

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Wednesday, April 15, 2015
TIME: 2:00 —3:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 732 Abruzzo (Identical H 115)	Sentencing; Revising the definition of the term "victim" to include governmental entities and political subdivisions in certain instances; requiring the sentencing judge to order restitution and a specified number of community service work hours for violations of chapter 838, F.S., relating to bribery and misuse of public office, or chapter 839, F.S., relating to offenses by public officers and employees, etc. CJ 03/30/2015 Favorable JU 04/15/2015 Favorable FP	Favorable Yeas 10 Nays 0
2	SJR 1142 Gaetz	Ad Valorem Taxation; Proposing amendments to the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead real property if the just value of the property declines; providing an effective date, etc. JU 04/15/2015 Favorable FT AP	Favorable Yeas 10 Nays 0
3	SB 724 Flores (Identical H 633)	Termination of Pregnancies; Revising conditions for the voluntary and informed consent to a termination of pregnancy; reenacting provisions relating to Agency for Health Care Administration rules regarding medical screening and evaluation of abortion clinic patients, to incorporate the amendment made by this act to s. 390.0111, F.S., in a reference thereto, etc. HP 03/31/2015 Favorable JU 04/15/2015 Favorable FP	Favorable Yeas 6 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, April 15, 2015, 2:00 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 238 Ring (Identical H 479)	Athletic Coaches; Requiring an independent sanctioning authority to dismiss an athletic coach ejected from a game for the remainder of that sport season under certain circumstances; authorizing such athletic coach to resume working under certain circumstances, etc. CF 03/12/2015 Favorable CA 03/31/2015 Favorable JU 04/07/2015 Temporarily Postponed JU 04/15/2015 Not Considered FP	Not Considered
5	SB 162 Joyner / Bradley (Identical H 103)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to, or was serving a concurrent incarceration for, another violent felony; providing that a wrongfully incarcerated person who commits a violent felony law violation, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 03/02/2015 Favorable JU 04/15/2015 Not Considered ACJ FP	Not Considered
6	SB 90 Margolis	Jury Composition; Requiring a 12-member jury for life felony cases, etc. JU 04/15/2015 Temporarily Postponed CJ ACJ AP	Temporarily Postponed
7	SB 334 Joyner (Identical H 205)	Criminal History Records of Minors; Reducing the period for which the criminal history records of certain minors must be retained before expungement, etc. JU 04/15/2015 Not Considered CJ RC	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, April 15, 2015, 2:00 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 664 Altman (Compare H 139)	Sentencing in Capital Felonies; Requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist, etc. CJ 03/10/2015 Not Considered CJ 03/16/2015 Favorable JU 04/15/2015 Not Considered AP	Not Considered
9	SB 794 Ring (Similar H 941)	Prejudgment Interest; Requiring a court to include prejudgment interest on the amount of money damages awarded to a plaintiff in a final judgment; providing for retroactive application, etc. JU 03/10/2015 Temporarily Postponed JU 03/17/2015 JU 03/24/2015 Temporarily Postponed JU 03/31/2015 Temporarily Postponed JU 04/15/2015 Not Considered ACJ AP	Not Considered
10	CS/SB 1064 Banking and Insurance / Hukill (Similar CS/CS/H 669)	Insurance Claims; Providing that an assignment or agreement that transfers authority to adjust, negotiate, or settle a claim or that violates other specified provisions is void; revising the authority of public adjuster apprentices; prohibiting assignment of an insurable interest except to subsequent purchasers after a loss; authorizing a property insurance policy to prohibit the post-loss assignment of certain benefits or rights that apply to specified losses; providing that a post-loss assignment in violation of the act is void, etc. BI 03/23/2015 Fav/CS JU 04/15/2015 Not Considered RC	Not Considered

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 732

INTRODUCER: Senator Abruzzo

SUBJECT: Sentencing/Restitution

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 732 expands the class of victims who are entitled to restitution resulting from a defendant's criminal conduct. Under the bill, governmental entities and political subdivisions can be victims that are entitled to restitution to the extent that they are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode.

The bill requires the court to order a person convicted of bribery or misuse of public office under ch. 838, F.S., or a crime committed by public officers and employees under ch. 839, F.S., to provide restitution to the victim and perform 250 hours of community service work. The court must order restitution if the court finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode.

II. Present Situation:

Restitution

Section 775.089, F.S., requires a judge to order a defendant convicted of a criminal offense to provide monetary or non-monetary restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense or criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.¹ The trial court must first conduct a restitution hearing to determine by competent evidence the amount owed to the victim and the defendant's ability to pay.²

¹ Section 775.089(1)(a), F.S.

² *Exilorme v. State*, 857 So. 2d 339, 340 (Fla. 2d DCA 2003) and *Graham v. State*, 720 So. 2d 294, 294 (Fla. 5th DCA 1998).

Currently, the restitution statute defines “victim,” in part, as “each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode.”³ The statute does not define “person.” A person, however, is defined in s. 1.01(3), F.S., to include “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.” Read together, it appears that governmental entities and political subdivisions could be “victims” for purposes of restitution. However, several of Florida’s district courts of appeal are split on the issue.

Some courts have held that governmental entities are barred from obtaining an order of restitution because they are not considered “victims” for purposes of restitution.⁴ These cases involved restitution requests by police departments, sheriff’s agencies, and a probation office. As such, the entities likely requested restitution for conducting investigations or performing other public services within the normal scope of their duties, rather than for actual damages suffered.⁵

Other district courts of appeal have held that governmental entities are “victims” for losses other than investigative costs, such as travel expenses incurred for trial, when the losses are a direct result of the defendant’s criminal episode.⁶ In *Childers v. State*, the First District Court held that because the definition of “person” included a list of individuals and entities, the Legislature did not intend the list to be limiting and exclusive, but rather illustrative.⁷

Offenses by Public Officials

Chapter 838, F.S., relating to bribery and misuse of public office, and ch. 839, F.S., relating to offenses by public officers and employees, create numerous criminal offenses involving public officials or employees in the performance of their official duties. Chapter 838, F.S., authorizes felony penalties for the following:

- Bribery involving a public servant;⁸
- Unlawful compensation or reward for official behavior;⁹
- Corruption by threat against a public servant;¹⁰
- Official misconduct;¹¹
- Bribery in athletic contests;¹²
- Soliciting, accepting, or agreeing to accept a commercial bribe;¹³
- Conferring, offering to confer, or agreeing to confer a commercial bribe;¹⁴

³ The definition also includes the victim’s estate if the victim is deceased, the victim’s next of kin if the victim is deceased as a result of the offense, as well as the victim’s trade association in certain instances. Section 775.089(1)(c), F.S.

⁴ See *Sims v. State*, 746 So. 2d 546, 547 (Fla. 2d DCA 1999); *Bain v. State*, 559 So. 2d 106, 106 (Fla. 4th DCA 1990); *T.H. Taylor v. State*, 672 So. 2d 605, 606 (Fla. 4th DCA 1996); and *Rodriguez v. State*, 691 So. 2d 568, 569 (Fla. 2d DCA 1997).

⁵ *Id.*

⁶ *Smith v. State*, 801 So. 2d 1043, 1046 (Fla. 5th DCA 2001); *Childers v. State*, 936 So. 2d 585, 597 (Fla. 1st DCA 2006).

⁷ *Childers*, supra note 6, at 597-599.

⁸ Section 838.015, F.S., 2nd degree felony.

⁹ Section 838.016, F.S., 2nd degree felony.

¹⁰ Section 838.021, F.S., 2nd and 3rd degree felonies.

¹¹ Section 838.022, F.S., 3rd degree felony.

¹² Section 838.12, F.S., 3rd degree felony.

¹³ Section 838.15, F.S., 3rd degree felony.

¹⁴ Section 838.16, F.S., 3rd degree felony.

- Disclosure or use of confidential criminal justice information;¹⁵ and
- Bid tampering.¹⁶

Chapter 839, F.S., authorizes misdemeanor and felony penalties for the following:

- County officers speculating in county warrants or certificates;¹⁷
- Municipal officers speculating in municipal scrip;¹⁸
- Tax collectors buying or receiving a lesser than face value amount of warrant or order;¹⁹
- Extortion by officers of the state;²⁰
- Clerk of court, sheriff, or county judge failing to keep records of costs;²¹
- Public official or employee falsifying records;²²
- Officer withholding records from successor;²³
- Judicial officer withholding records;²⁴
- Fraud of clerk in drawing a jury;²⁵
- Misappropriation of moneys by commissioners to make sales;²⁶
- Officer assuming to perform duties of office prior to qualification;²⁷
- Sheriff or officer willfully or corruptly refusing or neglecting to execute process;²⁸
- Officer refusing to execute criminal process;²⁹
- Jailer or officer refusing to receive prisoner;³⁰
- Officer taking insufficient bail;³¹
- Willful failure of officer to perform any duty required under criminal procedure law;³² and
- Misuse of confidential information.³³

As previously discussed, under s. 775.089, F.S., courts generally must order defendants to make restitution for damages or losses caused by criminal conduct. However, some criminal statutes contain restitution and community service requirements that are specific to those particular offenses.³⁴ Chapters 838 and 839, F.S., do not currently have specific restitution or community service requirements.

¹⁵ Section 838.21, F.S., 3rd degree felony offense.

¹⁶ Section 838.22, F.S., 2nd degree felony offense.

¹⁷ Section 839.04, F.S., 2nd degree misdemeanor offense.

¹⁸ Section 839.05, F.S., 2nd degree misdemeanor offense.

¹⁹ Section 839.06, F.S., 1st degree misdemeanor offense.

²⁰ Section 839.11, F.S., 1st degree misdemeanor offense.

²¹ Section 839.12, F.S., 2nd degree misdemeanor offense.

²² Section 839.13, F.S., 2nd degree felony, 3rd degree felony, and 1st degree misdemeanor offenses.

²³ Section 839.14, F.S., 2nd degree misdemeanor offense.

²⁴ Section 839.15, F.S., 1st degree misdemeanor offense.

²⁵ Section 839.16, F.S., 2nd degree misdemeanor offense.

²⁶ Section 839.17, F.S., 2nd degree felony offense.

²⁷ Section 839.18, F.S., 2nd degree misdemeanor offense.

²⁸ Section 839.19, F.S., 1st degree misdemeanor offense.

²⁹ Section 839.20, F.S., 1st degree misdemeanor offense.

³⁰ Section 839.21, F.S., 1st degree misdemeanor offense.

³¹ Section 839.23, F.S., 2nd degree misdemeanor offense.

³² Section 839.24, F.S., 2nd degree misdemeanor offense.

³³ Section 839.26, F.S., 1st degree misdemeanor offense.

³⁴ Statutes that include restitution provisions are: s. 267.13(1)(b), F.S., prohibition on unauthorized archeological excavation (provides a specified definition of restitution); s. 784.08(1), F.S., assault or battery of a person 65 years or older (defendant

III. Effect of Proposed Changes:

Restitution

The bill amends the definition of “victim” in s. 775.089(1)(c), F.S., to include governmental entities and political subdivisions. The entities must have been a direct victim of the defendant’s offense or criminal episode and not merely providing public services in response to the offense or criminal episode. (“Governmental entities” and “political subdivisions” are defined under the bill as they are currently defined in s. 11.45, F.S.³⁵) By expanding the definition of victim to include governmental entities and political subdivisions, these entities are entitled to compensation for damages or losses caused by a defendant’s criminal conduct.

Offenses by Public Officials

The bill creates ss. 838.23 and 839.27, F.S., to require a court to order a public official or employee convicted of any offense in chs. 838 or 839, F.S., to make restitution to the victim and perform 250 hours of community service work. Restitution must be ordered if the court finds that the victim suffered an actual financial loss caused directly or indirectly by the person’s offense or an actual financial loss related to the person’s criminal episode.

Restitution and community service work provided in this bill are in addition to any fine or sentence that may be imposed.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to 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. 10 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

shall be fined not more than \$10,000, ordered to pay restitution, and perform up to 500 hours of community service); s. 812.0145(1), F.S., theft from a person 65 years or older (defendant shall be ordered to pay restitution and perform up to 500 hours of community service); and s. 817.568(15)(a), F.S., criminal use of personal identification (specifies that the court may order restitution as payment of attorney’s fees incurred by the victim in correcting his or her credit, or costs incurred for a civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim due to actions of the defendant).

³⁵ “Governmental entity” means a state agency, county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. “Political subdivision” means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill enables state and local governmental entities to recover restitution under the bill, resulting in a positive fiscal impact.

According to the Department of Corrections (DOC), the bill's new requirement that an offender perform 250 hours of community service work could be enforced by a DOC probation officer if the offender is placed on community supervision. In FY 2013-14, the court sentenced 64 offenders to community supervision for violations of chs. 838 and 839, F.S.³⁶

This requirement could also be enforced by a DOC probation officer if the length of supervision provides enough time to complete community service for an offender released from prison to post release supervision. According to the department, any fiscal impact as a result of this new requirement is also indeterminate at this time. In FY 2013-14, there were 13 offenders sentenced to state prison for a violation of chs. 838 and 839, F.S.³⁷

Any fiscal impact to the department as a result of this bill is indeterminate.

The bill's restitution and community service requirements may have a negative fiscal impact on local governments that are required to supervise the community service hours and restitution payments. In FY 2013-14, there were 77 offenders sentenced statewide for a violation of chs. 838 and 839, F.S.³⁸

VI. Technical Deficiencies:

None.

³⁶ Department of Corrections, *2015 Bill Analysis for HB115* (2015) (on file with the Senate Judiciary Committee). HB 115 is the identical companion to SB 732.

³⁷ *Id.*

³⁸ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.089 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 838.23 and 839.27.

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 Abruzzo

25-00666-15

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A bill to be entitled

An act relating to sentencing; amending s. 775.089, F.S.; revising the definition of the term "victim" to include governmental entities and political subdivisions in certain instances; creating ss. 838.23 and 839.27, F.S.; requiring the sentencing judge to order restitution and a specified number of community service work hours for violations of chapter 838, F.S., relating to bribery and misuse of public office, or chapter 839, F.S., relating to offenses by public officers and employees; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 775.089, Florida Statutes, is amended to read:

775.089 Restitution.—

(1)

(c) The term "victim" as used in this section and in any provision of law relating to restitution means:

1. Each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense. The term includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, when such entities are a direct victim of the defendant's offense or criminal episode and not merely providing public

Page 1 of 3

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services in response to the offense or criminal episode.

2. The term also includes ~~and~~ the victim's trade association if the offense is a violation of s. 540.11(3)(a)3. involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation in this ~~subparagraph~~ ~~paragraph~~ relating to violations of s. 540.11(3)(a)3. applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. As used in this ~~subparagraph~~ ~~paragraph~~, the term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

Section 2. Section 838.23, Florida Statutes, is created to read:

838.23 Restitution and community service.—A person who is convicted of any offense in this chapter shall be ordered by the sentencing judge to make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode. A person who is convicted of any offense in this chapter shall also be ordered to perform 250 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and may not be in lieu thereof.

Section 3. Section 839.27, Florida Statutes, is created to

Page 2 of 3

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read:

839.27 Restitution and community service.—A person who is convicted of any offense in this chapter shall be ordered by the sentencing judge to make restitution to the victim of the offense if, after conducting a hearing, the judge finds that the victim suffered an actual financial loss caused directly or indirectly by the person's offense or an actual financial loss related to the person's criminal episode. A person who is convicted of any offense in this chapter shall also be ordered to perform 250 hours of community service work. Restitution and community service work shall be in addition to any fine or sentence that may be imposed and may not be in lieu thereof.

Section 4. This act shall take effect October 1, 2015.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 732
FINAL ACTION: Favorable
MEETING DATE: Wednesday, April 15, 2015
TIME: 2:00 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Benacquisto						
X		Brandes						
X		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Díaz de la Portilla, CHAIR						
10	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

732

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

Fl.

State

33773

Zip

Email _____

Speaking: For Against Information

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

Representing Pinellas County Florida Government Corporation.

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.

APPEARANCE RECORD

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

4 1 15 2015

Meeting Date

Topic _____

Bill Number 732

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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.

THE FLORIDA SENATE

APPEARANCE RECORD

4-15-15

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

732

Meeting Date

Bill Number (if applicable)

Topic RESTITUTION

Amendment Barcode (if applicable)

Name GARY FARMER

Job Title ATTORNEY

Address 425 N. ANDREWS AVE #2

Phone

Street

FT. LAUDERDALE FL 33301

Email

City

State

Zip

Speaking: For Against Information

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

Representing QUI TAM ATTORNEYS

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.

