

Section 1. Subsection (2) of section 731.301, Florida Statutes, is amended to read:

731.301 Notice

(2) In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate or in the decedent's protected homestead. Formal notice is not sufficient to invoke the court's personal jurisdiction over the person receiving notice regardless of the manner in which it is served.

Section 2. This act shall take effect upon becoming law and shall apply to formal notice given on or after such date.

**The Florida Bar
Real Property, Probate and Trust Law Section
Probate Law and Procedure Committee
Coins and Bullion Subcommittee**

WHITE PAPER

Proposed Addition of § 731.1065, Florida Statutes

I. SUMMARY

The proposed bill would create § 731.1065, Fla. Stat. to: i) specify that precious metals in any tangible form, such as bullion and coins that are kept apart from their normal use as legal tender for payment, constitute tangible personal property for purposes of the Florida Probate Code without foreclosing the possibility that other items may also constitute tangible personal property; and ii) create a bright line rule as to the disposition of such items identified in a separate writing that complies with § 732.515, Fla. Stat.

II. CURRENT SITUATION

The relevant Florida law does not specify whether certain types of precious metals, such as coins and bullion, that are regularly held by individuals dying in this State constitute “tangible personal property” (which is subject to devise by a tangible personal property clause in a will or a separate writing) or intangible property (which generally passes in accordance with a residuary clause in a will in absence of other specific direction). Specifically:

- The Florida Probate Code does not specify whether these items are “tangible personal property.”
- No Florida cases specifically address this issue; only a Delaware state case has analyzed § 732.515. *In re Last Will and Testament and Trust Agreement of Moor*, 879 A.2d 648, 649 (Del.Ch. Jun 08, 2005) (court noted that money is not specifically excluded under Section 732.515; did not specifically address coins or bullion).
- There is a lack of consensus among practitioners on this issue.

The subcommittee researched the probate code in other states and did not find any state classifying precious metals as intangible property. Washington and California's probate code specifically provide that precious metals are tangible personal property (in each state's separate writing statute).

III. EFFECT OF THE PROPOSED CHANGE

Section X. Section 731.1065, Florida Statutes, is created to read:

In this code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

Section X. The amendment made by this act to s. 731.1065 is intended to clarify existing law, and applies retroactively to all written instruments executed before or after July 1, 2019, as well as all proceedings pending or commenced before or after July 1, 2019 in which the disposition of precious metals in any tangible form has not been finally determined.

While the definition does not create a bright line rule of construction for purposes of a tangible personal property clause in a will, the definition serves as indicia that bullion and coins are ordinarily considered tangible personal property in the probate context. As such, the definition may provide clarity in circumstances where the Will does not specify what tangible personal property is and no other evidence of the testator's intent is apparent.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT - None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR - None.

VI. CONSTITUTIONAL ISSUES – None.

VII. OTHER INTERESTED PARTIES - None.

VIII. EFFECTIVE DATE

The addition of § 731.1065, Fla. Stat. is remedial in nature, is intended to clarify existing law, and would apply retroactively to all written instruments executed before or after July 1,

2019, as well as all proceedings pending or commenced before or after July 1, 2019 in which the disposition of precious metals in any tangible form has not been finally determined.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19

Meeting Date

358

Bill Number (if applicable)

665556

Amendment Barcode (if applicable)

Topic Decedent's Property

Name Sarah Butters

Job Title _____

Address 4049 Shady View Lane

Street

TLH

City

FL

State

32311

Zip

Phone (850) 425-5447

Email sbutters@awsley.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing RPPTL-FL Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 374

INTRODUCER: Senator Rouson

SUBJECT: Housing Discrimination

DATE: November 4, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Favorable
2. _____	_____	GO	_____
3. _____	_____	RC	_____

I. Summary:

SB 374 clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;
- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially chose whether to pursue remedies in a judicial proceeding or an administrative proceeding.

II. Present Situation:

Overview

This state's District Courts of Appeal have held that the Florida Fair Housing Act (FFHA) requires an alleged victim of housing discrimination to exhaust his or her administrative remedies before filing a civil action under the FFHA. However, federal District Courts (trial courts) in Florida have repeatedly disagreed with this interpretation, as has the U.S. Department of Housing and Urban Development (HUD).

HUD has also repeatedly stated that the FFHA, as interpreted by the DCAs, is inconsistent with the federal Fair Housing Act. Accordingly, HUD has advised the Commission for several years

that the Commission may be disqualified from receiving federal funding from HUD through the Fair Housing Assistance Program if Florida law is not conformed to the federal act.

The Florida Fair Housing Act (FFHA)

Purpose of the FFHA

The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.¹ In addition, the FFHA affords protection to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.²

Timeline for Filing and Processing Claims

A person alleging discrimination under the FFHA has 1 year after the discriminatory housing practice to file a complaint with the Commission.³ The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.⁴ The Commission may also decide to resolve the complaint and eliminate or correct the discriminatory housing practice through conciliation.⁵ If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the victim may initiate a civil action or file petition for an administrative determination.⁶ If the Commission finds reasonable cause to believe that housing discrimination has occurred, the claimant may request that the Attorney General bring an action against the respondent.⁷

A civil action must be commenced within 2 years after the alleged discriminatory act occurred.⁸ The court may continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.⁹ If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief, which may include compensatory or punitive damages.¹⁰ If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.¹¹

The Commission may institute a civil action if it is unable to achieve voluntary compliance with the FFHA and the Commission is not required to have petitioned for an administrative hearing or

¹ Section 760.23(1), F.S.

² Sections 760.23(6)-(9), F.S.

³ Section 760.34(1) and (2), F.S.

⁴ Section 760.34(1), F.S.

⁵ *Id.*

⁶ Section 760.34(4), F.S.

⁷ *Id.*

⁸ Section 760.35(1), F.S.

⁹ *Id.*

¹⁰ Section 760.35(2), F.S.

¹¹ Section 760.35(3), F.S.

exhausted its administrative remedies prior to bringing a civil action.¹² Remedies available under the FFHA include fines and actual and punitive damages.¹³ The court may also award reasonable attorney fees and costs to the Commission.¹⁴

The Commission, or any local agency certified as substantially equivalent, may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law.¹⁵ The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.¹⁶

State and Federal Courts Disagree Regarding the Need to Exhaust Administrative Remedies

In at least three cases, the District Courts of Appeal have held that a person must exhaust his or her administrative remedies before filing a civil action alleging housing discrimination under the FFHA.¹⁷ However, the United States District Courts (federal trial courts) for the Middle and Southern Districts of Florida have held the opposite.¹⁸ The different outcomes are the result of different interpretations of the FFHA, thus suggesting that the FFHA could be clearer as to whether a person must exhaust his or her administrative remedies before filing a civil action.

The Fair Housing Assistance Program

Eligibility for Participation in the FHAP

The federal Fair Housing Assistance Program (FHAP) permits the United States Department of Housing and Urban Development (HUD) to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act.¹⁹ To be eligible for participation in the FHAP, a state or local agency must enforce a fair housing law that is substantially equivalent to the federal Fair Housing Act.²⁰ HUD will then certify these agencies as substantially equivalent, qualifying the agencies for federal funding.²¹

¹² Section 760.34(7)(a), F.S.

¹³ Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.

¹⁴ Section 760.34(7)(c), F.S.

¹⁵ Sections 760.22(9) and 760.34(8), F.S.

¹⁶ Section 760.34(8), F.S.

¹⁷ See *Housing Opportunities Project v. SPV Realty, LC* 212 So. 3d 419 (Fla. 3d DCA 2016); *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012).

¹⁸ See *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436 (S.D. Fla. 2010); *Serota v. Carriage Hills Condominium Ass'n, Inc.* 2014 WL 3894264 (S.D. Fla. 2014); *Floyd v. City of Sanibel*, 2017 WL 78638 (S.D. Fla. 2017).

¹⁹ United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP)*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Oct. 31, 2019).

²⁰ *Id.*

²¹ *Id.*

The Florida Commission on Human Relations, and its Prospects for Continued Eligibility

In this state, the Florida Commission on Human Relations is the main agency certified as substantially equivalent.²² Monies the Commission receives from HUD under the FHAP are placed into the Commission's Operating Trust Fund. However, as recently as 2016, HUD warned the Commission by letter that it was at risk of suspension and withdrawal from the FHAP because the FFHA, which the Commission administers, is not substantially equivalent to the federal Fair Housing Act.²³ Particularly, HUD stated that the laws are not substantially equivalent because the federal Fair Housing Act permits a person alleging housing discrimination to file a civil action regardless of whether he or she has exhausted administrative remedies, while the FFHA, as interpreted by the DCAs, requires the exhaustion of administrative remedies before filing a civil action.²⁴

In 2019, the FHCR was suspended by HUD on different grounds.²⁵ In correspondence pertaining primarily to those other issues, HUD nonetheless pointed out the "continuing substantial equivalency issues" created by the FFHA as interpreted by the DCAs.²⁶

HUD's Reimbursement of the Commission under the FHAP, by the Numbers

As part of the Fair Housing Assistance Program, HUD reimburses the Commission for resolving housing cases. The reimbursement monies are placed into the Human Relation's Operating Trust Fund. In Fiscal Year 2018-2019, these payments totaled \$507,061 for the 2018 grant period. This amount was 45.99% of the Commission's Operating Trust fund for that year.²⁷ In Fiscal Year 2017-18, these payments totaled \$611,721, which was 49.89% of the Commission's Operating Trust Fund.²⁸

III. Effect of Proposed Changes:

The bill clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;

²² Six local agencies also qualify: the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. *See* United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Oct. 31, 2019).

²³ *See* Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (Mar. 16, 2016); Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 2, 2015) (on file with the Senate Committee on Judiciary).