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 1142

INTRODUCER: Senator Gaetz

SUBJECT: Ad Valorem Taxation

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	Favorable
2.			FT	
3.			AP	

I. Summary:

SJR 1142 proposes an amendment to the Florida Constitution which expands the authority of the Legislature to regulate ad valorem taxes. Under the amendment, the Legislature may prohibit increases in the assessed value of a person’s homestead when the market value of the homestead is decreasing.

Because of the Save-Our-Homes Amendment to the Florida Constitution, the assessed value of a homestead may become significantly less than its market value. However, as implemented, the SOH amendment also annually increases the assessed value of a homestead by the lesser of 3 percent or the inflation rate as long as the market value of the homestead exceeds its assessed value.

This joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature before it may be submitted to the electors for adoption.

II. Present Situation:

Ad Valorem Taxation Generally

Every year on January 1, the value of a person’s home is assessed by a property appraiser for the purposes of ad valorem taxation. The term “ad valorem” is a Latin term meaning “according to the value.”¹ Thus, an ad valorem tax on a person’s real property is a tax that is proportional to the value of the person’s property.² In general, the greater the value of the property, the greater the amount of the tax.

¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

² *Id.*

Under the tax structure established by the Florida Constitution, an ad valorem tax may be imposed only by counties, municipalities, school districts, and special districts.³ Ad valorem taxes provide approximately 50 percent of the funding for public schools and 30 percent of the funding for local governments.⁴

If imposed, the Florida Constitution requires that ad valorem taxes be at a uniform rate within each taxing unit.⁵ The maximum tax rate is limited to 10 mills each (1 percent of value) for counties, municipalities, and school districts.⁶ Other limitations may apply to taxes imposed by special districts. For 2014, the total millage rates from all taxing authorities in Florida's counties ranged from a low of 9.92 mills in Monroe County to a high of nearly 24 mills in Alachua County.⁷ The average total millage rate from all taxing authorities in Florida's counties was 17.4 mills.

The general rule for ad valorem taxation is that property taxes apply to a property's just or market value.⁸ However, many assessment benefits and exemptions from taxation apply to a wide variety of properties. These assessment benefits and tax exemptions and their resulting reductions in taxable values or properties are described in the table below.

Assessment Benefits and Exemptions	Value
Save-Our-Homes Differential	\$130.78 billion
10% Non-Homestead Assessment Increase Cap	\$46.28 billion
Agricultural Classification	\$51.86 billion
Pollution Control Devices	\$3.78 billion
Conservation Lands	\$0.10 billion
Working Waterfronts	\$0.18 billion
\$25K Homestead Exemption	\$106.25 billion
Additional \$25K Homestead Exemption	\$81.34 billion
\$25K Tangible Personal Property Exemption	\$7.78 billion
Government Property Exemption	\$160.59 billion
Institutional Property Exemption	\$58.82 billion
Other Exemptions	\$15.22 billion
Total Value of Assessment Benefits and Exemptions	\$662.98 billion

³ FLA. CONST. art. VII, s. 9; *see also* FLA. CONST. art. VII, s. 1 (prohibiting state ad valorem taxes).

⁴ Florida Department of Revenue, Information for Taxpayers, <http://dor.myflorida.com/dor/property/taxpayers/> then click Florida's Property Tax System (last visited Apr. 13, 2015).

⁵ FLA. CONST. art. VII, s. 2.

⁶ FLA. CONST. art. VII, s. 9(b).

⁷ Florida Department of Revenue, Florida Property Tax Data Portal <http://dor.myflorida.com/dor/property/resources/data.html>, then click Florida Ad Valorem Valuation and Tax Data, then click 2014, and then click Millage and Taxes Levied Report (last visited Apr. 12, 2015).

⁸ FLA. CONST. art. VII, s. 4.

As a result of the assessment benefits and exemptions, the value of property in Florida otherwise subject to ad valorem taxes by counties was reduced by 23.6 percent in 2014 from \$2.055 trillion to \$1.392 trillion.⁹

The Homestead Exemption

Of the various assessment benefits and exemptions identified in the table above, the most well-known is probably the homestead exemption. Under Article 7, section 6 of the Florida Constitution, every person having legal and equitable title to real estate and who maintains his or her permanent residence on that property is eligible for a \$25,000 homestead exemption. This exemption is applicable to ad valorem tax levies from every taxing authority. An additional \$25,000 homestead exemption applies to homesteads on the assessed value greater than \$50,000 and up to \$75,000. However, the additional exemption does not apply to ad valorem taxes by school districts.

The Save-Our-Homes Amendment

In 1992, the voters adopted the Save-Our-Homes amendment to the State Constitution.¹⁰ That amendment insulates those owning homestead properties from rapid increases in property taxes resulting from the appreciation in the value of their homes. The amendment works by limiting increases in the assessed value of a homestead to the lesser of 3 percent of the assessment for the prior year or the rate of inflation.¹¹ When home values increase faster than these thresholds, homestead owners accrue a Save-Our-Homes differential between the assessed value and the market value.¹² Over time, many homesteads have accrued large assessment differentials, which result in significant savings in property taxes. Additionally, a subsequent amendment to the Florida Constitution, makes the SOH differentials “portable,” meaning that a property owner can apply the differential to a new homestead.¹³

The SOH amendment was codified in Article VII, s. 4(d), Fla. Const., the most relevant provisions of which are reproduced below:

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

⁹ Florida Department of Revenue, County Just, Assessed, & Taxable Value (Dec. 2014) <http://dor.myflorida.com/dor/property/resources/pdf/jat.pdf>.

¹⁰ The amendment is codified as Article VII, section 4(d) of the Florida Constitution.

¹¹ FLA. CONST. art. VII, s. 4(d)1.a. and b.

¹² According to RealtyTrac, increases in the values of residential properties in Jacksonville and the Tampa-St. Petersburg-Clearwater areas, are significantly outpacing the thresholds of the SOH amendment. From February 2014 to February 2015, the value of residential properties in Jacksonville increased by 11 percent. In the Tampa-St. Petersburg-Clearwater area, values increased by 12 percent after increasing by 11 percent the previous year. Darren Blomquist, *Annual Home Price Appreciation Slows in 65 Percent of Major U.S. Metros in February Compared to Year Ago*, RealtyTrac, (Apr. 2, 2015) <http://www.realtytrac.com/news/home-prices-and-sales/feb-2015-home-price-appreciation-analysis/>.

¹³ See FLA. CONST. art. VII, s. 4(d)(8).

- (1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:
 - a. Three percent (3%) of the assessment for the prior year.
 - b. The percent change in the Consumer Price Index
- (2) No assessment shall exceed just value.
- (3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year Thereafter, the homestead shall be assessed as provided in this subsection.
- (4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead That assessment shall only change as provided in this subsection.
- (5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.
- (6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

Revenue Recapture Rule

Because the SOH amendment was clearly intended to limit ad valorem tax increases on homesteads, news articles reported that many were surprised or confused to have increased assessments and increased property taxes as their home values were falling in the mid to late 2000s.¹⁴ These increases are often attributed to the Department of Revenue's "revenue recapture rule," which implements the SOH amendment.^{15, 16} Under the revenue recapture rule, the assessed value of a homestead must increase by the lesser of 3 percent or the inflation rate every year the property's assessed value is less than its market value.¹⁷ Thus, assessment differentials that accrue during periods of rising property values are lost during periods of falling values.

¹⁴ See e.g., Chuin-Wei Yap, *Florida's Save Our Home tax benefit loses luster*, TAMPA BAY TIMES, (Jun. 1, 2008) <http://www.tampabay.com/news/localgovernment/floridas-save-our-homes-tax-benefit-loses-luster/581342>; Mike Bennett, *Rule needed to fix assessment inequity*, SUN SENTINEL, (Oct. 30, 2008) http://articles.sun-sentinel.com/2008-10-30/news/0810290245_1_property-tax-bills-market-value-appraiser; Elizabeth Wright, *Recapture rule will be costly for 95,797 Lee homeowners*, NAPLES NEWS, (Jun. 4, 2008) <http://www.naplesnews.com/business/real-estate/recapture-rule-cost-95797-homeowners-lee>.

¹⁵ Fla. Admin. Code R. 12D-8.0062, F.A.C.

¹⁶ When the revenue recapture rule was proposed for adoption in 1995, Broward County Property Appraiser William Markham challenged it in an administrative proceeding. *William Markham v. Department of Revenue*, 1995 WL 1053056, Fla. Admin. Order (Jun. 21, 1995). Mr. Markham argued that the rule conflicted with the intent of the framers of the SOH amendment and that the rule should prohibit increased assessments when a property's value does not increase. The administrative law judge, however, upheld the rule by concluding that it largely tracked the language of the constitutional amendment. This conclusion was further supported by findings that the limitation sought by Mr. Markham was not addressed in the amendment or its ballot summary.

¹⁷ The relevant portion of the revenue recapture rule, Rule 12D-8.0062(5) of the Florida Administrative Code, states:

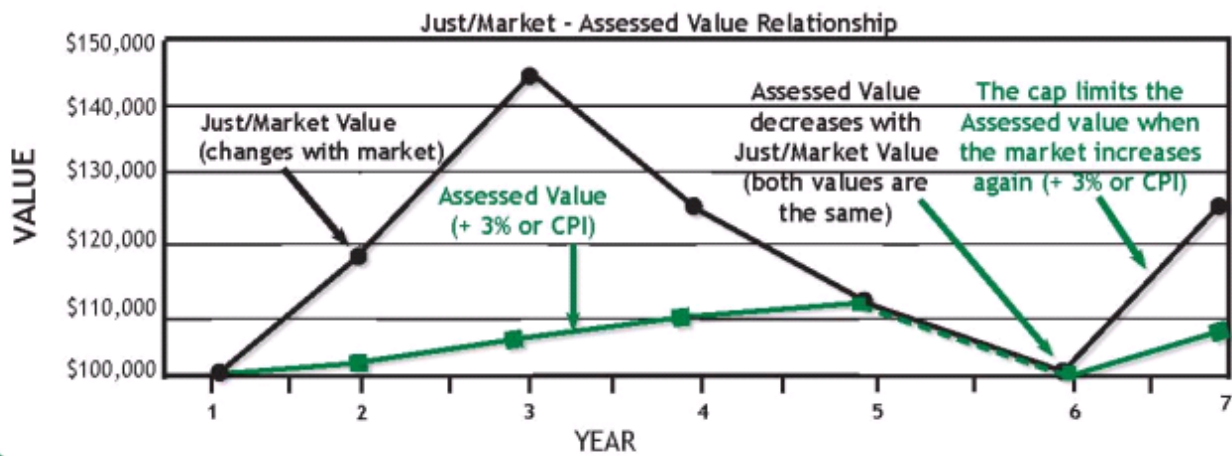
- (5) *Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is required to increase the prior year's assessed value by the lower of:*
 - (a) Three percent; or
 - (b) The percentage change in the Consumer Price Index (CPI)

The interaction between the SOH amendment and the revenue recapture rule is illustrated below.¹⁸

THE SAVE-OUR-HOMES CAP "RECAPTURE" RULE

If you have the Save-Our-Homes cap on your property and your just/market value decreases, your assessed value will still increase by the annual cap rate until it reaches the just/market value. If the just/market value decreases below the assessed value, the assessed value will decrease until the two values are the same. This does not mean that you have lost your Save-Our-Homes cap. The cap is still on the property, and will limit future increases of the assessed value.

The chart below illustrates the relationship between the just / market value and assessed value for a hypothetical property over several years.



Statutory Limitations on Property Tax Increases

Existing statutes impose some procedural restraints on the ability of a taxing authority to increase ad valorem taxes. First, existing law generally deems an ad valorem millage rate resulting in more revenue to a taxing authority as a tax increase even if the rate is lower than the prior year's rate.¹⁹ The threshold which defines whether millage rate is deemed a tax increase is known as the rolled-back rate. The rolled-back rate is the millage rate that will provide the same revenue as was levied during the prior year if applied to the new taxable values of properties taxed in the prior year.²⁰ If a taxing authority proposes a millage that exceeds the rolled-back rate, the taxing authority must advertise a "Notice of Proposed Tax Increase" and make a final decision on the proposed tax increase at a public hearing.

The second procedural restraint on increases in ad valorem taxes are supermajority voting requirements for millage rates exceeding the rolled-back rate.²¹ A millage rate that does not

¹⁸ The chart illustrating the relationship between the SOH amendment and the revenue recapture rule was created by the Pinellas County Property Appraiser's Office and is available on its website at <http://www.pcpao.org/SOH.html>.

¹⁹ Section 200.065(3), F.S.

²⁰ Section 200.065(5), F.S.

²¹ Section 200.065(5), F.S.

exceed 110 percent of the rolled-back rate must be approved by a two-thirds vote of the governing body of the taxing authority. A millage rate that is greater than 110 percent of the rolled-back rate must be approved by a unanimous vote of the governing body or a three-fourths vote if the governing body has at least nine members.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the Florida Constitution which expands the authority of the Legislature to regulate ad valorem taxes. Under the amendment, the Legislature may enact a general law prohibiting increases in the assessed value of a person's homestead when the market value of the homestead is decreasing.

Because of the Save-Our-Homes amendment to the Florida Constitution, the assessed value of a homestead may become significantly less than its market value. However, as implemented, the SOH amendment also annually increases the assessed value of a homestead by the lesser of 3 percent or the inflation rate as long as the market value of the homestead exceeds its assessed value.

If this amendment is approved by at least 60 percent of the electors voting on the amendment at the 2016 General Election, it will take effect on January 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Before a constitutional amendment that is proposed by the Legislature may be submitted to the electors for approval, it must be approved by at least 60 percent of the membership of each house of the Legislature.²² To take effect, the amendment must be approved by a vote of at least 60 percent of the electors voting on the measure.²³

²² FLA. CONST. art. XI, s. 1.

²³ FLA. CONST. art. XI, s. 5(e).

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

None.

B. Private Sector Impact:

This joint resolution authorizes the expansion of the Save-Our-Homes property tax assessment benefit for homestead properties. If implemented, the resolution will shift the property tax burdens from homestead properties onto other properties.²⁴

During periods of falling home values, taxing authorities may need to increase their ad valorem tax rates if they wish to limit tax revenue shortfalls. Properties such as non-homestead residential property or business properties which have the most value exposed to ad valorem taxation, will carry a proportionally larger share of any tax increase. On the other hand, Florida residents who are long-term owners of homestead properties will receive some insulation from future tax burdens that might otherwise force them to move into less expensive properties.

The Save-Our-Homes tax benefit resulted in similar properties carrying dissimilar tax burdens solely based on the length of ownership.²⁵ The revenue recapture rule reduces these dissimilar burdens when property values fall. This amendment, if implemented, will expand the differences in tax burdens carried by similar properties.

C. Government Sector Impact:

Because this joint resolution, if implemented, will effect ad valorem tax revenues from homestead properties, taxing authorities that are most dependent on ad valorem tax revenue from homestead properties will be the most effected by the amendment.

Article XI, s. 5(b) of the Florida Constitution requires that proposed constitutional amendments be published at least two times in newspapers throughout the state in advance of an election. These costs are unknown, but they are borne by the Secretary of State.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁴ See Office of Economic and Demographic Research, The Florida Legislature, *Florida's Property Tax Study Interim Report: As Required by Chapter 2006-311, Laws of Florida*, <http://edr.state.fl.us/Content/presentations/property-tax-study/EDR-Presentation-on-Interim-Findings.pdf>.

²⁵ *Id.*

VIII. Statutes Affected:

This joint resolution amends section 4 of Article VII of the Florida Constitution and creates section 34, Article XII 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.

By Senator Gaetz

1-01112-15

20151142__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead real property if the just value of the property declines; providing an effective date.

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

That the following amendment to Section 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are 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 VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—

By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land

Page 1 of 9

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

1-01112-15

20151142__

used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) The legislature may provide by general law that, except for changes, additions, reductions, or improvements to homestead property assessed as provided in paragraph (6), an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1.

(3) No assessment shall exceed just value.

(4)~~(3)~~ After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of

Page 2 of 9

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

1-01112-15 20151142__

59 paragraph (9) ~~(8)~~ apply. Thereafter, the homestead shall be
 60 assessed as provided in this subsection.