²⁴ *Id.*

²⁵ United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Region IV, *Post-Suspension Performance Assessment Report* (Aug. 8, 2019).

²⁶ *Id.*

²⁷ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (Oct. 31, 2019) (on file with the Senate Committee on Judiciary).

²⁸ Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).

- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially whether to pursue remedies in court or through an administrative proceeding.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The passage of the bill might be necessary to allow the Florida Commission on Human Relations to continue to receive federal reimbursement for the Commission's resolution

of housing discrimination cases. Without the bill, the Commission may be disqualified from receiving this funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Rouson

19-00605-20

2020374__

1 A bill to be entitled
 2 An act relating to housing discrimination; amending s.
 3 760.07, F.S.; removing housing discrimination as a
 4 cause of action for certain relief and damages
 5 stemming from violations of the Florida Civil Rights
 6 Act of 1992; amending s. 760.34, F.S.; revising the
 7 conditions under which an aggrieved person may
 8 commence a civil action in any appropriate court
 9 against a specified respondent to enforce specified
 10 rights; providing that the aggrieved person does not
 11 need to pursue certain other remedies before
 12 commencing a civil action; making technical changes;
 13 amending s. 760.35, F.S.; authorizing, rather than
 14 requiring, a civil action to commence within a
 15 specified period after an alleged discriminatory
 16 housing practice; authorizing an aggrieved person to
 17 commence a civil action regardless of certain
 18 circumstances; prohibiting an aggrieved person from
 19 filing a specified action in certain circumstances;
 20 providing an exception; prohibiting an aggrieved
 21 person from commencing a specified civil action if an
 22 administrative law judge has commenced a hearing on
 23 the record on the allegation; making technical
 24 changes; providing an effective date.
 25
 26 Be It Enacted by the Legislature of the State of Florida:
 27
 28 Section 1. Section 760.07, Florida Statutes, is amended to
 29 read:

Page 1 of 8

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19-00605-20

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30 760.07 Remedies for unlawful discrimination.—Any violation
 31 of any Florida statute that makes ~~making~~ unlawful discrimination
 32 because of race, color, religion, gender, pregnancy, national
 33 origin, age, handicap, or marital status in the areas of
 34 education, employment, ~~housing~~, or public accommodations gives
 35 rise to a cause of action for all relief and damages described
 36 in s. 760.11(5), unless greater damages are expressly provided
 37 for. If the statute prohibiting unlawful discrimination provides
 38 an administrative remedy, the action for equitable relief and
 39 damages provided for in this section may be initiated only after
 40 the plaintiff has exhausted his or her administrative remedy.
 41 The term "public accommodations" does not include lodge halls or
 42 other similar facilities of private organizations which are made
 43 available for public use occasionally or periodically. The right
 44 to trial by jury is preserved in any case in which the plaintiff
 45 is seeking actual or punitive damages.
 46 Section 2. Section 760.34, Florida Statutes, is amended to
 47 read:
 48 760.34 Enforcement.—
 49 (1) Any person who claims to have been injured by a
 50 discriminatory housing practice or who believes that he or she
 51 will be injured by a discriminatory housing practice that is
 52 about to occur may file a complaint with the commission.
 53 Complaints shall be in writing and ~~shall~~ contain such
 54 information and be in such form as the commission requires. Upon
 55 receipt of such a complaint, the commission shall furnish a copy
 56 to the person or persons who allegedly committed the
 57 discriminatory housing practice or are about to commit the
 58 alleged discriminatory housing practice. Within 100 days after

Page 2 of 8

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19-00605-20

2020374

receiving a complaint, or within 100 days after the expiration of any period of reference under subsection (3), the commission shall investigate the complaint and give notice in writing to the ~~aggrieved~~ person ~~aggrieved~~ whether it intends to resolve it. If the commission decides to resolve the complaint, it shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned. Any employee of the commission who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who files a complaint under subsection (1) must do so ~~be filed~~ within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must ~~shall~~ be verified.

(3) ~~If wherever~~ a local fair housing law provides rights

Page 3 of 8

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19-00605-20

2020374

and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in ss. 760.20-760.37, the commission shall notify the appropriate local agency of any complaint filed under ss. 760.20-760.37 which appears to constitute a violation of the local fair housing law, and the commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days after ~~from~~ the date the alleged offense was brought to his or her attention, commenced proceedings in the matter. In no event shall the commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(4) ~~If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37, The aggrieved person aggrieved may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination under pursuant to s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37 and is not required to petition for an administrative hearing or exhaust administrative remedies before commencing such action.~~ If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the aggrieved person ~~aggrieved~~, the Attorney General may bring an action in the name of the state on

Page 4 of 8

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19-00605-20

2020374

117 behalf of the aggrieved person to enforce ~~the provisions of~~ ss.
118 760.20-760.37.

119 (5) In any proceeding brought ~~under pursuant to~~ this
120 section or s. 760.35, the burden of proof is on the complainant.

121 (6) ~~If whenever~~ an action filed in court ~~under pursuant to~~
122 this section or s. 760.35 comes to trial, the commission shall
123 immediately terminate all efforts to obtain voluntary
124 compliance.

125 (7) (a) The commission may institute a civil action in any
126 appropriate court if it is unable to obtain voluntary compliance
127 with ss. 760.20-760.37. The commission does need not have to
128 petition petitioned for an administrative hearing or exhaust
129 exhausted its administrative remedies before prior to bringing a
130 civil action.

131 (b) The court may impose the following fines for each
132 violation of ss. 760.20-760.37:

133 1. Up to \$10,000, if the respondent has not previously been
134 found guilty of a violation of ss. 760.20-760.37.

135 2. Up to \$25,000, if the respondent has been found guilty
136 of one prior violation of ss. 760.20-760.37 within the preceding
137 5 years.

138 3. Up to \$50,000, if the respondent has been found guilty
139 of two or more violations of ss. 760.20-760.37 within the
140 preceding 7 years.

141
142 In imposing a fine under this paragraph, the court shall
143 consider the nature and circumstances of the violation, the
144 degree of culpability, the history of prior violations of ss.
145 760.20-760.37, the financial circumstances of the respondent,

Page 5 of 8

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19-00605-20

2020374

146 and the goal of deterring future violations of ss. 760.20-
147 760.37.

148 (c) The court shall award reasonable ~~attorney attorney's~~
149 fees and costs to the commission in any action in which the
150 commission prevails.

151 (8) Any local agency certified as substantially equivalent
152 may institute a civil action in any appropriate court, including
153 circuit court, if it is unable to obtain voluntary compliance
154 with the local fair housing law. The agency does need not have
155 to petition petitioned for an administrative hearing or exhaust
156 exhausted its administrative remedies before prior to bringing a
157 civil action. The court may impose fines as provided in the
158 local fair housing law.

159 Section 3. Section 760.35, Florida Statutes, is amended to
160 read:

161 760.35 Civil actions and relief; administrative
162 procedures.—

163 (1) An aggrieved person may commence a civil action ~~shall~~
164 ~~be commenced~~ no later than 2 years after an alleged
165 discriminatory housing practice has occurred. However, the court
166 shall continue a civil case brought ~~under pursuant to~~ this
167 section or s. 760.34 ~~from time to time~~ before bringing it to
168 trial if the court believes that the conciliation efforts of the
169 commission or local agency are likely to result in satisfactory
170 settlement of the discriminatory housing practice complained of
171 in the complaint made to the commission or to the local agency
172 and which practice forms the basis for the action in court. Any
173 sale, encumbrance, or rental consummated before prior to the
174 issuance of any court order issued under the authority of ss.

Page 6 of 8

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19-00605-20

2020374

760.20-760.37 and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of ss. 760.20-760.37 is shall not be affected.

(2) An aggrieved person may commence a civil action under this section regardless of whether a complaint has been filed under s. 760.34(1) and regardless of the status of any such complaint. If the commission has obtained a conciliation agreement with the consent of an aggrieved person under s. 760.36, the aggrieved person may not file any action under this section regarding the alleged discriminatory housing practice that forms the basis for the complaint except for the purpose of enforcing the terms of the conciliation agreement.

(3) An aggrieved person may not commence a civil action under this section regarding an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record on the allegation.

(4)(2) If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney ~~attorney's~~ fees and costs.

(5) (a) (3) (a) If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or

2. The aggrieved person ~~aggrieved~~ may request

19-00605-20

2020374

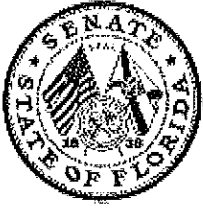
administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted under ~~pursuant to~~ ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney ~~attorney's~~ fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission under ~~pursuant to~~ s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or administrative action provided by law.

Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Judiciary Committee

Subject: Committee Agenda Request

Date: October 23, 2019

I respectfully request that **Senate Bill # 374**, relating to Housing Discrimination, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script that reads 'Darryl Rouson'.

Senator Darryl Rouson
Florida Senate, District 19

Stallard, Adam

From: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Sent: Thursday, October 31, 2019 4:06 PM
To: Stallard, Adam
Subject: Re: Urgent: Updated Information Request

Please see below

We are currently in state fiscal year 19/20 the % will be provided after the full 2019 grant period ends in 2020.

In State Fiscal Year 2018-19, the Commission received \$507,061 from HUD for the 2018 grant period, which was 45.99 % of the Commission's Operating Trust Fund for that year.

Christopher C. Turner

Deputy Director of External and Legislative
Affairs
Florida Commission on Human Relations

4075 Esplanade Way, Room 110
Tallahassee, FL 32399

o: 850-907-6848
c: 850-901-8761
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***United in One Goal: Equal Opportunity and
Mutual Respect***



*Correspondence made or received in connection
with the transaction of official business by a
state agency, unless exempt or made
confidential by law, is considered a public record
and may be subject to disclosure upon request.*

On Oct 31, 2019, at 3:42 PM, Stallard, Adam <Stallard.Adam@flsenate.gov> wrote:

Perfect. Thanks!