61 (5)~~(4)~~ New homestead property shall be assessed at just
 62 value as of January 1st of the year following the establishment
 63 of the homestead, unless the provisions of paragraph (9) ~~(8)~~
 64 apply. That assessment shall only change as provided in this
 65 subsection.

66 (6)~~(5)~~ Changes, additions, reductions, or improvements to
 67 homestead property shall be assessed as provided for by general
 68 law; provided, however, after the adjustment for any change,
 69 addition, reduction, or improvement, the property shall be
 70 assessed as provided in this subsection.

71 (7)~~(6)~~ In the event of a termination of homestead status,
 72 the property shall be assessed as provided by general law.

73 (8)~~(7)~~ The provisions of this amendment are severable. If
 74 any of the provisions of this amendment shall be held
 75 unconstitutional by any court of competent jurisdiction, the
 76 decision of such court shall not affect or impair any remaining
 77 provisions of this amendment.

78 (9)~~(8)~~

79 a. A person who establishes a new homestead as of January
 80 1, 2009, or January 1 of any subsequent year and who has
 81 received a homestead exemption pursuant to Section 6 of this
 82 Article as of January 1 of either of the two years immediately
 83 preceding the establishment of the new homestead is entitled to
 84 have the new homestead assessed at less than just value. If this
 85 revision is approved in January of 2008, a person who
 86 establishes a new homestead as of January 1, 2008, is entitled
 87 to have the new homestead assessed at less than just value only

1-01112-15 20151142__

88 if that person received a homestead exemption on January 1,
 89 2007. The assessed value of the newly established homestead
 90 shall be determined as follows:

91 1. If the just value of the new homestead is greater than
 92 or equal to the just value of the prior homestead as of January
 93 1 of the year in which the prior homestead was abandoned, the
 94 assessed value of the new homestead shall be the just value of
 95 the new homestead minus an amount equal to the lesser of
 96 \$500,000 or the difference between the just value and the
 97 assessed value of the prior homestead as of January 1 of the
 98 year in which the prior homestead was abandoned. Thereafter, the
 99 homestead shall be assessed as provided in this subsection.

100 2. If the just value of the new homestead is less than the
 101 just value of the prior homestead as of January 1 of the year in
 102 which the prior homestead was abandoned, the assessed value of
 103 the new homestead shall be equal to the just value of the new
 104 homestead divided by the just value of the prior homestead and
 105 multiplied by the assessed value of the prior homestead.
 106 However, if the difference between the just value of the new
 107 homestead and the assessed value of the new homestead calculated
 108 pursuant to this sub-subparagraph is greater than \$500,000, the
 109 assessed value of the new homestead shall be increased so that
 110 the difference between the just value and the assessed value
 111 equals \$500,000. Thereafter, the homestead shall be assessed as
 112 provided in this subsection.

113 b. By general law and subject to conditions specified
 114 therein, the Legislature shall provide for application of this
 115 paragraph to property owned by more than one person.

116 (e) The legislature may, by general law, for assessment

1-01112-15 20151142__
 117 purposes and subject to the provisions of this subsection, allow
 118 counties and municipalities to authorize by ordinance that
 119 historic property may be assessed solely on the basis of
 120 character or use. Such character or use assessment shall apply
 121 only to the jurisdiction adopting the ordinance. The
 122 requirements for eligible properties must be specified by
 123 general law.

(f) A county may, in the manner prescribed by general law,
 124 provide for a reduction in the assessed value of homestead
 125 property to the extent of any increase in the assessed value of
 126 that property which results from the construction or
 127 reconstruction of the property for the purpose of providing
 128 living quarters for one or more natural or adoptive grandparents
 129 or parents of the owner of the property or of the owner's spouse
 130 if at least one of the grandparents or parents for whom the
 131 living quarters are provided is 62 years of age or older. Such a
 132 reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from
 133 construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the
 134 property as improved.

(g) For all levies other than school district levies,
 135 assessments of residential real property, as defined by general
 136 law, which contains nine units or fewer and which is not subject
 137 to the assessment limitations set forth in subsections (a)
 138 through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed
 139 annually on the date of assessment provided by law; but those
 140 changes in assessments shall not exceed ten percent (10%) of the
 141
 142
 143
 144
 145

1-01112-15 20151142__
 146 assessment for the prior year. The legislature may provide by
 147 general law that, except for changes, additions, reductions, or
 148 improvements to property assessed as provided in paragraph (4),
 149 an assessment may not increase if the just value of the property
 150 is less than the just value of the property on the preceding
 151 date of assessment as provided by general law.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by
 152 general law, including any change of ownership of a legal entity
 153 that owns the property, such property shall be assessed at just
 154 value as of the next assessment date. Thereafter, such property
 155 shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such
 156 property shall be assessed as provided for by general law;
 157 however, after the adjustment for any change, addition,
 158 reduction, or improvement, the property shall be assessed as
 159 provided in this subsection.

(h) For all levies other than school district levies,
 160 assessments of real property that is not subject to the
 161 assessment limitations set forth in subsections (a) through (d)
 162 and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed
 163 annually on the date of assessment provided by law; but those
 164 changes in assessments shall not exceed ten percent (10%) of the
 165 assessment for the prior year. The legislature may provide by
 166 general law that, except for changes, additions, reductions, or
 167 improvements to property assessed as provided in paragraph (5),
 168 an assessment may not increase if the just value of the property
 169 is less than the just value of the property on the preceding
 170
 171
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1-01112-15

20151142__

175 date of assessment as provided by general law.

176 (2) No assessment shall exceed just value.

177 (3) The legislature must provide that such property shall
178 be assessed at just value as of the next assessment date after a
179 qualifying improvement, as defined by general law, is made to
180 such property. Thereafter, such property shall be assessed as
181 provided in this subsection.

182 (4) The legislature may provide that such property shall be
183 assessed at just value as of the next assessment date after a
184 change of ownership or control, as defined by general law,
185 including any change of ownership of the legal entity that owns
186 the property. Thereafter, such property shall be assessed as
187 provided in this subsection.

188 (5) Changes, additions, reductions, or improvements to such
189 property shall be assessed as provided for by general law;
190 however, after the adjustment for any change, addition,
191 reduction, or improvement, the property shall be assessed as
192 provided in this subsection.

193 (i) The legislature, by general law and subject to
194 conditions specified therein, may prohibit the consideration of
195 the following in the determination of the assessed value of real
196 property used for residential purposes:

197 (1) Any change or improvement made for the purpose of
198 improving the property's resistance to wind damage.

199 (2) The installation of a renewable energy source device.

200 (j)

201 (1) The assessment of the following working waterfront
202 properties shall be based upon the current use of the property:

203 a. Land used predominantly for commercial fishing purposes.

1-01112-15

20151142__

204 b. Land that is accessible to the public and used for
205 vessel launches into waters that are navigable.

206 c. Marinas and drystacks that are open to the public.

207 d. Water-dependent marine manufacturing facilities,
208 commercial fishing facilities, and marine vessel construction
209 and repair facilities and their support activities.

210 (2) The assessment benefit provided by this subsection is
211 subject to conditions and limitations and reasonable definitions
212 as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

213
214
215 SECTION 34. Property assessments.—This section and the
216 amendment of Section 4 of Article VII allowing the legislature
217 to prohibit an increase in the assessment of homestead and
218 specified nonhomestead real property having a declining just
219 value shall take effect on January 1, 2017.

220 BE IT FURTHER RESOLVED that the following statement be
221 placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

ARTICLE XII, SECTION 34

222
223
224
225 PROPERTY ASSESSMENTS; DECLINING PROPERTY VALUE.—Proposing
226 an amendment to the State Constitution to allow the Legislature,
227 by general law, to prohibit an increase in the assessment of
228 homestead and specified nonhomestead real property if the
229 property's just value is less than its just value on a specified
230 date, subject to any adjustment in the assessment due to
231 changes, additions, reductions, or improvements to the property
232 which are assessed pursuant to general law. This amendment takes

1-01112-15

20151142__

233 effect on January 1, 2017.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SJR 1142
FINAL ACTION: Favorable
MEETING DATE: Wednesday, April 15, 2015
TIME: 2:00 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean						
X		Benacquisto						
X		Brandes						
X		Joyner						
X		Simmons						
X		Simpson						
X		Soto						
X		Stargel						
X		Ring, VICE CHAIR						
X		Díaz de la Portilla, CHAIR						
10	0							
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
-R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

1142

Bill Number (if applicable)

Topic Act Valorem

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 134 S Bronaugh St

Phone _____

Street

Tallahassee

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL chamber of commerce

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

1142
Bill Number (if applicable)

Topic Property Taxes - Recapture

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Legislative Advocate

Address PO Box 1757

Phone 701-3621

Tallahassee, FL 32302
City State Zip

Email ahughes@flcities

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: SB 724

INTRODUCER: Senators Flores and Gaetz

SUBJECT: Termination of Pregnancies

DATE: April 14, 2015

REVISED: 04/15/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

I. Summary:

SB 724 redefines what constitutes “voluntary and informed consent” when terminating a pregnancy. Currently, s. 390.0111(3), F.S., requires a physician, before performing an abortion, to obtain the voluntary and informed written consent of the pregnant woman.¹ Consent is voluntary and informed only if the physician, or the referring physician, informs the woman of the nature and risks of undergoing or not undergoing the procedure, the probable gestational age of the fetus, and the medical risks to the woman and fetus of carrying the pregnancy to term.

This bill additionally requires that:

- The physician be physically present in the same room as the woman when providing her the necessary information about the procedure; and
- The information be provided to the woman at least 24 hours before the procedure is performed.

II. Present Situation:

Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.² The termination of a pregnancy must be performed by a physician³ licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.⁴

¹ If the woman is mentally incompetent, her court-appointed guardian may give the necessary voluntary and informed written consent. This “voluntary and informed consent” does not appear to be necessary in the case of a medical emergency.

Section 390.0111(3), F.S.

² Section 390.011(1), F.S.

³ Section 390.0111(2), F.S.

⁴ Section 390.011(8), F.S.

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.⁵ Specifically, an abortion may not be performed after viability or within the third trimester unless two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.⁶

Sections 390.0111(4) and 390.01112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. This termination of a pregnancy must be performed in a hospital.⁷

Case Law on Abortion

Federal Case Law

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.⁸ Using the strict scrutiny standard, the court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.⁹ Further, the court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.¹⁰

In 1992, the U.S. Supreme court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*,¹¹ the Court upheld the statute and relaxed the standard of review in abortion cases involving adult women from "strict scrutiny" to "unduly burdensome." An undue burden exists and makes a statute invalid if the statute's purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.¹² The Court held that the

⁵ Sections 390.011(11) and (12), F.S.

⁶ Sections 390.0111(1) and 390.01112(1), F.S.⁷ Sections 797.03(3), F.S.

⁷ Sections 797.03(3), F.S.

⁸ 410 U.S. 113 (1973).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 505 U.S. 833 (1992).

¹² *Id.* at 878.

undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state's interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman's right to elect the procedure.¹³ However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman's life or health.

The Court held that the informed consent provision of Pennsylvania's abortion statute requiring a physician to provide information relevant to the woman's informed consent did not impose an undue burden on the woman's right to abortion. Rather, the provision was a reasonable means to insure that the woman's consent was informed. The Court also determined that the 24-hour waiting period did not impose an undue burden on the woman's abortion right, even though the waiting period had the effect of increasing the costs for the woman and the risk of a delayed abortion.¹⁴

Florida Law on Abortion

Florida law embraces more privacy interests and expressly extends more privacy protection to its citizens than the U.S. Constitution does. Article I, section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."¹⁵ The Florida Supreme Court ruled in *In re T. W.*¹⁶

Under Florida law, prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests.... Under our Florida Constitution, the state's interest becomes compelling upon viability Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.¹⁷

The court concluded that, "Following viability, the state may protect its interest in the potentiality of life by regulating abortion, provided that the mother's health is not jeopardized."¹⁸

Unlike the U.S. Supreme Court, however, the Florida Supreme Court reached a different standard of review for privacy laws involving abortion. The Florida Supreme Court held that,

¹³ *Id.* at 846.

¹⁴ *Id.* at 886-887

¹⁵ *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).

¹⁶ 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

¹⁷ *Id.* at 1193-94.

¹⁸ *Id.* at 1194.

when determining the constitutionality of a statute that impinges upon a right of privacy under the Florida Constitution, the strict scrutiny standard of review applies.¹⁹

The Woman's Right-to-Know Act

The Woman's Right to Know Act (act) was enacted by the Florida Legislature in 1997.²⁰ The act required the voluntary and informed written consent of the pregnant woman before an abortion could be performed. The act also specified that consent was only voluntary and informed if the physician informed the woman, in person, of the nature and risks of undergoing the abortion or carrying the pregnancy to term and the probable gestational age of the fetus. In 2011, the Florida Legislature amended the statute and added the requirement that the gestational age of the fetus be verified by an ultrasound and that the pregnant woman be offered the opportunity to view the live ultrasound images and hear an explanation of them.²¹

Litigation of the Woman's Right-to-Know Act

Shortly after enactment, the statute's validity was challenged under the Florida and federal constitutions. The plaintiff physicians and clinics enjoined the enforcement of the act pending the outcome of the litigation, and the injunction was upheld on appeal.²² Thereafter, the plaintiffs were successful in obtaining a summary judgment against the state on the grounds that the act violated the right to privacy under Article I, section 23 of the Florida Constitution and was unconstitutionally vague under the federal and state constitutions. This decision was also upheld on appeal.²³ The state appealed this decision to the Florida Supreme Court.²⁴

The Florida Supreme Court addressed two issues raised by the plaintiffs. With regard to whether the act violated a woman's right to privacy, the Court determined that the information required to be provided to women in order to obtain informed consent was comparable to those informed consent requirements established in common law and by Florida statutory law²⁵ applicable to other medical procedures.²⁶ Accordingly, the Court determined that the act was not an unconstitutional violation of a woman's right to privacy.²⁷

Second, the Supreme Court addressed the allegation that the term "reasonable patient," and the act's reference to information about "risks" were unconstitutionally vague. The plaintiffs argued it was unclear whether the act requires patients to receive information about "non-medical" risks, such as social, economic or other risks.²⁸ The Court rejected these arguments and held that "...

¹⁹ *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612 (Fla. 2003).

²⁰ Chapter 97-151, Laws of Fla.

²¹ Chapter 2011-224, s. 1, Laws of Fla.

²² *Florida v. Presidential Women's Center*, 707 So. 2d 1145 (Fla. 4th DCA. 1998).

²³ *Florida v. Presidential Women's Center*, 884 So. 2d 526 (Fla. 4th DCA. 2004).

²⁴ *Florida v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006).

²⁵ *Id.* at 117-118. Section 766.103, F.S., is a general informed consent law for the medical profession, which requires that a patient receive information that would provide a "reasonable individual" with a general understanding of the procedure he or she will undergo, medically acceptable alternative procedures or treatments, and the substantial potential risks or hazards associated with the procedure. The court also refers to s. 458.324, F.S. (informed consent for patients who may be at high risk of developing breast cancer); s. 458.325, F.S., (informed consent for patients receiving electroconvulsive and psychosurgical procedures); and s. 945.48, F.S., (express and informed consent requirements for inmates receiving psychiatric treatment).

²⁶ *Id.*

²⁷ *Id.* at 118, 120.

²⁸ *Id.* at 118-119.

the act constitutes a neutral informed consent statute that is comparable to the common law and to informed consent statutes implementing the common law that exist for other types of medical procedures”²⁹

Abortion Statistics in Florida

The Department of Health reported 220,143 live births in the state for 2014.³⁰

According to the Agency for Health Care Administration, there are 65 licensed clinics in Florida which perform abortions.³¹

In 2014, the state reported that 72,107 abortions were performed in the following stages of fetal development:³²

- 65,934 abortions during the first 12 weeks of gestation;
- 6,173 abortions between 13 and 24 weeks of gestation; and
- None were performed after 24 weeks of gestation.

The majority of abortions, approximately 90 percent, were elective procedures, with:

- 60,007 performed in the first 12 weeks; and
- 5,370 performed between 13 and 24 weeks of gestation.

The remaining 10 percent were performed due to:

- Social or economic reasons- 5,115
- Rape-749
- Serious fetal genetic defect, deformity, or abnormality – 562
- Physical health of the mother that is not life endangering – 158
- Emotion or psychological health of the mother – 77
- Life endangering physical condition – 69
- Incest - 0

Counseling and Waiting Periods for Abortions in Other States

Currently, 26 states require a waiting period between abortion counseling and the actual abortion procedure. Most states require 24 hour waiting periods, but Alabama and Arkansas require 48 hour waiting periods while Missouri, South Dakota, and Utah require 72 hour waiting periods. Of the states having waiting periods, 12 require pre-abortion counseling to be provided in person which necessitates two separate trips to the facility before an abortion can be performed.³³ Under

²⁹ *Id.* at 120.

³⁰ E-mail from Ken T. Jones, Florida Department of Health, Bureau of Vital Statistics, on April 10, 2014. (on file with the Senate Committee on Judiciary).

³¹ E-mail from Orlando Pryor, Agency for Health Care Administration, on April 10, 2014 (on file with the Senate Committee on Judiciary).

³² Agency for Health Care Administration, *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Weeks of Gestation, Calendar Year 2014* (on file with the Committee on Judiciary).

³³ Guttmacher Institute, *Counseling and Waiting Periods for Abortion*, April 1, 2015, available at http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf, (last visited April 10, 2015). Arkansas amended its law on

the undue burden standard adopted by the United States Supreme Court in *Planned Parenthood*, while “24-hour waiting period[s] may make some abortions more expensive and less convenient, it cannot be said that [they are] invalid”³⁴

III. Effect of Proposed Changes:

SB 724 revises the requirements for what is “voluntary and informed consent” when terminating a pregnancy in s. 390.0111, F.S. The current law requires that a physician, before performing an abortion, obtain the voluntary and informed written consent of the pregnant woman, unless a medical emergency exists. Consent is voluntary and informed only if the physician who is to perform the abortion, or the referring physician, informs the woman of:

- The nature and risks of undergoing or not undergoing the proposed procedure;
- The probable gestational age of the fetus, verified by an ultrasound, at the time the termination of pregnancy is to be performed; and
- The medical risks to the woman and fetus of carrying the pregnancy to term.

This bill amends the current law to add two additional elements of informed consent. The three conditions above must be met by the physician who is to perform the procedure or the referring physician, and the information must be given by the physician:

- While physically present in the same room as the woman; and
- At least 24 hours before the procedure is performed.

Because of the 24-hour waiting period, a pregnant woman may need to make two trips to the facility to obtain an abortion.

The bill also republishes s. 390.012, F.S., for the purpose of incorporating the amendment made to s. 390.0111, F.S.

The bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

April 6, 2015, to require a 48 hour waiting period and the presence of a physician or qualified person for pre-abortion counseling. (HB 1578, 2015).

³⁴ *Supra* note 11, at 838.

D. Other Constitutional Issues:

If SB 724 becomes law and is challenged, it is uncertain whether a court will apply the strict scrutiny or undue burden standard of review. Historically, the Florida Supreme Court has applied the strict scrutiny standard to legislation imposing abortion restrictions. In contrast, the U.S. Supreme Court adopted the undue burden standard in a challenge to a Pennsylvania law similar to this bill. Whether the Florida Supreme Court will choose to adopt the undue burden standard under the Florida Constitution's privacy protections is not known. (See *Florida Law on Abortion* above).

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 section 390.0111 of the Florida Statutes.

The bill reenacts s. 390.012, F.S., for the purpose of incorporating the amendment made to s. 390.0111, 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.

B. Amendments:

None.

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



113284

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/15/2015	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment

Between lines 76 and 77
insert:

The woman may waive the requirements of this subparagraph if the pregnancy is the result of rape or incest or is a risk to the woman's health or if a severe fetal anomaly exists.

By Senator Flores

37-00574A-15

2015724__

1 A bill to be entitled
 2 An act relating to termination of pregnancies;
 3 amending s. 390.0111, F.S.; revising conditions for
 4 the voluntary and informed consent to a termination of
 5 pregnancy; reenacting s. 390.012(3)(d), F.S., relating
 6 to Agency for Health Care Administration rules
 7 regarding medical screening and evaluation of abortion
 8 clinic patients, to incorporate the amendment made by
 9 this act to s. 390.0111, F.S., in a reference thereto;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (a) of subsection (3) of section
 15 390.0111, Florida Statutes, is amended to read:

16 390.0111 Termination of pregnancies.—

17 (3) CONSENTS REQUIRED.—A termination of pregnancy may not
 18 be performed or induced except with the voluntary and informed
 19 written consent of the pregnant woman or, in the case of a
 20 mental incompetent, the voluntary and informed written consent
 21 of her court-appointed guardian.

22 (a) Except in the case of a medical emergency, consent to a
 23 termination of pregnancy is voluntary and informed only if:

24 1. The physician who is to perform the procedure, or the
 25 referring physician, has, at a minimum, orally, while physically
 26 present in the same room, and at least 24 hours before the
 27 procedure ~~in person~~, informed the woman of:

28 a. The nature and risks of undergoing or not undergoing the
 29 proposed procedure that a reasonable patient would consider

Page 1 of 5

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

37-00574A-15

2015724__

30 material to making a knowing and willful decision of whether to
 31 terminate a pregnancy.

32 b. The probable gestational age of the fetus, verified by
 33 an ultrasound, at the time the termination of pregnancy is to be
 34 performed.

35 (I) The ultrasound must be performed by the physician who
 36 is to perform the abortion or by a person having documented
 37 evidence that he or she has completed a course in the operation
 38 of ultrasound equipment as prescribed by rule and who is working
 39 in conjunction with the physician.

40 (II) The person performing the ultrasound must offer the
 41 woman the opportunity to view the live ultrasound images and
 42 hear an explanation of them. If the woman accepts the
 43 opportunity to view the images and hear the explanation, a
 44 physician or a registered nurse, licensed practical nurse,
 45 advanced registered nurse practitioner, or physician assistant
 46 working in conjunction with the physician must contemporaneously
 47 review and explain the images to the woman before the woman
 48 gives informed consent to having an abortion procedure
 49 performed.

50 (III) The woman has a right to decline to view and hear the
 51 explanation of the live ultrasound images after she is informed
 52 of her right and offered an opportunity to view the images and
 53 hear the explanation. If the woman declines, the woman shall
 54 complete a form acknowledging that she was offered an
 55 opportunity to view and hear the explanation of the images but
 56 that she declined that opportunity. The form must also indicate
 57 that the woman's decision was not based on any undue influence
 58 from any person to discourage her from viewing the images or

Page 2 of 5

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

37-00574A-15

2015724__

59 hearing the explanation and that she declined of her own free
60 will.

61 (IV) Unless requested by the woman, the person performing
62 the ultrasound may not offer the opportunity to view the images
63 and hear the explanation and the explanation may not be given
64 if, at the time the woman schedules or arrives for her
65 appointment to obtain an abortion, a copy of a restraining
66 order, police report, medical record, or other court order or
67 documentation is presented which provides evidence that the
68 woman is obtaining the abortion because the woman is a victim of
69 rape, incest, domestic violence, or human trafficking or that
70 the woman has been diagnosed as having a condition that, on the
71 basis of a physician's good faith clinical judgment, would
72 create a serious risk of substantial and irreversible impairment
73 of a major bodily function if the woman delayed terminating her
74 pregnancy.

75 c. The medical risks to the woman and fetus of carrying the
76 pregnancy to term.

77 2. Printed materials prepared and provided by the
78 department have been provided to the pregnant woman, if she
79 chooses to view these materials, including:

80 a. A description of the fetus, including a description of
81 the various stages of development.

82 b. A list of entities that offer alternatives to
83 terminating the pregnancy.

84 c. Detailed information on the availability of medical
85 assistance benefits for prenatal care, childbirth, and neonatal
86 care.

87 3. The woman acknowledges in writing, before the

37-00574A-15

2015724__

88 termination of pregnancy, that the information required to be
89 provided under this subsection has been provided.

90
91 Nothing in this paragraph is intended to prohibit a physician
92 from providing any additional information which the physician
93 deems material to the woman's informed decision to terminate her
94 pregnancy.

95 Section 2. For the purpose of incorporating the amendment
96 made by this act to section 390.0111, Florida Statutes, in a
97 reference thereto, paragraph (d) of subsection (3) of section
98 390.012, Florida Statutes, is reenacted to read:

99 390.012 Powers of agency; rules; disposal of fetal
100 remains.—

101 (3) For clinics that perform or claim to perform abortions
102 after the first trimester of pregnancy, the agency shall adopt
103 rules pursuant to ss. 120.536(1) and 120.54 to implement the
104 provisions of this chapter, including the following:

105 (d) Rules relating to the medical screening and evaluation
106 of each abortion clinic patient. At a minimum, these rules shall
107 require:

108 1. A medical history including reported allergies to
109 medications, antiseptic solutions, or latex; past surgeries; and
110 an obstetric and gynecological history.

111 2. A physical examination, including a bimanual examination
112 estimating uterine size and palpation of the adnexa.

113 3. The appropriate laboratory tests, including:

114 a. Urine or blood tests for pregnancy performed before the
115 abortion procedure.

116 b. A test for anemia.

37-00574A-15

2015724__

117 c. Rh typing, unless reliable written documentation of
118 blood type is available.

119 d. Other tests as indicated from the physical examination.

120 4. An ultrasound evaluation for all patients. The rules
121 shall require that if a person who is not a physician performs
122 an ultrasound examination, that person shall have documented
123 evidence that he or she has completed a course in the operation
124 of ultrasound equipment as prescribed in rule. The rules shall
125 require clinics to be in compliance with s. 390.0111.

126 5. That the physician is responsible for estimating the
127 gestational age of the fetus based on the ultrasound examination
128 and obstetric standards in keeping with established standards of
129 care regarding the estimation of fetal age as defined in rule
130 and shall write the estimate in the patient's medical history.
131 The physician shall keep original prints of each ultrasound
132 examination of a patient in the patient's medical history file.

133 Section 3. This act shall take effect July 1, 2015.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 724
FINAL ACTION: Favorable
MEETING DATE: Wednesday, April 15, 2015
TIME: 2:00 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	4/15/2015 1 Amendment 113284		4/15/2015 2 Motion to limit the debate until 3:25 pm		4/15/2015 3 Motion to extend debate from 3:25 pm to 3:29 pm	
			Joyner	Joyner	Stargel	Stargel	Stargel	Stargel
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bean		X	X			
X		Benacquisto		X	X			
X		Brandes		X	X			
	X	Joyner	X			X		
		Simmons						
X		Simpson		X	X			
	X	Soto	X			X		
X		Stargel		X	X			
	X	Ring, VICE CHAIR	X			X		
X		Díaz de la Portilla, CHAIR	X		X			
6	3	TOTALS	-	UNF	FAV	-	FAV	-
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill #724**, relating to Termination of Pregnancies, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

724
Bill Number (if applicable)

113284
Amendment Barcode (if applicable)

Topic Termination of pregnancies

Name Jennifer Dritt

Job Title Executive Director

Address 1820 E. Park Ave Ste 100

Phone 850-297-2000

Tallahassee FL 32301
City State Zip

Email j.dritt@fcasv.org

Speaking: For Against Information

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

Representing Florida Council Against Sexual Violence

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)

4/15/15

Meeting Date

724

Bill Number (if applicable)

Topic T.O.P.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr.

Phone

Street

Largo

City

FL.

State

33713

Zip

Email

Speaking: [X] For [] Against [X] Information

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

Representing Family life.

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Pro-Life Bill

Amendment Barcode (if applicable)

Name Peyton Lizotte

Job Title Student

Address 5317 98th Terrace

Phone (386) 365-1729

Street

Live Oak, FL 32040

Email _____

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)

4/15/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Pro-Life Bill

Amendment Barcode (if applicable)

Name Aubrey Lizotte

Job Title Student

Address 5317 98th Terrace

Phone (386) 365-1729

Live Oak, FL 32060
Street City State Zip

Email _____

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-15-15
Meeting Date

SB724
Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Sen 18

Address 1130 Crestview Ave

Phone

Street

TLC

FL 32303

Email

City

State

Zip

Speaking: For Against Information

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

Representing National Council of Jewish Women

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/14
Meeting Date

SB 724
Bill Number (if applicable)

Topic Pro-Life Bill

Amendment Barcode (if applicable)

Name Lisa Lizotte

Job Title Homemaker

Address 5317 98th Terrace

Phone (386) 365-1729

Street

Live Oak, FL 32060

City

State

Zip

Email lisaelizotte@gmail.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

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

Meeting Date

Topic Abortion

Bill Number 724
(if applicable)

Name Nicole Vinson

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 2035 Bayou Grande Blvd NE

Phone 813-415-8758

St Petersburg FL 33703
City State Zip

E-mail nvinson@merlinlawgroup.com

Speaking: For Against Information

Representing Self

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 724
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Kellan Pfeffer

Job Title Student

Address 4793 94th Place Phone _____

Live Oak FL 32060

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic SB 724 - ABORTION

Amendment Barcode (if applicable)

Name MICHELLE RICHARDSON

Job Title DIRECTOR OF PUBLIC POLICY

Address 4500 BISCAYNE BLVD

Phone 786-343-2700

MIAMI FL 33137

Email mrichardson@aclufl.org

Speaking: [] For [x] 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 [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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THE FLORIDA SENATE

APPEARANCE RECORD

4/15/15
Meeting Date

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

SB 724
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Corrie Pfeffer

Job Title Student

Address 4793 94th Place

Phone _____

Street Live Oak FL 32060

Email _____

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

4-15-15

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

SB 724

Meeting Date

Bill Number (if applicable)

Topic MANDATORY WAITING PERIOD

Amendment Barcode (if applicable)

Name CARLOS GUILLERMO SMITH

Job Title PUBLIC POLICY SPECIALIST

Address 2237 STONINGTON AVE

Phone 404-934-4944

Street

ORLANDO FL 32817

City

State

Zip

Email

Speaking: For Against Information

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

Representing EQUALITY 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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THE FLORIDA SENATE

APPEARANCE RECORD

4/15/15
Meeting Date

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

SB 724
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Terrad Pflaffer

Job Title Tech Consultant

Address 4793 94th Place

Phone 321-230-3903

Live Oak FL 32060
City State Zip

Email pflafferindustry@windstream.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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

04/15/2015
Meeting Date

SB 724
Bill Number (if applicable)

Topic ~~SB 7~~ PERSONAL EXPERIENCE

Amendment Barcode (if applicable)

Name BARBARA SCHWARTZ

Job Title _____

Address 2557 ALICE DRIVE
Street

Phone 407-234-2082

ORANGE CITY FL 32763
City State Zip

Email barbaraschwartz53@gmail.com

Speaking: For Against Information

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

Representing SELF

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Term of Pregnancies

Amendment Barcode (if applicable)

Name Bill Bunkley

Job Title President

Address PO Box 341644

Phone 813-264-2977

Street

Tampa

City

FL

State

33694

Zip

Email _____

Speaking: For Against Information

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

Representing FL Ethics + Religious Liberty Commission

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)

4/15/15

Meeting Date

724

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kristin Sanders

Job Title President of FSU VOX: Voices for PP

Address 1505 W. Tharpe St Apt 3122

Phone 9544780587

Street

Tallahassee, FL, 32303

Email pgs14@my.fsu.edu

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.

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APPEARANCE RECORD

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

4 / 15 / 2015

Meeting Date

Topic _____

Bill Number 724
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB724

Bill Number (if applicable)

Topic Reflection Period

Amendment Barcode (if applicable)

Name Kimberely Kent

Job Title Self

Address 1464 Dr. Martin Luther King Jr. Mem Bld

Phone (850) 926-9332

Street

Crawfordville

City

FL

State

32327

Zip

Email cdkimandkids@embarqmail.com

Speaking: [X] For [] Against [] Information

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

Representing Self

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/15/15

Meeting Date

SB724

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diane Macias

Job Title _____

Address 1048 NW 81st Terr.

Phone (954) 599-5179
~~235-~~

Street

Plantation FL 33322

City

State

Zip

Email _____

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Reflection Period

Amendment Barcode (if applicable)

Name Sherril Daume

Job Title Self

Address 1043 Epping Forest
Street
Tallahassee FL 32317
City State Zip

Phone 850 567 4624

Email shdaume@embarg
mail.com

Speaking: For Against Information

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

Representing Self

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-15-15
Meeting Date

724
Bill Number (if applicable)

Topic 24 Hr. Delay to get an abortion

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms.