From: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Sent: Thursday, October 31, 2019 3:41 PM
To: Stallard, Adam <Stallard.Adam@flsenate.gov>
Subject: RE: Urgent: Updated Information Request

I just looked out the window and she is out of the office, I will get those updated numbers back to you tomorrow morning.

Christopher C. Turner

Deputy Director of External and Legislative Affairs
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
Phone: 850-907-6848
Fax: 850-487-1007

United in One Goal: Equal Opportunity and Mutual Respect

<image001.jpg>

Correspondence made or received in connection with the transaction of official business by a state agency, unless exempt or made confidential by law, is considered a public record and may be subject to disclosure upon request.

From: Stallard, Adam <Stallard.Adam@flsenate.gov>
Sent: Thursday, October 31, 2019 3:40 PM
To: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Subject: RE: Urgent: Updated Information Request

Chris,

One follow-up: What percentage of the Operating Trust Fund did the 18-19 receipts equate to? Same question for 19-20 receipts.

Thanks much,

Adam

From: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Sent: Thursday, October 31, 2019 2:07 PM
To: Stallard, Adam <Stallard.Adam@flsenate.gov>; Rochester, Candace <Candace.Rochester@myfloridahouse.gov>
Subject: Re: Urgent: Updated Information Request

Adam,

Attached is the information you requested. I copied Candace from House Judiciary on this. Please let me know if there are any more questions.

- Fiscal Year 18-19 HUD receipts were \$383,509
- Fiscal Year 19-20 HUD receipts YTD: \$643,852 (3 receipts - \$520,300 for 2019, \$14,791 for 2018 and \$108,761 for 2018)

Christopher C. Turner

Deputy Director of External and Legislative
Affairs
Florida Commission on Human Relations

4075 Esplanade Way, Room 110
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Mutual Respect***



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with the transaction of official business by a
state agency, unless exempt or made
confidential by law, is considered a public record
and may be subject to disclosure upon request.*

On Oct 29, 2019, at 11:14 AM, Stallard, Adam <Stallard.Adam@flsenate.gov> wrote:

Christopher,

As I'm sure you noticed, SB 374 is on the agenda for our committee's Nov. 5 meeting. Of course, SB 374 is functionally identical to SB 958 (2019). Accordingly, I am looking to update the analysis.

Particularly, I'd like to know what the latest word is from HUD on its warning that the Commission might be suspended and withdrawn from the Fair Housing Assistance Program. (The latest word that I am aware of, as reflected in last session's analysis, was a 2016 letter from Lynn Grosso at HUD to your Executive Director.)

Also, I'd like to get updates to the figures highlighted in the below excerpt from last year's analysis.

HUD's Reimbursement of the Commission under the FHAP, by the Numbers

As part of the Fair Housing Assistance Program, HUD reimburses the Commission for resolving housing cases. The reimbursement monies are placed into the Human Relations Operating Trust Fund. In Fiscal Year 2017-18, these payments totaled \$611,721, which was 49.89 % of the Commission's Operating Trust Fund.^[1] In Fiscal Year 2017-18, the Commission received \$605,404 from HUD, which was 48.10 % of the Commission's Operating Trust Fund for that year.^[2]

If you can provide me the information requested by Thursday COB, that'd be great.

Adam Stallard

Attorney

Committee on Judiciary

The Florida Senate

515 Knott Building

404 South Monroe Street

Tallahassee, Florida 32399

(850) 487-5198

^[1] Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).

^[2] *Id.*

Stallard, Adam

From: Turner, Christopher <Christopher.Turner@fchr.myflorida.com>
Sent: Friday, April 5, 2019 2:51 PM
To: Stallard, Adam
Subject: Information requested

Adam,

Please call me at the cell number listed below if you need anything additionally. Thank you.

All Revenues	2016/2017	2017/2018
EEOC Federal Contract	653,150	614,500
HUD Contract / Grant	605,404	611,721
HUD Registration	0	0
<i>HUD percentage</i>	<i>0.4810</i>	<i>0.4989</i>

Christopher C. Turner

Deputy Director of External and Legislative
Affairs
Florida Commission on Human Relations

4075 Esplanade Way, Room 110
Tallahassee, FL 32399

o: 850-907-6848
c: 850-901-8761
f: 850-487-1007

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and Mutual Respect*



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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

July 2, 2015

Ms. Michelle Wilson
Executive Director
Florida Commission on Human Relations
2009 Apalachee Parkway
Tallahassee, FL 32301-4857

Dear Ms. Wilson:

This letter pertains to the issue of the judicially-created requirement that Florida state court plaintiffs exhaust their administrative remedies under the Florida Fair Housing Act (FFHA) as a precondition to filing a claim in state court.¹ While this issue has been the subject of correspondence between HUD and the Florida Commission on Human Relations (FCHR) since at least 2008,² as of this date the issue remains unresolved.³ By letter of July 10, 2013, FCHR was advised that in order to ensure continued substantial equivalence between the FFHA and the federal Fair Housing Act, and by extension, to ensure continued participation in the Fair Housing Assistance Program, "Florida should enact an amendment or regulation effectively addressing this issue prior to FCHR's due date for recertification, which is [January 25, 2016]."⁴

Pursuant to the regulations at 24 C.F.R. part 115 governing participation in the Fair Housing Assistance Program (FHAP), this letter will serve as official notification that HUD will proceed to suspend the participation of the FCHR in the Fair Housing Assistance Program (FHAP) unless the issue of exhaustion of administrative remedies is resolved to HUD's satisfaction or before January 25, 2016. HUD will continue to refer complaints to FCHR in the interim.

I. Background

As you know, in 2004 the Florida District Court of Appeals for the Fourth District dismissed a case brought by a plaintiff under the Florida Fair Housing Act alleging eviction because of a disability. The court held that plaintiff was barred from filing in state court by the doctrine of exhaustion of administrative remedies because he had not availed himself of the administrative process afforded by the FFHA. The court's holding was not based on any analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act.

¹ *Belletete v. Halford*, 866 So.2d 308 (Fla. Dist. Ct. App. 2004)

² Letter from Ken Carroll to Derick Daniel (May 1, 2008)

³ FCHR has made several attempts to seek a legislative cure, however, none have been successful.

⁴ Letter from Ken Carroll to Michelle Wilson (July 10, 2013); The date in the letter, December 23, 2015, is inaccurate; FCHR's current certification expires on January 25, 2016.

The Belletete holding has been criticized by the Attorney General of Florida, and has been rejected by the U.S. District Court for the Southern District of Florida.⁵ It has, however, been followed in Florida state courts, both in and outside of Florida's fourth district. As set forth more fully below, the Belletete holding is fundamentally inconsistent with both the letter and spirit of the federal Fair Housing Act.

II. Analysis

A. Federal Statutory Language and Case Law

The ability to directly file a civil action was present in the original 1968 Fair Housing Act. *See*, former 42 U.S.C. §3612(a) ("The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction."). The Supreme Court, in Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979), squarely rejected an argument that administrative exhaustion was required under the Act. Of particular note, the court stated:

The most plausible inference to be drawn from Title VIII is that Congress intended to provide all victims of Title VIII violations two alternative mechanisms by which to seek redress: immediate suit in federal district court, or a simple, inexpensive, informal conciliation procedure, to be followed by litigation should conciliation fail.

Gladstone at 103-104.

In rejecting an administrative exhaustion requirement, the court stated:

[The Act] provides substantial and rather specific support for the view that §§810 and 812 are available to precisely the same class of plaintiffs ... There is no evidence that Congress intended to condition access to the courts on a prior resort to the federal agency. To the contrary, the history suggests that all Title VIII complaints were to have available immediate judicial review. The alternative, administrative remedy was then offered as an option to those who desired to use it.

Gladstone at 105-106.

The Supreme Court concluded that the Court of Appeals correctly interpreted §§3610 and 3612 as providing alternative remedies to precisely the same class of plaintiffs. The court reasoned that this broad construction was consistent with both the language and legislative history of the Act.⁶

⁵ In Milsap, et al. v. Cornerstone Residential Management, Inc., et al., 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on Belletete as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General argued that Belletete was wrongly decided, the court reversed itself and reinstated the FFHA claims. *See*, 2010 WL 427436 (S.D. Fla. 2010).

⁶ The legislative history of the 1968 Fair Housing Act further supports complainants' direct access to courts without filing an administrative complaint. In describing the enforcement of the Act, Representative Celler stated: "In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged

In addition to Gladstone, considerable federal court precedent exists that recognizes a complainant's right to proceed directly to court without first pursuing a HUD complaint. *See, e.g., Huntington Branch, NAACP v. Town of Huntington*, 689 F.2d 391, 394 n.3 (2nd Cir. 1982)(citing Gladstone, the court stated "appellants sued under Section 812 of the Act, a specific alternative to Section 810 which allows plaintiffs to seek 'immediate judicial review' in a federal action."); *see also, Royster v. Martin*, 562 F. Supp. 623, 624 (S.D. Ohio 1983)(concludes that the complaint procedures set forth in §3610 are permissive and not mandatory and are recognized as distinct and separate and alternative remedies to the filing of the law suit in district court); Oliver v. Foster, 524 F. Supp. 927, 929 (S.D. Tex. 1981)("[Administrative and civil remedies] are independent remedies, and the administrative remedies need not be exhausted prior to the filing of a civil action in federal court."); Crim v. Glover, 338 F.Supp. 823, 825 (S.D. Ohio 1972)(holding that Congress intended the remedies provided for in §§3610 and 3612 to be separate and distinct, therefore, plaintiffs have the right to bring a suit in federal district court alleging racial discrimination before exhausting or attempting to exhaust the remedies provided for in §3610).

B. Florida Statutory Language and Case Law

As noted *supra.*, the Florida Fair Housing Act does not expressly require the exhaustion of administrative remedies as a precondition to filing a private civil action in state court. The relevant portion of the FFHA ("Enforcement") states:

Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur *may file* a complaint with the commission.

Fla. Statutes § 760.34 (1) (emphasis added)

In fact, at least two provisions of the FFHA stand in direct opposition to the idea that exhaustion of administrative remedies is a statutory requirement. First, the enforcement provisions go on to state:

Whenever an action filed in court pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

Fla. Statutes § 760.34 (6)

This subsection explicitly anticipates that a complaint may be pending simultaneously in both the administrative and judicial forum. Note that this provision is also completely consistent with the federal law, in which the administrative forum is divested of jurisdiction only at such time as a trial in court actually commences ("comes to trial"). Second, the section on "Civil actions and relief" states:

discriminatory housing practice occurred ..." 114 Cong.Rec. 9560 (1968). In addition, the House Judiciary Committee Report stated: "Section 812 states what is apparently an alternative to the conciliation-then-litigation approach [of §810]: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, *without complaining to HUD*, file an action in the appropriate U.S. district court." *Id.* at 9612 (emphasis added).

A civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court.

Fla. Statutes § 760.35 (1)

As with § 760.34(6) above, the only logical reading of this text indicates that a complaint may be pending simultaneously in both the administrative and judicial forum. Thus, on the issue of exhaustion of remedies the FFHA is, on its face, consistent with the federal Fair Housing Act. It is only the judicial holding of Belletete and its progeny that endangers the continued substantial equivalence of Florida's law and FCHR's continued participation in the Fair Housing Assistance Program.

Unfortunately, as noted above, the court in Belletete did not analyze the language or legislative intent of the FFHA in reaching its holding. While the holding has been rejected in federal court (*see*, fn. 6), it remains the law in Florida courts. The Florida Supreme Court has held that "[t]he decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court." *See, Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992).

Our research has uncovered at least two cases adopting Belletete in Florida's Fourth District Court of Appeals, *see, State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA April 22, 2015); Sun Harbor Homeowners' Ass'n. v. Bonura, 95 So. 3d 262, 267 (Fla. 4th DCA 2012), and we are aware of a similar ruling dismissing FFHA claims because of a failure to exhaust administrative remedies in the Eleventh Judicial Circuit, HOPE v. SPV Realty, L.C., CASE NO.: 14-32184-CA-01 (April 30, 2015). Because the Eleventh Judicial District is covered by the Third District Court of Appeals, this dismissal means that the Belletete holding has spread beyond the Fourth District Court of Appeals.

III. Conclusion

Both the plain language of the Fair Housing Act and relevant case law clearly indicate that the Act does not require administrative exhaustion prior to the filing of a private civil action. Because of the importance that Congress ascribed to allowing individuals to pursue a private civil action without having to first exhaust administrative remedies – in both the express text of the federal Fair Housing Act and in its legislative history – the judicial interpretation of the Florida statute that requires administrative exhaustion renders the Florida law fundamentally inconsistent with federal law.

The Department hereby notifies FCHR that it will take action to suspend its participation in the Fair Housing Assistance Program if the issue is not satisfactorily resolved through a statutory

amendment to the Florida Fair Housing Act on or before January 25, 2016.⁷ HUD will continue to refer complaints to FCHR in the interim. In the event the issue is not satisfactorily revised by the deadline, HUD will proceed to suspension and ultimately to withdrawal from the program under 24 C.F.R. § 115.211(b)(2) and (3).

If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at 202- 402-2126 or at Joseph.A.Pelletier@hud.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara K. Pratt", written in a cursive style.

Sara K. Pratt
Deputy Assistant Secretary for Enforcement
and Programs

cc: Carlos Osegueda, FHEO Region IV Director

⁷ While the July 2013 letter from Ken Carroll indicates that a regulation may suffice, the Department believes that only a legislative amendment to the statute will be effective in resolving the issue. This position was also expressed in a March 2013 email from FCHR's General Counsel.



OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

MAR 16 2016

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2016 MAR 21 AM 10:59

Michelle Wilson, Executive Director
Florida Commission on Human Relations
4075 Esplanade Way Room 110
Tallahassee, FL 32399

Subject: Florida Fair Housing Act – Exhaustion of Administrative Remedies

Dear Ms. Wilson:

This letter follows up on recent correspondence between HUD and the Florida Commission on Human Relations with respect to legislative revisions to the Florida Fair Housing Act necessary to overcome the judicially-created requirement that Florida state court plaintiffs exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.

The Department has notified FCHR that unless such legislation was enacted on or before March 12, 2016, FCHR risked suspension and withdrawal from the FHAP program. I am aware of the extensive efforts of FCHR to secure such legislation during the 2016 session of the Florida General Assembly, which were unfortunately unsuccessful. I am also aware, however, that FCHR is actively working with the appellant in a case pending in Florida's Third District Court of Appeals that, if successful, would create a split in Florida's intermediate appellate courts on the issue. It is my understanding that FCHR has filed an amicus brief with the Third DCA, and that oral arguments are scheduled in the very near future.

Taking all of the above into consideration, and in the absence of any intervening occurrence or event, the Department will refrain from making any decision regarding suspension and withdrawal during the pendency of the judicial proceedings. The Department values its existing partnership with the Florida Commission on Human Relations and is hopeful that the issue will be favorably resolved by the courts. If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at (202) 402-2126 or at Joseph.A.Pelletier@hud.gov.

Sincerely,

Lynn Grosso, Acting Deputy Assistant Secretary
for Enforcement and Programs

cc: Carlos Osegueda, FHEO Region IV Director

THE FLORIDA SENATE

APPEARANCE RECORD

11/05/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 468

Bill Number (if applicable)

Topic MANDATORY SENTENCES

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE FL. 32301

Email cgrajales@belibre.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19

Meeting Date

468

Bill Number (if applicable)

Topic Mand. Sentencing

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 Middlebrooks Cr

Phone _____

Street

TLH

City

FL

State

32312

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Right on crime

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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11-05-19

Meeting Date

468
~~346~~

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 North Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

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APPEARANCE RECORD

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11-05-2019

Meeting Date

468
346

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Stacy Scott

Job Title 8th Circuit Public Defender

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@PD08.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing 8th Circuit Public Defender

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/5/2019

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468

Meeting DateBill Number (if applicable)Topic Mandatory SentencesAmendment Barcode (if applicable)Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165StreetTallahasseeFL32308CityStateZipEmail mdunagan@flsheriffs.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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11/5/19

Meeting Date

SB 468

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney - 18th Cir.

Address 2725 Judge Fran Jamieson

Phone (321) 637-5575

Street Viera

FL

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing FPAA - Fla Prosecuting Attorneys Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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11/05/2019

Meeting Date

SB468

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Gary W. Hester

Job Title Government Affairs

Address P.O. Box 14038

Phone 863-287-8438

Street

Tallahassee

FL

32317

Email garywhester@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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11/5/19

Meeting Date

468

Bill Number (if applicable)

Topic

Mand. Min

Amendment Barcode (if applicable)

Name

Greg Newbaker

Job Title

State Director

Address

Street

Phone

City

State

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

FAMM

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

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11/5/19

Meeting Date

468

Bill Number (if applicable)

Topic Judicial Discretion to Depart from Mandatory Minimums

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 W. Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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11-5-19
Meeting Date

SB 468
Bill Number (if applicable)

Topic MANDATORY SENTENCES

Amendment Barcode (if applicable)

Name SEX AND BUDS CAY COUNTY FL. HOKKY James O.

Job Title SEX TOYS OF Cay County FL

Address 2908 BLANDMAN BLVD
Street
MIDDLEBURY FL 32068
City State Zip

Phone 904 415-3221

Email SEXBUDS1@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Cay County

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

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11/5/19

Meeting Date

468

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Ingrid DelgadoJob Title Associate Director for Social Concerns & Respect LifeAddress 261 W Park Av Phone _____
StreetTallahassee FL 32301 Email _____
City State ZipSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Conference of Catholic BishopsAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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11/5/2019
Meeting Date

468
Bill Number (if applicable)

Topic Mand. Min.

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address 126 N Mills Ave
Street
Orlando FL 32807
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing New Florida Majority

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 468

INTRODUCER: Senator Brandes

SUBJECT: Mandatory Sentences

DATE: November 1, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Elsesser	Cibula	JU	Favorable
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 468 authorizes a court to impose a sentence and fine “other than” the mandatory minimum for a drug trafficking offense if the court finds on the record that the offender (1) did not engage in a continuing criminal enterprise (2) did not use or threaten violence or use a weapon during the commission of the offense, and (3) did not cause death or serious bodily injury.

II. Present Situation:

Section 893.135, F.S., requires mandatory minimum prison sentences for certain drug trafficking offenses. That section provides that possession of more than certain specified amounts of cannabis, cocaine, certain narcotic opioids, sedatives, stimulants, hallucinogens, and other illicit substances constitutes “trafficking,” with increasing mandatory prison terms and fines for possession of amounts beyond certain thresholds.

For example, s. 893.135(1)(a), F.S., defines possession of more than 25 pounds of cannabis as “trafficking in cannabis;” offenders possessing more than 25 pounds but less than 2,000 pounds of cannabis are subject to a mandatory minimum 3-year prison term and \$25,000 fine; offenders possessing 2,000 pounds or more, but less than 10,000 pounds of cannabis are subject to a mandatory minimum 7-year prison term and a \$50,000 fine; and offenders possessing more than 10,000 pounds of cannabis are subject to a mandatory minimum 15-year prison term and \$200,000 fine. Possession of “trafficking” amounts of the substances in s 893.135, F.S., is generally punishable as a first-degree felony,¹ while certain aggravators, such as importation into the state or an intentional killing in the course of trafficking, can increase the offense to a life or capital felony.