Address 625 E. Brevard St

Phone 850-232-3969

Tallahassee FL 32308

Email barbaradevane1@yahoo.com

Speaking: For Against Information

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

Representing FL NOW

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

04-15-2015
Meeting Date

SB 724
Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Patricia Cosic

Job Title _____

Address 816 Tara Trace Cir SW
Street

Phone 386-364-4020

Live Oak FL 32064
City State Zip

Email PLCOSICE@gmail.com

Speaking: For Against Information

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

Representing UNBORN

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15 2015

Meeting Date

724

Bill Number (if applicable)

Topic SB 72A

Amendment Barcode (if applicable)

Name BROOK HINES

Job Title Self-employed

Address 1625 Cypress Ridge Drive

Street

Phone 407 282 8263

Orlando

City

FL

State

32825

Zip

Email brookhines@me.com

Speaking: For Against Information

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

Representing Self

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)

4/15/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Grace Law

Job Title

Address 11255 Hogan Rd

Phone 386-688-1099

Street

Live Oak

City

FL

State

32060

Zip

Email gslaw97@gmail.com

Speaking: [X] For [] Against [] Information

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

Representing Unborn

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of pregnancies

Amendment Barcode (if applicable)

Name Teresa Ward

Job Title attorney

Address 230 N, Jefferson St.

Phone _____

Street

Monticello FL 32344

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA RIGHT TO LIFE

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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4/15/15

Meeting Date

724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Reproductive Life

Address 201 W Park

Phone

Tallahassee FL

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-15-15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Term of Remembrance

Amendment Barcode (if applicable)

Name Mark Phillips

Job Title Lobbyist

Address 101 Victoria

Phone _____

Street

Dunedin FL 34698

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL Family Policy Council

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)

4/15/13
Meeting Date

SB 724
Bill Number (if applicable)

Topic Termination of pregnancies

Amendment Barcode (if applicable)

Name Joshua Swack

Job Title _____

Address 407 Alma Dr
Street

Phone (386) 867-1887

Brandon FL 33510
City State Zip

Email _____

Speaking: For Against Information

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

Representing unborn

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15

Meeting Date

724

Bill Number (if applicable)

Topic SB 724

Amendment Barcode (if applicable)

Name Kimberly Diaz

Job Title Legislative Representative

561.472.9934

Address 2300 FL Mangn. Rd.

Phone ~~407-472-1324~~

Street

West Palm Beach FL 33409

Email _____

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

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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)

4/15/15

Meeting Date

SB 724

Bill Number (if applicable)

Topic 24 hr Reflection Period

Reflection Period
Amendment Barcode (if applicable)

Name Kimberly Nelson

Job Title Peer Counselor

Address 919 W. Pensacola St

Phone 850 297-1174

Tallahassee FL 3230
City State Zip

Email Kimberly9277@aol.com

Speaking: For Against Information

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

Representing A Women's Pregnancy Center

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/15/15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Pro-Life Bill

Amendment Barcode (if applicable)

Name Lucas Lizotte

Job Title Student

Address 5317 98th Terrace

Phone (386) 345-1729

Live Oak, FL 32060
Street City State Zip

Email _____

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.

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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)

04/15/15

Meeting Date

SB 724

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name DAVID PARNELL

Job Title DRAFTSMAN

Address 9689 County Rd 417

Street

Phone 386 209 5247

Live Oak FL 32060

City

State

Zip

Email david.parnell55@gmail.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

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)

04/15/2015

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Deborah Phillips

Job Title _____

Address 12712 202nd Place

Phone 386-364-7028

Street

O'Brien

FL

32071

Email jeep5149@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Unborn

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)

4/15-15
Meeting Date

SB 724
Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name LARRY EWING

Job Title _____

Address 2090 121st Place
Street

Phone 386-842-5193

Live Oak Fla. 32060
City State Zip

Email _____

Speaking: For Against Information

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

Representing Unborn

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)

4-15-15

Meeting Date

SB 724

Bill Number (if applicable)

Topic Termination of Pregnancy

Amendment Barcode (if applicable)

Name Betty Pfeffer

Job Title BARN Manager

Address 14209 217th Road

Phone 386 776 2197

Street

Live Oak FL 32060

City

State

Zip

Email pfefferb@windstream.net

Speaking: For Against Information

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

Representing UNBORN

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.

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 238

INTRODUCER: Senator Ring

SUBJECT: Athletic Coaches

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Favorable
2.	Stearns	Yeatman	CA	Favorable
3.	Procaccini	Cibula	JU	Pre-meeting
4.			FP	

I. Summary:

SB 238 requires an independent sanctioning authority to dismiss an athletic coach who is ejected from a game in a league of children who are 12 years of age or younger. The dismissal remains in effect at least until the following sport season.

The bill also requires an independent sanctioning authority to establish a process for coaches to appeal an ejection.

II. Present Situation:

Current law defines the term “athletic coach” as a person who is authorized by an independent sanctioning authority to work as a coach, assistant coach, or referee for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state and who has direct contact with one or more minors on the youth athletic team.¹

The term “independent sanctioning authority” is defined as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S.² An independent sanctioning authority is required to do the following:

- Conduct a level 1 background screening pursuant to s. 435.03, F.S., of each current and prospective athletic coach and maintain certain documentation of those screenings for at least 5 years.

¹ Section 943.0438, F.S.

² *Id.*

- Adopt policies related to requirements for parents or guardians of a young athlete to annually sign and return an informed consent that explains the nature and risk of concussion and head injury, including the risk of continuing to play after a concussion or head injury.
- Adopt policies related to continued participation and return to participation by a young athlete who is suspected of sustaining a concussion or head injury.³

The application process to become a coach, assistant coach, or manager, most often uncompensated, for youth athletic organizations, such as a Little League or City Parks and Recreation teams, may involve criminal background checks and interviews, and often include coaching and safety training.⁴ The Little League organizations have established rules for the suspension of their coaches which grant the Little League board of directors the authority to suspend or remove a coach or manager. The board of directors also considers concerns about coaches or managers from parents or anyone else.⁵ Other youth athletic organizations such as Pop Warner and city leagues have also suspended coaches for improper conduct or lack of coaching responsibility.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 943.0438, F.S., to require an independent sanctioning authority to immediately dismiss an athletic coach who has been ejected from a game in a league in which the children are 12 years of age or younger. The dismissed coach may resume work as a coach the following sport season or any time thereafter if the authority determines the coach is still qualified. A procedure for a coach to appeal an ejection is also required to be established by a sanctioning authority.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ *Id.*

⁴ Little League Softball and Baseball, *Coach's/Manager's Role*, <http://www.littleleague.org/managersandcoaches/coachrole.htm> (Apr. 6, 2015).

⁵ *Id.*

⁶ Gary Mihoces, *Pop Warner investigates, suspends coaches*, USA TODAY, (Oct. 24, 2012) <http://www.usatoday.com/story/sports/2012/10/24/pop-warner-coach-suspensions/1655795/> (This article describes a situation in which two opposing coaches were suspended from their coaching role after five players on the losing team left the field with concussions.).

D. Other Constitutional Issues:

Under existing case law, members of a purely social club have no due process rights prior to expulsion from the club.⁷ However, some due process rights may exist for members of other organizations. An organization may be “held to reasonable standards of due process and fairness” if disciplinary action against a member “may have an import which transcends the organization itself because it conveys to the community that the disciplined member was found lacking by his peers.”⁸ The appellate process provided by the bill likely provides a sufficient amount of due process protections to coaches who are ejected from a game.

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

None.

B. Private Sector Impact:

Because the bill imposes a significant penalty on a coach who is ejected from a game, coaches and sanctioning organizations will likely make use of the procedures to appeal a dismissal from a league. There will likely be costs associated with the appellate process.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0438, 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.

⁷ *McCune v. Wilson*, 237 So. 2d 169 (Fla. 1970).

⁸ *Id.* at 172.

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 Ring

29-00149-15

2015238__

1 A bill to be entitled
 2 An act relating to athletic coaches; amending s.
 3 943.0438, F.S.; requiring an independent sanctioning
 4 authority to dismiss an athletic coach ejected from a
 5 game for the remainder of that sport season under
 6 certain circumstances; authorizing such athletic coach
 7 to resume working under certain circumstances;
 8 requiring an independent sanctioning authority to
 9 establish a procedure for an athletic coach to appeal
 10 certain decisions; providing an effective date.
 11

12 Be It Enacted by the Legislature of the State of Florida:
 13

14 Section 1. Paragraph (h) is added to subsection (2) of
 15 section 943.0438, Florida Statutes, to read:

16 943.0438 Athletic coaches for independent sanctioning
 17 authorities.—

18 (2) An independent sanctioning authority shall:

19 (h) Immediately dismiss an athletic coach who is ejected
 20 from a game in a league of children 12 years of age or younger
 21 for the remainder of the sport season.

22 1. Except as provided in subparagraph 2., the independent
 23 sanctioning authority may allow an athletic coach dismissed
 24 under this paragraph to resume working as an athletic coach for
 25 the league the following sport season or any time thereafter if
 26 the authority determines that the person remains qualified to
 27 work as an athletic coach.

28 2. The independent sanctioning authority must establish a
 29 procedure of due process to ensure that an athletic coach

Page 1 of 2

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

29-00149-15

2015238__

30 ejected from a game in a league of children 12 years of age or
 31 younger has the opportunity to appeal the ejection to the
 32 independent sanctioning authority. The authority shall expedite
 33 the appeal process so that disposition of the appeal can be made
 34 before the end of the applicable sport season, if possible. If
 35 the athletic coach is successful in his or her appeal, the
 36 athletic coach shall be reinstated and allowed to continue
 37 coaching for the remainder of the sport season and thereafter.

38 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

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: Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 162 amends ch. 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., provides an administrative process for an eligible person who has been wrongfully incarcerated for a felony conviction to seek compensation. Under current law, a person is not eligible for compensation through the administrative process if the person has another valid felony conviction.¹ For these ineligible individuals, their only remedy may be a claim bill which must be approved by the Legislature. The bill narrows the disqualifying criminal offenses to felonies which are violent in nature, and thereby expands the pool of potential applicants for compensation through the administrative process.

II. Present Situation:

The Legislature passed the Victims of Wrongful Incarceration Compensation Act (Act) in 2008.² The Act authorizes a person who has been wrongfully incarcerated for a felony conviction to petition the court for a determination that the person was a wrongfully incarcerated person who is eligible for compensation.

The petition must:

- Allege that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the evidence of actual innocence; and

¹ Section 961.04, F.S.

² Chapter 961, F.S., (2008-39, Laws of Florida). To date, 3 persons have been compensated under the Act and one claim has recently been approved and forwarded to the Chief Financial Officer. The claim recently forwarded was for James Joseph Richardson, who became newly eligible under a change to ch. 961, F.S., adopted in 2014 (ch. 2014-198, Laws of Fla.) Correspondence with the Office of the Attorney General (February 18, 2015) (on file with the Senate Judiciary Committee).

- Allege that the person is not disqualified from seeking compensation based on criminal history.³

The prosecutor must respond within 30 days either concurring that the petitioner is not ineligible or objecting to the petition.⁴

“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony conviction, which is one of the following:

- The person had a prior conviction or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.⁵

Regardless of the validity of the wrongful incarceration claim, if the court finds the petitioner ineligible for compensation under s. 961.04, F.S., based on a preponderance of the evidence, the court must dismiss the petition.⁶ If, however, the court does not dismiss the petition but the prosecutor objects, the case proceeds to a hearing before an administrative law judge.⁷ At the hearing, the petitioner must establish by clear and convincing evidence actual innocence and eligibility for compensation.⁸

Once the court determines that the petitioner is eligible for compensation, the petitioner must, within 2 years, apply to the Department of Legal Affairs.⁹ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.¹⁰

³ Section 961.03(1), F.S.

⁴ Section 961.03(2), F.S.

⁵ Section 961.04, F.S.

⁶ Section 961.03 (2)-(4), F.S.

⁷ Section 961.03(5), F.S.

⁸ Section 961.03(5), F.S. Ultimately, the original sentencing court will either adopt or decline to adopt the findings and recommendation of the administrative law judge. The court must then enter its final order in the matter either certifying the petitioner to be a wrongfully incarcerated person or denying the petition. s. 961.03(6)(d) and (7), F.S. If the order is favorable, the petitioner may apply to the Department of Legal Affairs for compensation.

⁹ Section 961.05, F.S.

¹⁰ Section 961.06(1)(a), F.S. The \$50,000 annual rate of compensation must be adjusted for inflation since 2008.

Additionally, the person is entitled to waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System institution listed in 1000.21(3), F.S., or any state university listed in s. 1000.21(6), F.S., if the person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; reasonable attorney’s fees and expenses incurred and paid in connection with criminal proceedings and appeals regarding the wrongful conviction, and immediate administrative expunction of the person’s criminal record resulting from the wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

To date, three persons have been compensated under the Act. One additional claim has recently been through the application process and forwarded to the Chief Financial Officer.¹¹

Of the 27 states that have statutes establishing a process for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.¹² A few other states, however, do exclude persons from compensation who confessed or pled guilty, unless the person can establish coercion by a law enforcement officer.¹³

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person who is wrongfully incarcerated could be placed on parole or community supervision as part of the sentence.¹⁴ If a person commits a misdemeanor or a technical violation of supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, the basis for revocation was a felony, the person is ineligible for any compensation.¹⁵

III. Effect of Proposed Changes:

The bill amends the Victims of Wrongful Incarceration Compensation Act to narrow the class of individuals who are ineligible for compensation for wrongful incarceration through the administrative process. Wrongfully incarcerated persons will now be found ineligible for compensation only if:

- Before the person’s wrongful incarceration, he or she committed a violent felony;
- During the person’s wrongful incarceration, he or she committed a violent felony; or
- During a period of parole or community supervision on the sentence that led to wrongful incarceration, the person committed a violent felony which resulted in the revocation of parole or community supervision.

Limiting disqualifying offenses to violent felonies potentially increases the pool of wrongfully incarcerated persons who may seek compensation through the administrative process.

“Violent felony” is defined in the bill by cross-referencing ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

¹¹ Correspondence with the Office of the Attorney General, February 18, 2015.

¹² *Making Up for Lost Time, What the Wrongfully Convicted Endure and How to Provide Fair Compensation*, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org, pg. 19. Hawaii is currently considering a wrongful incarceration statute. Other states generally take these matters up by “personal bills,” a process much like Florida’s claim bill process.

¹³ *Id.* at 18.

¹⁴ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Fla; s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., includes controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

¹⁵ Section 961.06(2), F.S.

Thus, the violent felony offenses that preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to 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. 10 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who is entitled to compensation under the Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. More persons may qualify for compensation under the provisions of the bill.

C. Government Sector Impact:

Although the statutory limits on compensation under the Act are clear, actual fiscal impact of the bill is unquantifiable. The possibility that a person will be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently or may exist in the future.

There have been three successful claims since the Act became effective. An additional claim is currently in the Office of the Chief Financial Officer awaiting payment arrangements.

The Office of the Attorney General reports that applications of two persons claiming to be eligible for compensation were actually not eligible. Two other claims lack complete documentation and are currently being investigated. Since the Act became effective, there have been an additional 22 inquiries to the Office of the Attorney General but no further communication from those persons.

The Office of the State Courts Administrator expects that the bill may result in more petition filings based on wrongful incarceration. Still, the OSCA expects any potential impact to be insignificant.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 2, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, 961.06, 961.03, and 961.055.

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.

By Senators Joyner and Bradley

19-00004-15

2015162__

1 A bill to be entitled
 2 An act relating to compensation of victims of wrongful
 3 incarceration; amending s. 961.02, F.S.; defining the
 4 term "violent felony"; amending s. 961.04, F.S.;
 5 providing that a person is disqualified from receiving
 6 compensation under the Victims of Wrongful
 7 Incarceration Compensation Act if, before or during
 8 the person's wrongful conviction and incarceration,
 9 the person was convicted of, pled guilty or nolo
 10 contendere to, or was serving a concurrent
 11 incarceration for, another violent felony; amending s.
 12 961.06, F.S.; providing that a wrongfully incarcerated
 13 person who commits a violent felony law violation,
 14 rather than a felony law violation, which results in
 15 revocation of parole or community supervision is
 16 ineligible for compensation; reenacting s.
 17 961.03(1)(a), (2), (3), and (4), F.S., relating to
 18 determination of status as a wrongfully incarcerated
 19 person and determination of eligibility for
 20 compensation, to incorporate the amendments made to s.
 21 961.04, F.S., in references thereto; reenacting s.
 22 961.055(1), F.S., relating to application for
 23 compensation for a wrongfully incarcerated person and
 24 exemption from application by nolle prosequi, to
 25 incorporate the amendments made to s. 961.04, F.S., in
 26 references thereto; providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 7

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

19-00004-15

2015162__

30 Section 1. Section 961.02, Florida Statutes, is amended to
 31 read:
 32 961.02 Definitions.—As used in ss. 961.01-961.07, the term:
 33 (1) "Act" means the Victims of Wrongful Incarceration
 34 Compensation Act.
 35 (2) "Department" means the Department of Legal Affairs.
 36 (3) "Division" means the Division of Administrative
 37 Hearings.
 38 ~~(4) "Wrongfully incarcerated person" means a person whose~~
 39 ~~felony conviction and sentence have been vacated by a court of~~
 40 ~~competent jurisdiction and, with respect to whom pursuant to the~~
 41 ~~requirements of s. 961.03, the original sentencing court has~~
 42 ~~issued its order finding that the person neither committed the~~
 43 ~~act nor the offense that served as the basis for the conviction~~
 44 ~~and incarceration and that the person did not aid, abet, or act~~
 45 ~~as an accomplice or accessory to a person who committed the act~~
 46 ~~or offense.~~
 47 (4)(5) "Eligible for compensation" means a person meets the
 48 definition of the term "wrongfully incarcerated person" and is
 49 not disqualified from seeking compensation under the criteria
 50 prescribed in s. 961.04.
 51 (5)(6) "Entitled to compensation" means a person meets the
 52 definition of the term "eligible for compensation" and satisfies
 53 the application requirements prescribed in s. 961.05, and may
 54 receive compensation pursuant to s. 961.06.
 55 (6) "Violent felony" means a felony offense listed in s.
 56 775.084(1)(c)1. or s. 948.06(8)(c).
 57 (7) "Wrongfully incarcerated person" means a person whose
 58 felony conviction and sentence have been vacated by a court of

Page 2 of 7

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

19-00004-15 2015162__
 59 competent jurisdiction and the original sentencing court has
 60 issued its order, pursuant to the requirements of s. 961.03,
 61 finding that the person neither committed the act nor the
 62 offense that served as the basis for the conviction and
 63 incarceration and that the person did not aid, abet, or act as
 64 an accomplice or accessory to a person who committed the act or
 65 offense.

66 Section 2. Section 961.04, Florida Statutes, is amended to
 67 read:

68 961.04 Eligibility for compensation for wrongful
 69 incarceration.—A wrongfully incarcerated person is not eligible
 70 for compensation under the act if:

71 (1) Before the person's wrongful conviction and
 72 incarceration, the person was convicted of, or pled guilty or
 73 nolo contendere to, regardless of adjudication, any violent
 74 felony offense, or a crime committed in another jurisdiction the
 75 elements of which would constitute a violent felony in this
 76 state, or a crime committed against the United States which is
 77 designated a violent felony, excluding any delinquency
 78 disposition;

79 (2) During the person's wrongful incarceration, the person
 80 was convicted of, or pled guilty or nolo contendere to,
 81 regardless of adjudication, any violent felony offense; or

82 (3) During the person's wrongful incarceration, the person
 83 was also serving a concurrent sentence for another felony for
 84 which the person was not wrongfully convicted.

85 Section 3. Subsection (2) of section 961.06, Florida
 86 Statutes, is amended to read:

87 961.06 Compensation for wrongful incarceration.—

19-00004-15 2015162__
 88 (2) In calculating monetary compensation under paragraph
 89 (1) (a), a wrongfully incarcerated person who is placed on parole
 90 or community supervision while serving the sentence resulting
 91 from the wrongful conviction and who commits anything less than
 92 a violent felony law violation that results in revocation of the
 93 parole or community supervision is eligible for compensation for
 94 the total number of years incarcerated. A wrongfully
 95 incarcerated person who commits a violent felony law violation
 96 that results in revocation of the parole or community
 97 supervision is ineligible for any compensation under subsection
 98 (1).

99 Section 4. For the purpose of incorporating the amendments
 100 made by this act to section 961.04, Florida Statutes, in
 101 references thereto, paragraph (a) of subsection (1) and
 102 subsections (2), (3), and (4) of section 961.03, Florida
 103 Statutes, are reenacted to read:

104 961.03 Determination of status as a wrongfully incarcerated
 105 person; determination of eligibility for compensation.—

106 (1) (a) In order to meet the definition of a "wrongfully
 107 incarcerated person" and "eligible for compensation," upon entry
 108 of an order, based upon exonerating evidence, vacating a
 109 conviction and sentence, a person must set forth the claim of
 110 wrongful incarceration under oath and with particularity by
 111 filing a petition with the original sentencing court, with a
 112 copy of the petition and proper notice to the prosecuting
 113 authority in the underlying felony for which the person was
 114 incarcerated. At a minimum, the petition must:

115 1. State that verifiable and substantial evidence of actual
 116 innocence exists and state with particularity the nature and

19-00004-15 2015162__

117 significance of the verifiable and substantial evidence of
 118 actual innocence; and

119 2. State that the person is not disqualified, under the
 120 provisions of s. 961.04, from seeking compensation under this
 121 act.

122 (2) The prosecuting authority must respond to the petition
 123 within 30 days. The prosecuting authority may respond:

124 (a) By certifying to the court that, based upon the
 125 petition and verifiable and substantial evidence of actual
 126 innocence, no further criminal proceedings in the case at bar
 127 can or will be initiated by the prosecuting authority, that no
 128 questions of fact remain as to the petitioner's wrongful
 129 incarceration, and that the petitioner is not ineligible from
 130 seeking compensation under the provisions of s. 961.04; or

131 (b) By contesting the nature, significance, or effect of
 132 the evidence of actual innocence, the facts related to the
 133 petitioner's alleged wrongful incarceration, or whether the
 134 petitioner is ineligible from seeking compensation under the
 135 provisions of s. 961.04.

136 (3) If the prosecuting authority responds as set forth in
 137 paragraph (2) (a), the original sentencing court, based upon the
 138 evidence of actual innocence, the prosecuting authority's
 139 certification, and upon the court's finding that the petitioner
 140 has presented clear and convincing evidence that the petitioner
 141 committed neither the act nor the offense that served as the
 142 basis for the conviction and incarceration, and that the
 143 petitioner did not aid, abet, or act as an accomplice to a
 144 person who committed the act or offense, shall certify to the
 145 department that the petitioner is a wrongfully incarcerated

19-00004-15 2015162__

146 person as defined by this act. Based upon the prosecuting
 147 authority's certification, the court shall also certify to the
 148 department that the petitioner is eligible for compensation
 149 under the provisions of s. 961.04.

150 (4) (a) If the prosecuting authority responds as set forth
 151 in paragraph (2) (b), the original sentencing court shall make a
 152 determination from the pleadings and supporting documentation
 153 whether, by a preponderance of the evidence, the petitioner is
 154 ineligible for compensation under the provisions of s. 961.04,
 155 regardless of his or her claim of wrongful incarceration. If the
 156 court finds the petitioner ineligible under the provisions of s.
 157 961.04, it shall dismiss the petition.

158 (b) If the prosecuting authority responds as set forth in
 159 paragraph (2) (b), and the court determines that the petitioner
 160 is eligible under the provisions of s. 961.04, but the
 161 prosecuting authority contests the nature, significance or
 162 effect of the evidence of actual innocence, or the facts related
 163 to the petitioner's alleged wrongful incarceration, the court
 164 shall set forth its findings and transfer the petition by
 165 electronic means through the division's website to the division
 166 for findings of fact and a recommended determination of whether
 167 the petitioner has established that he or she is a wrongfully
 168 incarcerated person who is eligible for compensation under this
 169 act.

170 Section 5. For the purpose of incorporating the amendments
 171 made by this act to section 961.04, Florida Statutes, in
 172 references thereto, subsection (1) of section 961.055, Florida
 173 Statutes, is reenacted to read:
 174 961.055 Application for compensation for a wrongfully

19-00004-15

2015162__

175 incarcerated person; exemption from application by nolle
176 prosequi.-

177 (1) A person alleged to be a wrongfully incarcerated person
178 who was convicted and sentenced to death on or before December
179 31, 1979, is exempt from the application provisions of ss.
180 961.03, 961.04, and 961.05 in the determination of wrongful
181 incarceration and eligibility to receive compensation pursuant
182 to s. 961.06 if:

183 (a) The Governor issues an executive order appointing a
184 special prosecutor to review the defendant's conviction; and

185 (b) The special prosecutor thereafter enters a nolle
186 prosequi for the charges for which the defendant was convicted
187 and sentenced to death.

188 Section 6. This act shall take effect October 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 3, 2015

I respectfully request that **Senate Bill # 162**, relating to Compensation of Victims of Wrongful Incarceration, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

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 90

INTRODUCER: Senator Margolis

SUBJECT: Jury Composition

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			CJ	
3.			ACJ	
4.			AP	

I. Summary:

SB 90 increases from six to twelve persons the number of jurors required in life-felony cases. Currently, only capital cases require twelve-member juries. Juries for other cases will continue to be six-person juries.

II. Present Situation:

Jury Pools

Jurors are selected from driver's license rolls maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).¹ To serve as a juror, a person must be 18 years old or older, a United States citizen, and a Florida resident. People without driver's licenses are also eligible for juror service if they have an identification card from the DHSMV or execute an affidavit for service.²

The Number of Jurors Required in Felony Cases

Section 913.10, F.S., requires six-person juries to preside in most criminal cases, and 12-person juries in capital cases.

¹ Section 40.01, F.S.

² Section 40.011(3) and (4), F.S.

Many states require 12-member juries in all felony cases.³ Arizona requires a 12-member jury if the prosecution seeks a sentence of 30 years or longer.⁴ Indiana requires 12-member juries for certain felonies or enhanced penalty charges.⁵ Louisiana requires 12-member juries where punishment involves confinement at hard labor.⁶ New Jersey requires 12-member juries in all criminal cases.⁷ Indiana, Oregon, and Washington, D.C., allow the parties to consent to less than the standard number of jurors.⁸

Life Felonies

Life felonies are generally treated as reclassifications of other offenses from first degree felonies to life felonies or as enhanced penalties for crimes with aggravating circumstances.⁹ Life felonies are punishable by life imprisonment¹⁰ and \$15,000 in fines.¹¹

Jury Selection

During jury selection in criminal cases, the state and the defense are each able to remove potential jurors from serving as jury members for a particular case. To remove a juror, counsel must notify the court that he or she is challenging the service of an individual juror.

Section 913.03, F.S., establishes grounds for challenges for cause of individual jurors, which are:

- The juror does not meet qualifications required by law;
- The juror is not of sound mind or suffers from a physical condition that renders him or her incapable of performing duties required of a juror;
- The juror has a state of mind or conscientious beliefs that preclude him or her of reaching a finding of guilt or innocence unless the court establishes that the person can render an impartial verdict based on the evidence;

³ These include Alabama, Alaska, Arkansas, California, Colorado, Delaware, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. National Conference of State Legislatures (NCSL), *Felony Juries*, <http://data.ncsl.org/QvAJAXZfc/opendoc.htm?document=Public%20App/SCO.qvw&host=QVS@qlikviewisa&anonymous=true&bookmark=Document/BM185> (last visited April 13, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Email correspondence from Jonathan Griffin, NCSL (April 13, 2015).

⁹ Offenses reclassified from a first degree felony to a life felony include: an offense in which the use of a weapon or firearm is an essential element and during the commission of the felony the person carries, displays, uses, threatens to use, or attempts to use the weapon or firearm or commits an aggravated battery (s. 775.087(1)(a), F.S.); a person who without consent takes a firearm from a law enforcement officer lawfully engaged in his or her duties and commits any other crime involving the firearm (s. 775.0875(2)(a)1., F.S.); and a person who commits a gang-related offense punishable by a first degree felony (s. 874.04(2)(c), F.S.). Additionally, a person who kidnaps a child under the age of 13 and commits aggravated child abuse, sexual battery, lewd or lascivious conduct, prostitution, or child exploitation on the child commits a life felony (s. 787.01(3)(a), F.S.); and a person who commits human trafficking for commercial sexual activity of a child under the age of 18 commits a life felony (s. 787.06(3)(g), F.S.).

¹⁰ Section 775.082(3)(a)3., F.S.

¹¹ Section 775.083(1)(a), F.S.

- The juror has certain ties to the case, such as serving on the grand jury that returned an indictment; serving on a former jury trying that defendant in the same case or another person for the same offense charged; or serving as a juror in a civil action related to the criminal charge;
- The juror is an adverse party in a civil action;
- The juror is related by blood or marriage within the third degree to parties in the case;
- The juror served as a state or defense witness at the preliminary hearing or before the grand jury or is going to be a witness for either party at trial; or
- The juror is a surety on the defendant's bail bond.

Either party may request an unlimited number of the removal of jurors based on challenges for cause. Peremptory challenges, or challenges for other than cause, however, are limited to:

- Ten challenges, if the offense is punishable by death or life imprisonment.
- Six challenges, if the offense is punishable by more than 12 months imprisonment but not death or life.
- Three challenges for all other offenses.¹²

The Equal Protection Clause of the United State Constitution prohibits peremptory challenges of a juror for the sole purpose of excluding a person from service based on the race of the juror. The court has long considered this practice of exclusion an impermissible denial of a citizen's honor and privilege of serving on a jury.¹³ Either party may challenge a peremptory strike on the basis of the race of the juror. Through a process known as a *Batson* challenge, once counsel challenges opposing counsel's strike of a juror, opposing counsel must offer a race-neutral reason for the strike.¹⁴

The specific process for a *Batson* challenge first places the burden on the opponent of the peremptory challenge to make a prima facie showing of race discrimination. The burden of persuasion then shifts to the proponent of the strike to offer a race-neutral explanation, after which the trial court must determine which side has met their burden.¹⁵

Although the *Batson* case involved a black defendant challenging the striking of four black persons which resulted in an all-white jury, subsequent courts have extended the *Batson* Court's holding to removal of potential jurors based on other ethnicities.¹⁶ To establish a prima facie showing, the racial discrimination alleged must be of a cognizable class, in which the group is "objectively discernible from the rest of the community."¹⁷

¹² Section 913.08(1), F.S.

¹³ *Challenge to Prospective Jurors*, 47 AM. JUR. 2D Jury Selection 213; In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Court, in citing an 1880 Supreme Court case, opined "More than a century ago, the court decided that the State denies a black defendant equal protection from which members of his race have been purposefully excluded." *Id.* at 85.

¹⁴ *Batson v. Kentucky*, 476 U.S. 79, 99 (1986).

¹⁵ *Id.* at 93-94.

¹⁶ *State v. Alen*, 616 So. 2d 452, 454 (Fla. 1993).

¹⁷ *Id.* at 454. In this case, the Court ruled that the state impermissibly struck a Hispanic juror as the state failed to show an absence of pretext when challenged. *Id.* at 456.

III. Effect of Proposed Changes:

This bill increases from six to twelve persons the number of jurors required in life-felony cases. Currently, only capital cases require twelve-member juries. Juries for other cases will continue to be six-person juries. Increasing the number of jurors from six to twelve members in a life felony case may increase the number of hung juries, or juries returning less than a unanimous verdict in life-felony cases.¹⁸ This bill does not change court rules requiring a unanimous verdict in criminal trials.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill may require counties to spend additional funds on court facilities to accommodate the additional jurors required by the bill. However, because the bill relates to criminal laws, it appears to be exempt from the restraints on the power of the Legislature to enact local mandates under Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

During the 2014 Legislative Session, with respect to a previous version of this bill, CS/SB 94, the Association of Court Clerks and Comptrollers (Clerks) indicated that the 2014 bill would have added \$0.7 million in annual recurring costs to the clerks of court. The clerks based their assumption on 12-member juries costing double what six-person

¹⁸ Unanimous verdicts are required in all criminal cases. The Florida Rules of Criminal Procedure provide: "No verdict may be rendered unless all of the trial jurors concur in it." Fla. R. Crim. P. 3.440.

juries cost. The Supreme Court, in studying the issue of standards for jury panel sizes, recommends a large number of potential jurors to be summoned for a 12-person jury (40 jurors), in contrast to a county court trial (14 jurors). Based on the Supreme Court's recommendation that more jurors be summoned for 12-person juries than six-person juries, the clerks considered their estimate to be conservative.¹⁹

Funding court facilities is a responsibility of counties under Section 14 (c), Article V, of the State Constitution. To the extent that existing facilities are insufficient to meet the requirements imposed by this bill, counties will have additional facility expenses.