¹ First-degree felonies are generally punishable by up to a 30-year prison sentence, with certain exceptions.

The Criminal Punishment Code

In most cases, the minimum sentence for a criminal offense is governed by the Criminal Punishment Code, as described in ss. 921.002, 921.0021, 921.0022, 921.0023, and 921.0024, F.S. The Criminal Punishment Code assigns an “offense severity level” ranging from 1-10 to non-capital felonies, with 1 (a third-degree felony) being the least severe and 10 (a life felony) being the most severe.² Other factors, such as the nature of any victim injury, can increase an offender’s point total, and the point total can be multiplied based on the nature of an offense (i.e. drug trafficking, adult-on-minor sex offense) or on the categorization of the defendant (i.e. prison release reoffender, habitual felony offender).³ Points from the defendant’s prior record are factored into the defendant’s point total.⁴ For an offender scoring fewer than 44 points, the lowest permissible sentence is any non-state prison sanction.⁵ If the offender scores higher than 44 points, the lowest permissible sentence is calculated by subtracting 28 from the defendant’s point total and then decreasing the result by 25 percent.⁶ The resulting total represents the defendant’s lowest permissible sentence in months. A court may impose a sentence lower than the lowest permissible sentence only if it finds a mitigating circumstance as described in s. 921.0026, F.S.⁷

Mandatory minimum sentences supersede the lowest permissible sentence under the Criminal Punishment Code: “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”⁸

In some cases, an offender’s conduct is governed by multiple statutes; in such cases, “a prosecutor has discretion to decide whether and how to prosecute the defendant.”⁹ As such, if a defendant possesses enough of a controlled substance to violate ss. 893.13 and 893.135, F.S., a prosecutor has the discretion to charge under s. 893.13, F.S., which does not require a mandatory minimum prison sentence for most offenses,¹⁰ or s. 893.135, F.S., which does.

The state’s Youthful Offender Act specifies criteria for the sentencing of youthful offenders “[i]n lieu of other criminal penalties authorized by law”¹¹ A defendant sentenced as a youthful

² Section 921.0023, F.S.

³ Section 921.0024(1)(a), F.S.

⁴ *Id.*

⁵ Section 921.0024(2), F.S.

⁶ *Id.*

⁷ Section 921.0026, F.S., provides a non-exhaustive list of mitigating factors, including the fact that the “victim was an initiator, willing participant, aggressor, or provoker of the incident,” and the “offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.”

⁸ Fla. R. Crim. P. 3.704(d)(26).

⁹ *State v. Gonzales*, 121 So. 3d 625, 629 (Fla. 4th DCA 2013).

¹⁰ There are three exceptions. Section 893.13(1)(c)1., F.S., subjects offenders selling certain controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility to a 3-year mandatory minimum sentence. Section 893.13(1)(g)1., F.S., subjects offenders manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present to a 5-year mandatory minimum sentence. Section 893.13(1)(g)2., F.S., subjects offenders manufacturing methamphetamine or phencyclidine causing a child under 16 to suffer great bodily harm to a 10-year mandatory minimum sentence.

¹¹ Section 958.04, F.S.

offender, therefore, is not subject to the mandatory minimum sentences for drug trafficking offenses under s. 893.135, F.S.¹²

Federal Mandatory Minimum Sentences for Drug Trafficking

“Federal drug trafficking offenders are primarily convicted of offenses under Title 21 of the United States Code.”¹³ Like Florida’s framework, the federal sentencing structure has different tiers of mandatory minimum sentences based on the quantity and type of controlled substance involved in the offense.¹⁴ However, the federal framework involves two tiers (compared to Florida’s three): “[w]hen certain quantity thresholds are met, a 5-year mandatory minimum penalty and a maximum term of 40 years applies, while larger amounts increase the mandatory minimum to 10 years, with a maximum of life imprisonment.”¹⁵ Under 21 U.S.C. ss. 841 and 960, the following amounts are required to trigger mandatory minimums sentences:

Controlled substance	Threshold amount for 5-year minimum mandatory sentence	Threshold amount for 10-year minimum mandatory sentence
Heroin	100 grams	1 kilogram
Powder Cocaine	500 grams	5 kilograms
Cocaine-Based Mixture (crack)	28 grams	280 grams
Methamphetamine (pure)	5 grams	50 grams
Methamphetamine (mixture)	50 grams	500 grams
Marijuana	100 kilograms	1,000 kilograms

Florida’s framework in some cases involves lower thresholds to trigger mandatory minimums. For example, the possession of 25 pounds of marijuana triggers a 3-year mandatory minimum sentence in Florida, but it would not trigger a mandatory minimum federal sentence. Additionally, the possession of 10,000 pounds of marijuana would trigger a 15-year mandatory minimum sentence in Florida, but a 10-year mandatory minimum federal sentence. Notably, regarding threshold amounts of cocaine, Florida treats cocaine and “any mixture containing cocaine” the same, imposing mandatory minimums beginning at the possession of 28 grams. Conversely, federal law differentiates between cocaine mixtures (typically “crack” cocaine) and powder cocaine, having a higher threshold for the latter.

¹² See, e.g., *Salazar v. State*, 544 So. 2d 313, 313 (Fla. 2d DCA 1989) (mandatory minimum did not apply to youthful offender, as “the penalties established in the Youthful Offender Act shall be imposed in lieu of other criminal penalties authorized by law”).

¹³ United States Sentencing Commission, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf (last visited October 31, 2019).

¹⁴ *Id.*

¹⁵ *Id.*

III. Effect of Proposed Changes:

This bill allows a sentencing court to impose a sentence “other than”¹⁶ the mandatory minimum on drug trafficking offenders if the court finds on the record that (1) the offender did not engage in a continuing criminal enterprise as defined in s. 893.20, F.S.,¹⁷ (2) the offender did not use or threaten violence or use a weapon during the commission of the offense, and (3) the offender did not cause a death or serious bodily injury.

The bill authorizes a sentencing court to impose a sentence other than the mandatory minimum on an offender convicted of trafficking in the following substances:

- Cannabis or cannabis plants¹⁸
- Cocaine¹⁹
- Morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin²⁰
- Hydrocodone, Oxycodone, Alfentanil, Carfentanil, Fentanyl, Sufentanil, or a fentanyl derivative
- Phencyclidine²¹
- Methaqualone²²
- Amphetamine or methamphetamine²³
- Flunitrazepam²⁴
- Gamma-butyrolactone (GBL)²⁵
- 1,4-Butanediol²⁶
- Substituted phenycyclohexylamine, substituted cathinone, substituted phenethylamine²⁷
- Lysergic acid diethylamide (LSD)²⁸

¹⁶ Under the broadest reading of this language, a sentence *exceeding the statutory maximum* could also be permitted (as such a sentence would be one “other than” the mandatory minimum). While courts likely would not engage in such an interpretation, more specific language (such as “less than”) seems more consistent with the Legislature’s intent.

¹⁷ Under s. 893.20, F.S., a person is guilty of engaging in a continuing criminal enterprise if he or she “commits three or more felonies under [chapter 893] in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts”

¹⁸ Section 893.135(1)(a), F.S.

¹⁹ Section 893.135(1)(b), F.S.

²⁰ Section 893.135(1)(c), F.S.

²¹ Section 893.135(1)(d), F.S.; Phencyclidine is a “hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans.” Phencyclidine, PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/Phencyclidine> (last visited October 31, 2019).

²² Section 893.135(1)(e), F.S.; “Methaqualone is a sedative, hypnotic agent that was used for insomnia, but was taken off of the market, in the U.S., in 1983 due to its high risk of abuse.” Methaqualone, PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/6292> (last visited October 31, 2019).

²³ Section 893.135(1)(f), F.S.

²⁴ Section 893.135(1)(g), F.S.; “Some reports indicate that it is used as a date rape drug and suggest that it may precipitate violent behavior. The United States Government has banned the importation of this drug.” Flunitrazepam, PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/3380> (last visited October 31, 2019).

²⁵ Section 893.135(1)(h), F.S.; GBL is commercial solvent.

²⁶ Section 893.135(1)(j), F.S.

²⁷ Section 893.135(1)(k)1., F.S.

²⁸ Section 893.135(1)(l)1, F.S.

- Synthetic cannabinoids²⁹
- N-benzyl phenethylamines³⁰

Because the lowest permissible sentence under the Criminal Punishment Code Scoresheet is distinct from a “mandatory minimum sentence,”³¹ the bill does not grant a court any additional authority to deviate from the lowest permissible Criminal Punishment Code Scoresheet sentence.³²

Section 775.084, F.S., which is not amended by the bill, requires “mandatory minimum” prison terms for “habitual felony offenders.”³³ An offender convicted of drug trafficking in violation of s. 893.135, F.S., would still be subject to certain mandatory minimum sentences if he or she meets the definition of a “habitual felony offender.”

The effective date of the bill is July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²⁹ Section 893.135(1)(m), F.S., synthetic cannabinoids do not derive their psychoactive effects through THC, but rather are “cannabinoid receptor agonists” that act on various brain receptors in a similar manner to cannabinoids.

³⁰ Section 893.135(1)(n), F.S.

³¹ See Fla. R. Crim. P 3.704(d)(26) (differentiating between a mandatory minimum sentence and the lowest permissible sentence under the Criminal Punishment Code).

³² Section 921.0026, F.S., authorizes a court to depart downward from the lowest permissible sentence under the Criminal Punishment Code Scoresheet based on a non-exhaustive list of mitigating factors described in that section.