The Office of State Courts Administrator expects judges to spend more time supervising the jury selection process, as the attorneys are likely to take longer to reach consensus on the seating of 12 jurors, rather than the current six required in life felony cases. With the increase in the number of jurors, more hung juries may result leading to retrials. However, the exact fiscal impact is unknown.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 913.10 of the 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.

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

¹⁹ Clerks of the Court, *Fiscal Impact Statement for SB 94*.

²⁰ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 90* (April 14, 2015).

By Senator Margolis

35-00092-15

201590__

1 A bill to be entitled

2 An act relating to jury composition; amending s.
3 913.10, F.S.; requiring a 12-member jury for life
4 felony cases; providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Section 913.10, Florida Statutes, is amended to
9 read:

10 913.10 Number of jurors.—Twelve persons shall constitute a
11 jury to try all capital and life felony cases, and six persons
12 shall constitute a jury to try all other criminal cases.

13 Section 2. This act shall take effect July 1, 2015.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 90
FINAL ACTION:
MEETING DATE: Wednesday, April 15, 2015
TIME: 2:00 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE			4/15/2015 FINAL VOTE 1		4/15/2015 Motion to reconsider instanter 2		4/15/2015 Motion to Temporarily Postpone 3	
Yea	Nay	SENATORS	Yea	Nay	Yea	Nay	Yea	Nay
		Bean		X				
		Benacquisto		X				
		Brandes		X				
		Joyner	X					
		Simmons	X					
		Simpson		X				
		Soto	X					
		Stargel		X				
		Ring, VICE CHAIR	X					
		Díaz de la Portilla, CHAIR	X					
		TOTALS	5	5	FAV	-	FAV	-
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable UNF=Unfavorable -R=Reconsidered	RCS=Replaced by Committee Substitute RE=Replaced by Engrossed Amendment RS=Replaced by Substitute Amendment	TP=Temporarily Postponed VA=Vote After Roll Call VC=Vote Change After Roll Call	WD=Withdrawn OO=Out of Order AV=Abstain from Voting
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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-15-15
Meeting Date

SB 90
Bill Number (if applicable)

Topic Jury Composition

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title STATE ATTORNEY - 8 CIR

Address 120 W UNIVERSITY AVE
Street
Gainesville FL
City State Zip

Phone 352-374-3686

Email cervonew@sa08.org

Speaking: For Against Information

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

Representing FLA Prosecuting Attorney's 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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 15, 2015

90

Meeting Date

Bill Number (if applicable)

Topic Jury Composition

Amendment Barcode (if applicable)

Name Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 N. Broadway

Phone 863.534.4200

Street

Bartow

Florida

33830

Email dimmi_r@pd10.state.fl.us

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, Inc.

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)

April 15, 2015

90

Meeting Date

Bill Number (if applicable)

Topic Jury Composition

Amendment Barcode (if applicable)

Name Rex Dimmig

Job Title Public Defender, 10th Circuit

Address 255 N. Broadway

Phone 863.534.4200

Street

Bartow

Florida

33830

Email dimmi_r@pd10.state.fl.us

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, Inc.

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)

4/15/15

Meeting Date

90

Bill Number (if applicable)

Topic Relating to Jury Composition

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title State Attorney

Address 120 W UNIVERSITY AVE

Phone 352-374-3686

Street

Gainesville FL 32601

Email cervoneb@sa08.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Prosecuting Attorneys 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 334

INTRODUCER: Senator Joyner

SUBJECT: Criminal History Records of Minors

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 334 requires that a person's juvenile criminal history records be expunged when the person turns 18 years of age, unless the person, while a minor, was adjudicated as an adult for a forcible felony.

II. Present Situation:

Criminal Justice Information Program

The Florida Department of Law Enforcement is responsible for operating the Criminal Justice Information Program, which is the state's central criminal justice information repository.¹ The program is responsible for collecting, processing, storing, maintaining, and disseminating criminal justice information and records.

With respect to minors, the program maintains criminal case disposition reports that are submitted by clerks of court.² The program also maintains the fingerprints, palm prints, and facial images of minors who are charged with or found to have committed an offense that would be a felony if committed by an adult.³ These records will also be maintained by the program for a minor who is found to have committed one of the following offenses at a misdemeanor level: assault, battery, carrying a concealed weapon or the open carrying of a weapon, unlawful use of destructive devices or bombs, neglect of a child, exposure of sexual organs, unlawful possession of a firearm, petit theft, cruelty to animals, arson, and unlawful possession or discharge of a weapon at a school or school event.⁴

¹ Sections 20.201 and 943.051, F.S.

² Section 943.052(2), F.S.

³ Section 943.051(3)(a) and 943.052(3)(b), F.S.

⁴ Section 943.051(3)(b) and 943.052(3)(b), F.S.

Expunction Juvenile Criminal History Records

Section 943.0515, F.S., defines when a person's juvenile criminal history records must be expunged. A person's juvenile records must be expunged on his or her 24th birthday if the person *was not* classified as a "serious or habitual juvenile offender" or committed to a juvenile correctional facility or juvenile prison.

A person's juvenile records must be expunged on his or her 26th birthday if the person *was* classified as a "serious or habitual juvenile offender" or committed to a juvenile correctional facility or juvenile prison. However, a person's juvenile records must be merged with his or her adult criminal records if the person was adjudicated as an adult for a forcible felony⁵ or adjudicated delinquent for certain sexual offenses.

Serious or Habitual Juvenile Offender

Section 943.0515, F.S., defining when a person's juvenile records must be expunged, may appear to be unclear because the term "serious or habitual juvenile offender" is not defined under current law. The term was defined in s. 985.47, F.S. (2011), which was repealed by the 2011 Legislature.⁶ Under the former statute, judges were directed to determine whether a child was a serious or habitual juvenile offender. In general, a child who was at least 13 years of age at the time of disposition and was convicted of a felony or one of the following offenses would have been classified as a serious or habitual juvenile offender:

- Arson.
- Sexual battery.
- Robbery.
- Kidnapping.
- Aggravated child abuse.
- Aggravated assault.
- Aggravated stalking.
- Murder.
- Manslaughter.
- Unlawful throwing, placing or discharging of a destructive device or bomb.
- Armed burglary.
- Aggravated battery,
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age.
- Carrying, displaying, using, threatening or attempting to use a weapon or firearm during the commission of a felony.

⁵ A forcible felony includes treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony that involves the use or threat of physical force or violence against another person. Section 776.08, F.S.

⁶ See s. 4, ch. 2011-70, Laws of Fla.

Juvenile Correctional Facility or Juvenile Prison

According to s. 985.465, F.S., a juvenile correctional facility or juvenile prison is a secure residential commitment program that is designed to serve children from 13 to 19 years of age who have a designated length of stay of 18 to 36 months. The criteria for determining whether a child may be committed to a juvenile correctional facility or juvenile prison is almost identical to the criteria above which defined whether a child was a serious or habitual juvenile offender. However, in addition to the criteria for a serious or habitual juvenile offender, a child may be committed to a juvenile correctional facility or juvenile prison for carjacking, home-invasion robbery, and burglary with an assault or battery.

Expunged and Sealed Records

Section 943.0515, F.S., provides for the automatic expunction of juvenile criminal history records under certain circumstances when a person turns 24 or 26 years of age. The statute does not explain the effect of the expunction. However, under another statute providing for the expunction of criminal records, s. 943.0585(4), F.S., explains that when a record is expunged it is physically destroyed or obliterated by all criminal justice agencies that have custody of the record. However, the record is retained by the Department of Law Enforcement. Expunged records in possession of the department are confidential and exempt from disclosure requirements under the public records laws and are not available to any person or entity without a court order.

Section 943.095, F.S., provides procedures for a person to petition to a court to seal a criminal history record. A sealed record is similar to an expunged record in that it becomes confidential and exempt from disclosure requirements.⁷ However, a sealed record is available to criminal justice agencies for criminal justice purposes, which include conducting background checks for approval of firearms transfers, assisting judges in case-related decisionmaking, or examining a person's suitability for certain types of employment or licenses.

If a person's criminal history record has been sealed or expunged, in most circumstances, he or she may lawfully deny or fail to acknowledge the arrests covered by a sealed or expunged record.⁸ However, a person must acknowledge his or her criminal history if he or she:

- Is a candidate for employment with a criminal justice agency.
- Is a defendant in a criminal prosecution.
- Is a candidate for admission to The Florida Bar.
- Is seeking employment, licensure, or a contract with a state agency in a sensitive position that requires the person to have direct contact with children, the disabled, or the elderly.
- Is seeking to be employed or licensed the Department of Education, a school, or a local government entity that licenses child care facilities.
- Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services.
- Is seeking to be appointed as a guardian in a guardianship proceeding.

⁷ Section 943.059(4), F.S.

⁸ Sections 943.059(4)(a) and 943.585(4)(a), F.S.

- Is seeking to purchase a firearm or obtain a concealed weapons permit (only for those having a sealed record).

III. Effect of Proposed Changes:

This bill requires that a person's juvenile criminal history records be expunged when the person turns 18 years of age, unless the person, while a minor, was adjudicated as an adult for a forcible felony. However, because of several technical drafting issues in the bill, some other effect may have been intended. See the Technical Deficiencies Section of this analysis for additional information.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By requiring the expunction of a person's juvenile criminal history records when the person turns 18 years of age, the person may have more educational and employment opportunities. However, potential employers may believe that knowledge of a young adult's juvenile criminal history is an important factor in making employment decisions.

C. Government Sector Impact:

According to the Florida Department of Law Enforcement, this bill will require it to make programming changes to its Computerized Criminal History System. The effort will require 848 hours of programming at a cost of \$72,080.⁹ Because of the amount of

⁹ Florida Department of Law Enforcement, *2015 FDLE Bill Analysis for SB 334* (Feb. 9, 2015) (on file with the Senate Committee on Judiciary)

programming required by the bill, the department recommends that the bill's effective date be March 1, 2016 or another date after the programming changes are completed.¹⁰

VI. Technical Deficiencies:

The bill has some structural drafting issues which suggests something other than the description in the Effect of Proposed Changes Section of this analysis may have been intended. First, existing law establishes tiered timeframes for the expunction of a person's juvenile records in separate paragraphs of s. 943.0515(1), F.S. These timeframes are based on the severity of a person's juvenile offenses, the more severe a person's juvenile criminal record, the longer the records are retained. The bill generally provides that a person's juvenile records are expunged at his or her 18th birthday, regardless of the severity of the offences. However, the tiered structure remains in the statute, but it is no longer necessary. Accordingly, the subparagraphs of s. 943.0515(1), F.S., should be consolidated into a single subsection.

The second technical issue relates to the records juveniles who have been committed to a juvenile correctional facility or juvenile prison. Under current law, a minor can be committed to a juvenile prison until age 19, but the bill provides for the expunction of juvenile records on a person's 18th birthday. Accordingly, the Legislature may wish to amend the bill to allow for a person's juvenile records to be maintained while he or she is in a juvenile correctional facility or juvenile prison.

The third technical issue in the bill relates to a requirement in existing s. 943.0515(2)(a), F.S., that a person's juvenile record be merged with his or her adult record if the person is charged with or convicted of a forcible felony after he or she turns 18 years of age. This circumstance could occur under current law if the charge or conviction for a forcible felony occurs before the person's 24th or 26th birthday when his or her juvenile records would otherwise be expunged. If as the bill provides a person's juvenile records are expunged on his or her 18th birthday, the condition requiring the merger of a person's juvenile and adult criminal records described in s. 943.0515(2)(a), F.S., could not occur. Thus, if the legislature intends to expunge a person's juvenile criminal history records on his or her 18th birthday, paragraph (2)(a) of s. 943.0515, F.S., should be repealed.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 943.0515, Florida Statutes.

¹⁰ *Id.*

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.

By Senator Joyner

19-00782-15

2015334__

1 A bill to be entitled

2 An act relating to criminal history records of minors;
3 amending s. 943.0515, F.S.; reducing the period for
4 which the criminal history records of certain minors
5 must be retained before expungement; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (1) of section 943.0515, Florida
11 Statutes, is amended to read:

12 943.0515 Retention of criminal history records of minors.—

13 (1) (a) The Criminal Justice Information Program shall
14 retain the criminal history record of a minor who is classified
15 as a serious or habitual juvenile offender or committed to a
16 juvenile correctional facility or juvenile prison under chapter
17 985 until the minor's 18th birthday ~~for 5 years after the date~~
18 ~~the offender reaches 21 years of age~~, at which time the record
19 shall be expunged unless it meets the criteria of paragraph
20 (2) (a) or paragraph (2) (b).

21 (b) If the minor is not classified as a serious or habitual
22 juvenile offender or committed to a juvenile correctional
23 facility or juvenile prison under chapter 985, the program shall
24 retain the minor's criminal history record until the minor's
25 18th birthday ~~for 5 years after the date the minor reaches 19~~
26 ~~years of age~~, at which time the record shall be expunged unless
27 it meets the criteria of paragraph (2) (a) or paragraph (2) (b).

28 Section 2. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER
Democratic Leader
19th District

January 28, 2015

Senator Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

This is to request that Senate Bill 334, *Criminal History Records*, be placed on the agenda for the Committee on Judiciary. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 664

INTRODUCER: Senator Altman

SUBJECT: Sentencing in Capital Felonies

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 664 requires sentencing juries in capital cases to issue an advisory verdict for the death penalty by a unanimous vote. Current law requires a simple majority vote in the sentencing phase of a capital case.

In sentences in which a jury imposes a death sentence, the jury verdict must be in writing and the verdict must certify the unanimity of the vote.

Current law requires a sentencing jury in a capital case to consider and recommend to the court:

- Whether sufficient aggravating circumstances exist;
- Whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances; and
- Whether the defendant should be sentenced to life imprisonment or death.

This bill also reverses the order a jury is to consider the existence of the mitigating and aggravating circumstances. The bill requires the jury to render to the court whether aggravating factors sufficiently outweigh mitigating factors.

Under current law, the court is required to conduct its own independent analysis of the aggravating and mitigating circumstances. The bill restricts the court's ability to consider aggravating factors. The bill requires that the court consider only the aggravating factors unanimously found to exist by the jury. The bill clarifies that each aggravating circumstance used as persuasive in the jury's recommendation of death must be proven beyond a reasonable doubt.

The bill applies to sentencing in all capital felonies, including capital drug trafficking felonies.

The bill affects sentencing proceedings in death penalty cases beginning as of July 1, 2015 or after. Therefore, the bill applies to capital crimes committed before July 1, 2015 if those cases have not proceeded to the sentencing phase by the July 1, 2015 effective date of the bill.

II. Present Situation:

Florida's Capital Sentencing Law

The Jury's Role

In Florida, after a guilty verdict in a capital case, a jury issues a sentencing recommendation of death or life imprisonment.¹ During the sentencing phase the jury hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating circumstances.² The aggravating factors must be established beyond a reasonable doubt.³ The fact-finder must be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.⁴

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, the jury must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based on these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.⁵ However, even if the aggravating circumstances are found to outweigh

¹ With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The jury must consider from the facts presented to them, facts in addition to those necessary to prove the commission of the crime, whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether mitigating circumstances require a lesser penalty. *State v. Dixon*, 283 So.2d 1, 8 (Fla. 1973).

² "An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim." *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases*, Instr. 7.11.

³ "An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven." ... "If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole." *Id.*

⁴ "Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed." *Id.*

⁵ "The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor." *Id.*

the mitigating circumstances, the jury must be instructed that they are never required to return a recommendation for death.⁶

A simple majority vote recommended of the jury is necessary for recommendation of the death penalty. Juries are not required to list on the verdict aggravating and mitigating circumstances the jury finds persuasive or to disclose the number of jurors making these findings.⁷

Aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S.:

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the

⁶ “The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death.” *Id.*

⁷ “If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:

A majority of the jury by a vote of _____ to _____ advise and recommend to the court that it impose the death penalty upon (defendant).

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole.” *Id.*

sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

- (6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:
- (a) The defendant has no significant history of prior criminal activity.
 - (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
 - (c) The victim was a participant in the defendant’s conduct or consented to the act.
 - (d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
 - (e) The defendant acted under extreme duress or under the substantial domination of another person.
 - (f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
 - (g) The age of the defendant at the time of the crime.
 - (h) The existence of any other factors in the defendant’s background that would mitigate against imposition of the death penalty.⁸

Judicial Determination of Sentence

A jury’s recommended sentence is not binding on the court. After receiving the jury’s recommendation, the judge must then decide the appropriate sentence.⁹ The judge conducts an independent analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge’s decision-making process on the ultimate sentence handed down.¹⁰ The judge may override the jury’s decision.