³³ Habitual felony offenders are defendants who have been convicted of two or more prior felonies, or whose conduct meets certain criteria: the offense was committed while the offender was serving a prison sentence or within 5 years after release from a prison sentence, the felony is not simple possession under s. 893.13, F.S., and any of the qualifying felonies were not pardoned or set aside in a postconviction proceeding. Section 775.084(1)(a), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The 2019 Criminal Justice Impact Conference estimated that allowing a court to sentence a drug trafficking offender to a sentence other than the mandatory minimum would have a “negative significant” prison bed impact (a decrease of more than 25 prison beds, where each bed requires an estimated \$68,710 in annual capital costs) in each of the next 5 fiscal years.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 893.135, F.S., requires life sentences for offenders who possesses 150 or more kilograms of cocaine, 30 or more kilograms of certain opioids, or 30 kilograms or more of flunitrazepam.³⁵ The statute says these offenders “shall be punished by life imprisonment,” but does not use the words “mandatory minimum.” If the Legislature intends to allow a court to impose a sentence less than life imprisonment for qualifying offenses, it may wish to add clarifying language.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.135 and 893.03, F.S.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

³⁴ 2019 Conference Results, Criminal Justice Impact Conference, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last visited October 31, 2019); Capital and Operating Costs for the Department of Corrections for Use in Fiscal Impacts by the Criminal Justice Estimating Conference 2019 Session, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/2019DOCPeDiemandBedCosts.pdf> (last visited October 31, 2019).

³⁵ Section 893.135(1)(b)2., (c)5., and (g)2., F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Brandes

24-00383-20

2020468__

A bill to be entitled

An act relating to mandatory sentences; amending s. 893.135, F.S.; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; amending s. 893.03, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

(a) The person did not engage in a continuing criminal enterprise as defined in s. 893.20(1).

(b) The person did not use or threaten violence or use a weapon during the commission of the crime.

(c) The person did not cause a death or serious bodily injury.

Section 2. Paragraph (c) of subsection (3) of section

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00383-20

2020468__

893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00383-20

2020468

or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit

Page 3 of 4

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24-00383-20

2020468

is not relevant to the charging of a violation of s. 893.135.

The weight of the controlled substance shall be determined pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

Section 3. This act shall take effect July 1, 2020.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 15, 2019

I respectfully request that **Senate Bill #468**, relating to **Mandatory Sentences**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19
Meeting Date

374
Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida State Conference of NAACP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19
Meeting Date

374
Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

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Tallahassee FL 32303
City State Zip

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Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/5/19

Meeting Date

374

Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Edward G. Labrador, Esq

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Email elabrador@broward.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Broward County Bd. of County Commissioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SJR 176

INTRODUCER: Senator Rodriguez

SUBJECT: Single-subject Limitation for Constitution Revision Commission Proposals

DATE: November 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.			EE	
3.			RC	

I. Summary:

SJR 176 limits any amendment to the Constitution proposed by the Constitution Revision Commission to “one subject and matter connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular revision of the entire Constitution.

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Constitution Revision Commission convenes in 2037, and thus, it would be the first Commission to be governed by the amendment.

II. Present Situation:

Overview

The Florida Constitution requires that a Constitution Revision Commission be established every 20 years and that it have the authority to propose a revision of all or any part of the Florida Constitution. Accordingly, a Constitution Revision Commission may propose single-subject amendments, multi-subject amendments, or a revision of the entire Constitution.

Context – Proposed Amendments that Appeared on the 2018 General Election Ballot

Seven of the amendments on the 2018 General Election ballot were proposed by the Commission. And at least two of the Commission-proposed amendments were regarded by many as including two or more changes that were substantially unrelated; in other words, each of these

amendments were considered by many to involve the “bundling” of multiple subjects.¹ Accordingly, voters who wanted to vote for only one of the changes set forth in a given multi-subject amendment may have been frustrated by having to choose between voting for a change they did not desire (because it was paired with one they wanted) or having to vote against a change they desired (because it was paired with a change they did *not* like).²

Examples of Commission-proposed amendments that many regarded as multi-subject were amendment 9 and amendment 6. Amendment 9 combined a ban on oil-drilling in state seawaters with a ban on “vaping” in indoor workplaces. Amendment 6 combined what many regarded as three different subjects: a crime-victim-rights proposal, a prohibition on judges deferring to agencies’ interpretation of statutes or rules, and a 5-year increase in the mandatory retirement age for judges.

Constitution Revision Commission

Origin

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions that were proposed during a Special Session of the Legislature. One of the resolutions included a provision requiring a Constitution Revision Commission to convene once every 20 years, beginning in 1977. Accordingly, three Commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.³

Members

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). The Governor must appoint a chair from among the 37 members.⁴

Task, Procedures, and Authority

The Commission’s task is to examine the Constitution and decide which, if any, amendments to submit for voter approval. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.⁵ In turn, the amendments must be submitted to the

¹ See, e.g., The News Service of Florida, *Constitutional Amendments? One subject only, please*, THE GAINESVILLE SUN (Nov. 23, 2018), <https://www.gainesville.com/news/20181123/constitutional-amendments-one-subject-only-please>.

² See Brendan Rivers and News Service of Florida Staff, *Bill Filed to Ban Bundled Amendments from Constitution Revision Commission*, WJCT FIRST COAST CONNECT (Nov. 26, 2018), <http://news.wjct.org/post/bill-filed-ban-bundled-amendments-constitution-revision-commission>; see generally, Editorial Board, *Florida’s constitutional amendments: Vote ‘yes’ on 4 and 11, ‘no’ on rest*, TALLAHASSEE DEMOCRAT (Oct. 7, 2018), <https://www.tallahassee.com/story/opinion/editorials/2018/10/07/floridas-amendments-yes-4-and-11-no-rest-our-opinion/1494375002/> (arguing that amendment 6 and amendment 9 each included a proposal worthy of approval, but should be voted against on account of at least one unworthy proposal in each); Kelley H. Armitage, *Constitution Revision Commissions Avoid Logrolling, Don’t They?*, 72 FLA. B.J. 62 (Nov. 1998) (arguing that the Constitution Revision Commission does not have sufficient safeguards against logrolling).

³ Constitution Revision Commission, *History*, <https://crc.law.fsu.edu/about/history.html> (last visited Oct. 28, 2019).

⁴ FLA. CONST. art. XI, s. 2.

⁵ FLA. CONST. art. XI, s. 2.

voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.⁶

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and “hold [an unspecified number of] public hearings.”⁷

The Single-Subject Requirement

Amendments that are Limited to One Subject

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. Only amendments that originate by way of citizen initiative are limited to one subject. Accordingly, as the Florida Supreme Court stated in a case challenging a 2018 Commission-proposed amendment, the Constitution Revision Commission need not limit its proposals to one subject:

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the CRC are not bound by the single-subject rule limiting amendments to one subject. . . . Moreover, the Florida Constitution expressly authorizes bundling, as it gives the CRC authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.⁸

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.⁹

⁶ FLA. CONST. art. XI, s. 5.

⁷ FLA. CONST. art. XI, s. 2.

⁸ *Detzner v. Anstead*, 256 So. 3d 820, 823-24 (Fla. 2018) (citation omitted); *see also*, *County of Volusia v. Detzner*, 253 So. 3d 507, 512 (Fla. 2018) (“Appellants have conceded, however, that CRC proposals are not bound by the single-subject requirement”); *Charter Review Commission of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (“Only proposals originating through a petition initiative are subject to the single-subject rule.”).

⁹ *Fine v. Firestone*, 448 So. 2d 984, 994 (Fla. 1984).

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”¹⁰ Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.¹¹

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Constitution Revision Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”¹² This is not true, the Court noted, of citizen initiatives.¹³

What “One Subject” Means

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”¹⁴ In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”¹⁵ Moreover, the single-subject limitation prohibits an amendment from

(1) engaging in “logrolling” or (2) “substantially altering or performing the functions of multiple aspects of government.” . . . The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.¹⁶

And although “no single proposal can substantially *alter* or *perform* the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “*affect* several branches of government.”¹⁷ However, “how an initiative proposal *affects* other articles or sections of the constitution *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal.”¹⁸

¹⁰ *Id.* at 832 (quoting *Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

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¹² *Id.* at 1339.

¹³ *Id.*

¹⁴ *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

¹⁵ *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016).

¹⁶ *Id.* at 827-28 (citations omitted).

¹⁷ *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).

¹⁸ *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).

Below, a brief look at three Supreme Court opinions shows how the Court has applied these legal principles in deciding whether a particular citizen initiative had embraced more than one subject.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a

right for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”¹⁹

In the Court’s analysis of the amendment, it identified two basic “components”—the establishment of a right and a guarantee of the government’s authority to regulate that right. And the Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were “two sides of the same coin,” and were therefore “component parts or aspects of a single dominant plan or scheme,” and accordingly were, “naturally related and connected to the amendment’s oneness of purpose.”²⁰ The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.²¹

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a “trust to restore the Everglades funded by a fee on raw sugar.”²² The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.”²³ The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the “Everglades Ecosystem.” Additionally, the amendment “contemplate[d] the exercise of vast executive powers” by the trustees, including the “management, construction, and operation of water storage and sewer systems.”²⁴ Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.²⁵

In yet another opinion, issued in *Fine v. Firestone*, the Court disapproved of a proposed amendment that contained three subjects.²⁶ But the Court did so without specifying that the

¹⁹ *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016) (quoting the language of the proposed amendment at issue, titled, “Rights of Electricity Consumers Regarding Solar Energy Choice”).

²⁰ *Id.* at 828.

²¹ *Id.*

²² *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1337 (Fla. 1994).

²³ *Id.* at 1340.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment

limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.²⁷

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.²⁸ Like a bill, it may begin in either house of the Legislature.

To pass Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house of the Legislature.²⁹ Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.³⁰

III. Effect of Proposed Changes:

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Constitution Revision Commission be limited to “one subject and matter directly connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular, comprehensive revision of the Constitution.

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.³¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ *Id.* at 992 (Fla. 1984).

²⁸ FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

²⁹ FLA. CONST. art. XI, s. 1.

³⁰ FLA. CONST. art. XI, s. 5.

³¹ See e.g., *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearn*, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish[] twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$29,737.60, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election

by either joint resolution of the Florida Legislature or by the initiative petition process.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution amends Article XI, section 2 of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³² Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Oct. 30, 2019) (on file with the Senate Committee on Judiciary).

By Senator Rodriguez

37-00406-20

2020176__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 2 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Constitution Revision Commission be limited to a single subject.

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

That the following amendment to Section 2 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 2. Revision commission.—

(a) Within thirty days before the convening of the 2037 ~~2017~~ regular session of the legislature, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:

- (1) the attorney general of the state;
 - (2) fifteen members selected by the governor;
 - (3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and
 - (4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.
- (b) The governor shall designate one member of the

37-00406-20

2020176__

commission as its chair. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of this constitution or any part thereof ~~of it~~.

(d) Any proposal of a revision of this constitution, or any part thereof, filed by the constitution revision commission with the custodian of state records must embrace but one subject and matter directly connected therewith.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XI, SECTION 2

ESTABLISHING SINGLE-SUBJECT LIMITATION FOR CONSTITUTION REVISION COMMISSION PROPOSALS.—Proposing an amendment to the State Constitution to require that any proposal of a revision of the State Constitution, or any part thereof, filed by the Constitution Revision Commission with the custodian of state records for placement on the ballot be limited to a single subject and matter directly connected to such subject.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ

37th District

October 10, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to simmons.david@flsenate.gov

Chair Simmons,

I respectfully request that you place SJR 176 Single-Subject Limitation for Constitutional Revision Commission Proposals on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "JR", with a stylized flourish extending from the end.

Senator José Javier Rodríguez
District 37

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- ☐ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

Stallard, Adam

From: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Sent: Wednesday, October 30, 2019 10:29 AM
To: Stallard, Adam
Subject: RE: SJR 396 advertising cost

Adam,

Since the text for SJR 176 & SJR 396 is identical from 2019, so would the cost estimate, The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish* twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$ 58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.

*The requirement to provide these publications in Spanish stems from Section 203 of the federal Voting Rights act.

Let me know if you have any questions!

Thank you!

Brittany N. Dover
Legislative Affairs Director
Department of State
850.245.6509 (office)
850.274.3105 (cell)

From: Stallard, Adam <Stallard.Adam@flsenate.gov>
Sent: Monday, October 28, 2019 10:08 AM
To: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Subject: SJR 396 advertising cost

EMAIL RECEIVED FROM EXTERNAL SOURCE

Brittany,

If you could provide me with the cost of advertising SJR 396, I'd appreciate it. This SJR is identical to SJR 690 (2019).

If I could get your estimate by Thursday, that'd be great.

THE FLORIDA SENATE

APPEARANCE RECORD

11/05/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 176

Bill Number (if applicable)

Topic SINGLE-SUBJECT LIMITATION FOR CONSTITUTION REVISION

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email Cgrajales@belibre.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

James Otto SSR 1760
Bill Number (if applicable)

Topic SIMPLE SUBJECT FOR CONSTITUTIONAL Amendment Barcode (if applicable)

Name SEX AND BUDS CLAY COUNTY HOTELS REVISION COMMISSION PROPOSALS

Job Title SEX TOY STORES OF CLAY COUNTY

Address _____
Street

Phone 904 415-3221

City

State

Zip

Email SEX BUDS 106MAN.COM

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SJR 396

INTRODUCER: Senator Rodriguez

SUBJECT: Single-subject Limitation for Taxation and Budget Reform Commission

DATE: November 4, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Favorable
2. _____	_____	EE	_____
3. _____	_____	RC	_____

I. Summary:

SJR 396 limits any amendment to the Constitution proposed by the Taxation and Budget Reform Commission to “one subject and matter connected therewith.”

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Taxation and Budget Reform Commission convenes in 2027, and thus it would be the first Commission to be governed by the amendment.

II. Present Situation:

Overview

The Florida Constitution requires that a Taxation and Budget Reform Commission be established once every 20 years and that it have the authority to propose a revision of the “Constitution or any part of it dealing with taxation or the state budgetary process.” Although the Commission’s proposals are limited to this area of law, each proposal may nonetheless embrace multiple subjects within this area.

Taxation and Budget Reform Commission

Origin

In 1988, this state's voters approved a constitutional amendment that was proposed by the Legislature to create the Taxation and Budget Reform Commission.¹ The amendment specified that the Commission must convene for the first time in 2007, and once every 20 years afterward.²

Members

The Constitution requires that the Commission be comprised of 25 voting members and 4 non-voting "ex-officio" members. The 25 voting members must be appointed by the Governor (11), the Speaker of the House (7), and the Senate President (7). The 4 non-voting members must be chosen by the Speaker (2) and the Senate President (2) from the members of their respective houses; one of the two choices from each house must be from the minority party. At its initial meeting, the commissioners must elect a commissioner who is not also a legislator to serve as chair.

Task, Procedures, and Authority

The Commission is tasked with examining this state's budgetary process, revenue needs, and expenditure processes.³ Upon examining these matters, the Commission must issue a report of the results of its review, and propose any recommended statutory changes to the Legislature. The Commission may also propose "a revision of this constitution or any part of it dealing with taxation and the state budgetary process."⁴

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. It says only that the Commission must elect a chair at its initial meeting, convene for further meetings at the call of the chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings as it deems necessary to carry out its responsibilities."⁵

The Single-Subject Requirement

Amendments that are Limited to One Subject

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. As the Florida Supreme Court has repeatedly stated, "the citizen initiative is the only method that is constrained by the single-subject requirement."⁶

¹ See HJR 1616 (1988).

² *Id.*

³ FLA. CONST. art. XI, s. 6(d).

⁴ FLA. CONST. art. XI, s. 6(e).

⁵ FLA. CONST. art. XI, s. 2.

⁶ *Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888 (Fla. 2000); see also, *Charter Review Commission of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) ("Only proposals originating through a petition initiative are subject to the single-subject rule.").

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has also repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.⁷

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”⁸ Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.⁹

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Taxation and Budget Reform Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”¹⁰ This is not true, the Court noted, of citizen initiatives.¹¹

What “One Subject” Means

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”¹² In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”¹³ Moreover, the single-subject limitation prohibits an amendment from

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A brief look at three Supreme Court opinions will help illuminate the Court’s understanding of these legal principles, and therefore of what “one subject” means.

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right for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”¹⁷

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“management, construction, and operation of water storage and sewer systems.”²² Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.²³

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limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.²⁵

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To pass the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house of the Legislature.²⁷ Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.²⁸

III. Effect of Proposed Changes:

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Taxation and Budget Reform Commission be limited to “one subject and matter connected therewith.”

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.²⁹

²² *Id.*

²³ *Id.*

²⁴ *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

²⁵ *Id.* at 992 (Fla. 1984).

²⁶ FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

²⁷ FLA. CONST. art. XI, s. 1.

²⁸ FLA. CONST. art. XI, s. 5.

²⁹ See e.g., *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearn*, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish[] twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution amends Article XI, section 6 of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁰ Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Oct. 30, 2019) (on file with the Senate Committee on Judiciary).

By Senator Rodriguez

37-00407-20

2020396__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject.

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

That the following amendment to Section 6 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 6. Taxation and budget reform commission.—

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority

37-00407-20

2020396__

party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a

37-00407-20

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59 strategic decisionmaking process.

60 (e) The commission shall hold public hearings as it deems
61 necessary to carry out its responsibilities under this section.
62 The commission shall issue a report of the results of the review
63 carried out, and propose to the legislature any recommended
64 statutory changes related to the taxation or budgetary laws of
65 the state. Not later than one hundred eighty days prior to the
66 general election in the second year following the year in which
67 the commission is established, the commission shall file with
68 the custodian of state records its proposal, if any, of a
69 revision of this constitution or any part of it dealing with
70 taxation or the state budgetary process. Any proposal of a
71 revision of this constitution, or any part thereof, filed by the
72 commission with the custodian of state records must embrace but
73 one subject and matter directly connected therewith.

74 BE IT FURTHER RESOLVED that the following statement be
75 placed on the ballot:

76 CONSTITUTIONAL AMENDMENT

77 ARTICLE XI, SECTION 6

78 ESTABLISHING SINGLE-SUBJECT LIMITATION FOR TAXATION AND
79 BUDGET REFORM COMMISSION PROPOSALS.—Proposing an amendment to
80 the State Constitution to require that any proposal of a
81 revision to the State Constitution, or any part thereof, filed
82 by the Taxation and Budget Reform Commission with the custodian
83 of state records for placement on the ballot be limited to a
84 single subject and matter directly connected to such subject.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ

37th District

October 18, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to simmons.david@flsenate.gov

Chair Simmons,

I respectfully request that you place SJR 396 Single-subject Limitation for Taxation and Budget Reform Commission on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "JR", with a stylized flourish extending from the end.

Senator José Javier Rodríguez
District 37

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- ☐ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

Stallard, Adam

From: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Sent: Wednesday, October 30, 2019 10:29 AM
To: Stallard, Adam
Subject: RE: SJR 396 advertising cost

Adam,

Since the text for SJR 176 & SJR 396 is identical from 2019, so would the cost estimate, The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish* twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$ 58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.

*The requirement to provide these publications in Spanish stems from Section 203 of the federal Voting Rights act.

Let me know if you have any questions!

Thank you!

Brittany N. Dover
Legislative Affairs Director
Department of State
850.245.6509 (office)
850.274.3105 (cell)

From: Stallard, Adam <Stallard.Adam@flsenate.gov>
Sent: Monday, October 28, 2019 10:08 AM
To: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Subject: SJR 396 advertising cost

EMAIL RECEIVED FROM EXTERNAL SOURCE

Brittany,

If you could provide me with the cost of advertising SJR 396, I'd appreciate it. This SJR is identical to SJR 690 (2019).

If I could get your estimate by Thursday, that'd be great.

THE FLORIDA SENATE
APPEARANCE RECORD

11/05/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 396

Bill Number (if applicable)

Topic SINGLE-SUBJECT LIMITATION FOR TAXATION AND BUDGET REFORM COMMISSION Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE

Street

Phone 786.260.9283

TALLAHASSEE

FL.

32301

City

State

Zip

Email cgrasales@delibre.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 11/5/2019 2:01:16 PM

Ends: 11/5/2019 3:41:02 PM **Length:** 01:39:47

2:01:15 PM Meeting called to order by Chair Simmons
2:01:20 PM Roll call by Administrative Assistant Joyce Butler
2:01:33 PM Quorum present
2:01:37 PM Comments from Chair Simmons
2:02:48 PM Introduction of Tab 1, SB 160 by Chair Simmons
2:03:02 PM Explanation of SB 160, Peer-to-Peer Support for First Responders by Senator Perry
2:04:12 PM Comments from Chair Simmons
2:04:18 PM Question from Senator Gibson
2:04:29 PM Response from Senator Perry
2:04:59 PM Follow-up question from Senator Gibson
2:05:06 PM Response from Senator Perry
2:05:43 PM Question from Senator Rodriguez
2:05:51 PM Response from Senator Perry
2:08:04 PM Amendment Barcode No. 191422 withdrawn
2:08:52 PM Speaker Wayne Bernoska, President, Florida Professional Firefighters
2:11:35 PM Question from Senator Gibson
2:11:42 PM Response from Mr. Bernoska
2:13:08 PM Question from Senator Stargel
2:13:15 PM Response from Mr. Bernoska
2:13:34 PM Follow-up question from Senator Stargel
2:13:42 PM Response from Mr. Bernoska
2:14:39 PM Follow-up question from Senator Stargel
2:14:47 PM Response from Mr. Bernoska
2:15:30 PM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in support
2:15:49 PM Speaker George Wallace in support
2:20:26 PM Question from Senator Gibson
2:20:34 PM Response from Mr. Wallace
2:23:46 PM Question from Chair Simmons
2:24:55 PM Response from Mr. Wallace
2:28:36 PM Meredith Brock Stanfield, Director of Legislative & Cabinet Affairs, Department of Financial Services waives in support
2:28:59 PM Speaker Steve Zona, President FOP Lodge 530, Florida FOP
2:31:17 PM Question from Chair Simmons
2:31:22 PM Response from Mr. Zona
2:32:27 PM Speaker Mick McHale, Florida PBA
2:35:07 PM Comments from Chair Simmons
2:36:18 PM Comments from Senator Baxley
2:38:07 PM Senator Gibson in debate
2:39:28 PM Comments from Senator Perry
2:41:44 PM CS/SB 160 temporarily postponed
2:42:50 PM Introduction of Tab 3, SB 248 by Chair Simmons
2:43:00 PM Explanation of SB 248, Public Records/County Attorneys and Assistant County

Attorneys by Senator Hooper

2:44:19 PM Comments from Chair Simmons

2:44:34 PM Laura Youmans, Legislative e Counsel, Florida Association of Counties waives in support

2:44:41 PM Edward Labrador, Legislative Counsel, Broward County Board of County Commissioners waives in support

2:44:52 PM Ralph Lair, Intergovernmental Affairs Officer, Pasco County waives in support

2:45:03 PM Cari Roth, Charlotte County waives in support

2:45:33 PM Speaker James Otto, Sex & Buds Clay County & Hotels

2:46:40 PM Closure waived

2:46:42 PM Roll call on SB 248 by Administrative Assistant Joyce Butler

2:46:55 PM SB 248 reported favorably

2:47:08 PM Introduction of Tab 2, SB 162 by Chair Simmons

2:47:37 PM Explanation of SB 162, Public Records by Senator Perry

2:48:12 PM Comments from Chair

2:48:25 PM Cesar Grajales, Coalitions Director, Americans for Prosperity waives in support

2:49:52 PM James Otto, Sex, Buds, Clay County FL Hotels

2:50:36 PM Closure waived

2:50:44 PM Roll call on SB 162 by Administrative Assistant Joyce Butler

2:50:49 PM SB 162 reported favorably

2:50:57 PM Introduction of Tab 4, SB 344 by Chair Simmons

2:51:12 PM Explanation of SB 344, Courts by Senator Bradley

2:53:00 PM Comments from Chair Simmons

2:54:03 PM Explanation of Amendment Barcode No. 386350 by Senator Bradley

2:54:30 PM Amendment Barcode No. 386350 adopted

2:55:33 PM Zayne Smith, Associate State Director, AARP waives in support

2:55:40 PM Catherine Ackerman, Executive Director, Florida Public Guardian Coalition waives in support

2:56:46 PM James Otto, Sex & Buds Clay County FL Hotels

2:57:20 PM Senator Baxley in debate

2:58:14 PM Senator Bradley in closure

2:59:23 PM Roll call on CS/SB 344 by Administrative Assistant Joyce Butler

3:00:24 PM CS/SB 344 reported favorably

3:00:37 PM Introduction of Tab 5, SB 358 by Chair Simmons

3:00:53 PM Explanation of SB 358, Decedents' Property by Senator Berman

3:03:33 PM Amendment Barcode No. 665556 introduced

3:03:54 PM Explanation of Amendment by Senator Berman

3:04:32 PM Sarah Butters, RPPTL - FL Bar waives in support of Amendment

3:05:02 PM Amendment Barcode No. 665556 adopted

3:05:45 PM Closure waived

3:05:50 PM Roll call by Administrative Assistant Joyce Butler

3:06:00 PM CS/SB 358 reported favorably

3:06:22 PM Introduction of Tab 6, TP'd until Senator Rouson arrives

3:06:50 PM Introduction of Tab 7, SB 468 by Chair Simmons

3:07:04 PM Explanation of SB 468, Mandatory Sentences by Senator Brandes

3:07:40 PM Comments from Chair Simmons

3:07:51 PM Question from Chair Stargel

3:07:57 PM Response from Senator Brandes

3:08:25 PM Cesar Grajales, Coalitions Director, Americans for Prosperity waives in support

3:08:51 PM Chelsea Murphy, State Director, Right on Crime waives in support

3:09:08 PM Speaker Nancy Daniels, Legislative Consultant, Florida Public Defender Association in support

3:12:15 PM Speaker Stacy Scott, 8th Circuit Public Defender in support
3:15:46 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in opposition
3:16:01 PM Phil Archer, State Attorney, 18th Circuit, Florida Prosecuting Attorneys Association waives in opposition
3:16:25 PM Gary Hester, Government Affairs, Florida Police Chiefs Association waives in opposition
3:16:41 PM Greg Newburn, State Director, FAMM waives in support
3:17:04 PM Kara Gross, Legislative Director & Senior Policy Counsel, ACLU of Florida waives in support
3:17:47 PM Speaker James Otto, Sex & Buds Clay County FL Hotels
3:20:10 PM Ingrid Delgado, Associate Director for Social Concerns & Respect Life, Florida Conference of Catholic Bishops waives in support
3:20:24 PM Ida V. Eskamani, New Florida Majority waives in support
3:20:52 PM Comments from Chair Simmons
3:20:57 PM Senator Gibson in debate
3:21:53 PM Senator Stargel in debate
3:22:47 PM Senator Hutson in debate
3:23:27 PM Senator Baxley in debate
3:26:29 PM Senator Brandes in closure
3:28:12 PM Roll call on SB 468 by Administrative Assistant Joyce Butler
3:29:11 PM SB 468 reported favorably
3:29:28 PM Introduction of Tab 6, SB 374 by Chair Simmons
3:29:45 PM Explanation of SB 374, Housing Discrimination by Senator Rouson
3:31:30 PM Comments from Chair Simmons
3:31:47 PM Pamela Burch Fort, Florida State Conference of NAACP waives in support
3:32:06 PM Alice Vickers, Florida Alliance for Consumer Protection waives in support
3:32:17 PM Edward G. Labrador, Legislative Counsel, Broward County Board of County Commissioners waives in support
3:32:49 PM Senator Rouson in closure
3:32:58 PM Roll call by Administrative Assistant Joyce Butler
3:33:10 PM SB 374 reported favorably
3:33:30 PM Introduction of Tab 8, SJR 176 by Chair Simmons
3:33:49 PM Explanation of SJR 176, Single-subject Limitation for Constitution Revision Commission Proposals
3:35:10 PM Cesar Grajales, Coalitions Director, Americans for Prosperity waives in support
3:35:31 PM Speaker James Otto, Sex & Buds Clay County FL Hotels
3:36:10 PM Senator Baxley in debate
3:37:29 PM Closure waived
3:37:33 PM Roll call by Administrative Assistant Joyce Butler
3:37:46 PM SJR 176 reported favorably
3:37:55 PM Introduction of Tab 9, SJR 396 by Chair Simmons
3:38:14 PM Explanation of SJR 396, Single-subject Limitation for Taxation and Budget Reform Commission
3:39:21 PM Comments from Chair Simmons
3:39:40 PM Cesar Grajales, Coalitions Director, Americans for Prosperity waives in support
3:39:57 PM Roll call by Administrative Assistant Joyce Butler
3:40:05 PM SJR 396 reported favorably
3:40:20 PM Comments from Chair Simmons
3:40:24 PM Senator Hutson moves to adjourn, meeting adjourned