Proportionality Review

A judgment of conviction and a sentence of death is subject to automatic review by the Supreme Court of Florida.¹¹ The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in meaningful review.¹²

The Florida Supreme Court engages in a proportionality review in all cases in which the death penalty is handed down. A proportionality review is the comparison of one case in which the defendant was sentenced to death to other similar cases.

⁸ Aggravating and mitigating circumstances appear in s. 921.142 (6) and (7), F.S., which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.

⁹ “The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant.” *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.*

¹⁰ What is referred to as the *Tedder* “Great Weight” Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908, 910 (Fla. 1975). In that case, the court determined that “[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.”

¹¹ Section 921.141(4), F.S.

¹² *State v. Dixon*, 283 So.2d 1, 8 (Fla. 1973).

When the U.S. Supreme Court upheld Florida's current death penalty sentencing law in 1976 in *Proffitt v. Florida*, the court seemed to rely heavily on the Florida Supreme Court's promise to give each death case a meaningful review.¹³ The *Proffitt* Court stated:

it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences.¹⁴

To date, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th, and 6th Amendments.¹⁵

State v. Steele, The Florida Jury's Responsibility in Finding Aggravating Factors

Although the U.S. Supreme Court issued rulings in two death penalty cases, *Ring v. Arizona* and *Apprendi v. New Jersey*, indicating that aggravating factors operate as the "functional equivalent of an element of a greater offense,"¹⁶ and therefore must be decided by a jury, the Florida Supreme Court has not yet held that those decisions apply within the context of Florida's death penalty sentencing scheme.¹⁷

In *State v. Steele*, Justice Cantero wrote for the majority:

Even if *Ring* did apply in Florida—an issue we have yet to conclusively decide—we read it as requiring only that the jury make the finding of "an element of a greater offense." *Id.* That finding would be that at least one aggravator exists—not that a specific one does. But given the requirements of section 921.141 and the language of the standard jury instructions, such a finding already is implicit in a jury's recommendation of a sentence of death. Our interpretation of *Ring* is consistent with the United States Supreme Court's assessment of Florida's capital sentencing statute. In *Jones v. United States*, 526 U.S. 227, 250–51, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the Court noted that in its decision in *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989), in which it concluded that the Sixth Amendment does not require explicit jury findings on aggravating circumstances, "a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved." In requiring the jury to consider by majority vote each particular aggravator submitted rather than merely specifying whether one or more

¹³ *Proffitt v. Florida*, 428 U.S. 242, 258-259 (1976). The Court decided *Proffitt* on 8th and 14th Amendment grounds (cruel or unusual punishment and due process), not on 6th Amendment (right to a jury trial) grounds.

¹⁴ *Id.* at 258-259.

¹⁵ Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).

¹⁶ See *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (ruling that aggravating circumstances must be determined by the jury; quoting *Apprendi v. New Jersey*, 530 U.S. 466 (2000)).

¹⁷ *State v. Steele*, 921 So.2d 538, 546 (Fla. 2005).

aggravators exist, the trial court in this case imposed a greater burden than the one the Supreme Court imposed in reviewing Arizona’s judge-only capital sentencing scheme in *Ring*.¹⁸

Although the Florida Supreme Court declined to require more or different factfinding by a death penalty jury, the *Steele* opinion did contain “suggestions” from the Court: “in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury’s recommendations.”¹⁹

The Court examined the death penalty sentencing requirements of the other 37 states (at the time of the opinion) and concluded that “Florida is now the only state in the country that allows a jury to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote.”²⁰ Finally, Justice Cantero wrote, “Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.”²¹

Florida-Specific Statistical Information

Table 1 shows that under current law and practice only 20 percent of death cases over a twelve year period had unanimous jury verdicts. Based on this analysis it is impossible to predict with any degree of accuracy whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

TABLE 1
Distribution of Jury Votes in Death Cases
by Calendar Year of Disposition by Florida Supreme Court²²
(N=296)

Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	Total	% ²³	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	32	11%	11%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	42	14%	25%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	66	22%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	54	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	42	14%	80%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	60	20%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	296	100%	
Other ²⁴	3	1	2	3	4	2	0	0	1	4	3	1	0	24		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	320		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely to be affirmed by the Florida Supreme Court on direct appeal. Sixty-three percent of the 12-0 cases were affirmed by the court compared to 53 percent of the 7-5 cases. It appears then that a

¹⁸ *Id.* at 546.

¹⁹ *Id.* at 548.

²⁰ *Id.* at 550.

²¹ *Id.*

²² Thirteen years of data compiled by the Supreme Court Clerk’s Office.

²³ Calculated percentage excludes the “other” category.

²⁴ Includes waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.

unanimous jury vote is not as strongly correlated with an affirmed sentence as perhaps logically predicted.

TABLE 2

Distribution of Jury Votes in Death Cases Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2012 ²⁵ (N=296)					
Original Jury Vote For Death	TOTAL	Death Sentence Affirmed	Percent Affirmed	Death Sentence Not Affirmed ²⁶	Percent Not Affirmed
7 to 5	32	17	53%	15	47%
8 to 4	42	31	74%	11	26%
9 to 3	66	48	73%	18	27%
10 to 2	54	39	72%	15	28%
11 to 1	42	37	88%	5	12%
12 to 0	60	38	63%	22	37%
TOTAL	296	210	71%	86	29%

Tables 1 and 2 illustrate the wide variability in voting practices in death cases.

American Bar Association Report (2006) and Section Report to the House of Delegates (2015)

In September of 2006, the American Bar Association (ABA) issued a report entitled “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report.” The authors of the report acknowledged that the Florida Supreme Court has consistently rejected the claims under the U.S. Supreme Court’s decision in *Ring v. Arizona* that the jury must make a unanimous advisory sentence.²⁷ Despite this recognition and Florida’s practice of not requiring unanimity, the ABA report asserts that by not requiring a unanimous recommendation, meaningful jury deliberation is lessened.²⁸

The ABA report cites to a survey of Florida jurors in capital cases who were not required to reach a unanimous vote to recommend a death sentence.²⁹ The ABA report argues that these jurors were less likely to take longer than 3 hours to reach a sentencing decision and less likely to demonstrate emotional commitment to the punishment decision.³⁰

In its recent Report to the House of Delegates, the Section of Individual Rights and Responsibilities of the ABA points out that the penalty phase jury is asked to perform a “complicated and unique analysis” as it weighs aggravating and mitigating factors.³¹ The report suggests that “requiring unanimity . . . promotes a thorough and reasoned resolution.”³²

²⁵ Source document: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012

²⁶ Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

²⁷ “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report,” American Bar Association, Death Penalty Moratorium Implementation Project (2006), pg. 287.

²⁸ *Id.* pg. 303.

²⁹ *Id.*

³⁰ *Id.* pg. 304.

³¹ ABA Death Penalty Due Process Review Project, Section of Individual Rights and Responsibilities, Report to the House of Delegates, February, 2015, pg. 4.

³² *Id.*

Comparison of Florida to Other States

Of the 32 U.S. states that currently authorize the death penalty, three, including Florida, do not require jury verdicts on life or death be unanimous in its final sentencing recommendation or decision. The federal government also requires unanimity.³³

Of the three states:

- Alabama authorizes a jury to recommend a death sentence on a vote of 10-2, which is non-binding on the trial court.³⁴ By judicial decision, every death sentence must be based on a unanimous finding of at least one aggravating circumstance.³⁵ Alabama also permits the judge to make a decision to issue a death sentence, even after a unanimous jury makes a recommendation for life.
- Delaware requires juries to unanimously find at least one aggravating circumstance beyond a reasonable doubt. The jury must document how each juror voted on the decision of whether aggravating circumstances outweigh the mitigating circumstances. The sentencing decision is left to the trial judge.³⁶
- Florida requires neither a unanimous jury recommendation nor a unanimous finding by the jury that any aggravating circumstance has been proved.³⁷ A Florida jury can recommend a death sentence to the trial judge on a simple majority vote of the 12 jurors, and there is no special verdict required to reflect the vote on the aggravating circumstances.³⁸

III. Effect of Proposed Changes:

This bill requires that a death sentence in a capital case be supported by a unanimous vote of a jury as under current law. The jury verdict must be in writing, and a death sentence must certify the unanimity of the vote. Requiring unanimity for death sentences may reduce the number of death sentences issued.

Current law requires a sentencing jury in a capital case to consider and recommend to the court:

- Whether sufficient aggravating circumstances exist;
- Whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances; and
- Whether the defendant should be sentenced to life imprisonment or death.

³³ Fed. R. Crim. P. 31 (a).

³⁴ Ala. Code § 13A-5-46-47 (2012).

³⁵ See, e.g., *Ex parte McNabb*, 887 So. 2d 998, 1005-05 (Ala. 2004); *Ex parte Waldrop*, 859 So. 2d 1181, 1188 (Ala. 2002); *McCray v. State*, 88 So. 3d 1, 82, and n.33 (Ala. Crim. App. 2010).

³⁶ Del. Code Ann. Tit. 11, § 4209(c)(3)(A) (West 2013).

³⁷ Even in 1976, Florida's capital sentencing scheme was particularly unique in that the jury only recommended a sentence, its recommendation need not be unanimous or by any particular numerical vote, and the trial judge was permitted to override the jury's sentencing vote, whether for a life or death sentence. See *Proffitt*, 428 U.S. at 252; *Spaziano v. Florida*, 468 U.S. 447 (1984).

³⁸ Fla. Stat. §§921.141(2)-(3) (2014); American Bar Association, *Death Penalty Due Process Review Project Section of Individual Rights and Responsibilities, Report to the House of Delegates (108A)*; http://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/108a.html

In addition to requiring unanimous verdicts in capital cases, this bill also reverses the order that juries are directed to consider of the existence of mitigating and aggravating circumstances. The bill requires the jury to recommend to the court whether aggravating factors sufficiently outweigh mitigating factors. This change may also have the effect of decreasing the number of capital cases resulting in death sentences.

Under current law, the court is required to conduct its own independent analysis of the aggravating and mitigating circumstances. If the court imposes a death sentence, the sentencing order must contain specific findings of fact based upon the aggravating and mitigating factors, the trial record, and sentencing proceedings. The bill restricts the court's ability to consider aggravating factors. The bill requires that the court consider the aggravating factors "unanimously found to exist by the jury."³⁹ Therefore the court will not be able to engage in weighing the evidence of mitigating and aggravating factors as it currently does in determining its sentence in a case. This provision comports with the findings in *Ring v. Arizona*.

The bill clarifies that each aggravating circumstance used as persuasive in the jury's recommendation of death must be proven beyond a reasonable doubt. This change codifies standard jury instructions in capital cases, which require aggravating circumstances to be established beyond a reasonable doubt. However, no heightened standard of proof is required for a jury to find the existence of mitigating circumstances.

The bill applies to sentencing in capital felonies as well as for capital drug trafficking felonies.

The bill affects sentencing proceedings in death penalty cases beginning as of July 1, 2015 or after. Therefore, the bill applies to capital crimes committed before July 1, 2015 if those cases have not proceeded to the sentencing phase by the July 1, 2015, effective date of the bill. Still, defendants sentenced to death prior to the effective date may challenge the application of the provisions to their cases.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to 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. 10 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill applies to sentencing proceedings held on or after July 1, 2015. Generally when the Legislature amends a criminal statute application is prospective and the bill affects criminal conduct occurring after the effective date of the bill.

Under the bill, a defendant who committed a capital murder offense at any time but who has not been sentenced for the crime prior to July 1, 2015 will be sentenced under the new procedures created by the bill.

Arguably a defendant may bring a challenge based on whether the new sentencing scheme is a “benefit” to a defendant and, if so, whether the Savings Clause in the Florida Constitution is implicated. Article X, Section 9, of the state constitution provides:

Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

Likewise, a defendant sentenced after July 1, 2015, but who committed a capital crime might argue that the pre-July 1 sentencing procedures could have been a benefit to him or her and therefore a violation of the constitutional prohibition on ex post facto laws.⁴⁰

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the Attorney General may experience a fiscal impact from the bill.

The Office of the State Courts Administrator (OSCA) reports that although there may be a reduction in death penalty litigation resulting from the increased thresholds created by the bill, this may be offset somewhat at the trial court level. OSCA bases this on anticipating more death penalty cases taken to trial rather than pleas entered, as it will be less likely that a defendant will receive the death penalty. The fiscal impact cannot be

⁴⁰ Article I, Section 10 of the Florida Constitution provides: No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed. A primary purpose of the Ex Post Facto Clause is to ensure that citizens have prior notice of the consequences of committing a crime before the crime is committed. *Westerheide v. State*, App. 5 Dist., 767 So.2d 637 (Fla. 2000), approved by the Florida Supreme Court in 831 So.2d 93 (Fla. 2002).

determined due to the lack of data needed to determine the impact on court and judicial workload.⁴¹ Jury instructions will have to be amended to conform to the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In *Hurst v. State*, a criminal defendant was convicted of murder. The jury issued a death sentence on a vote of 7-5. On appeal to the Florida Supreme Court, Hurst asked the court to review three issues:

- Proper court procedure when the defense asserts that he or she has mental retardation;
- Proportionality of the sentence in consideration of the totality of the circumstances; and
- Review of state precedent in not requiring the jury to make specific findings of aggravating factors or a unanimous jury recommendation for a sentence, in light of *Ring v. Arizona*.⁴²

Although the Court upheld the death sentence, the *Hurst* court was divided on the application of *Ring* and other possible constitutional implications.⁴³

On March 9, 2015, the United States Supreme Court accepted the defendant's petition for certiorari review.⁴⁴ In so doing, the Court limited review to the following question: "Whether Florida's death sentencing scheme violates the Sixth Amendment or the Eighth Amendment in light of this Court's decision in *Ring v. Arizona*"⁴⁵

The dissenting opinion in the *Hurst* case may provide some insight into the U.S. Supreme Court's focus on the Sixth and Eighth Amendments and the *Ring* decision in the question to be decided by the United States Supreme Court.⁴⁶

- It is only after a sentencing hearing and additional findings of fact regarding aggravators and mitigators that the sentence of death may be imposed. Not only is this requirement imposed by Florida law, but it is constitutionally mandated by the Eighth Amendment to prevent death sentences from being arbitrarily imposed.⁴⁷
- As interpreted in *Ring*, the Sixth Amendment requires a jury to find aggravating factors. As Justice Scalia explained in his concurring opinion in *Ring*, the bottom line is that "the fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all facts essential to imposition of the level of punishment that the defendant receives—whether the

⁴¹ Office of the State Courts Administrator, *Judicial Impact Statement* (Mar. 9, 2015) (on file with the Senate Judiciary Committee.)

⁴² *Hurst v. State*, 147 So.3d 435, 441-447 (Fla. 2014).

⁴³ Justice Pariente wrote a dissenting opinion as to all but one issue in the *Hurst* case and Justices Labarga and Perry concurred with Justice Pariente's dissent. *Id.* at 449-452.

⁴⁴ Case No. 14-7505, *Hurst v. Florida*. <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-7505.htm>

⁴⁵ *Id.*

⁴⁶ The Sixth Amendment to the U.S. Constitution guarantees the right to trial by jury; the Eighth Amendment protects persons from cruel and unusual punishment, which is related to the "arbitrary and capricious" application of the death penalty. The Florida Supreme Court has declined to apply the *Ring* case's holding to the Florida death penalty scheme since the case was decided by the U.S. Supreme Court in 2002. (*Ring v. Arizona*, 536 U.S. 584, 609 (2002)).

⁴⁷ *Hurst*, *supra* note 42, at 450.

statute calls them elements of the offense, sentencing factors, or Mary Jane—must be found by a jury.” *Ring*, 536 U.S. at 610, 122 S.Ct. 2428 (Scalia, J., concurring).⁴⁸

- [T]he use of a special verdict form during the penalty phase would enable this Court “to tell when a jury has unanimously found a death-qualifying aggravating circumstance, which would both facilitate our proportionality review and satisfy the constitutional guarantee of trial by jury even when the recommendation of death is less than unanimous.” *Coday*, 946 So.2d at 1024 (Pariente, J., concurring in part and dissenting in part).⁴⁹
- In addition to Florida’s outlier status as the only state in the country that allows the death penalty to be imposed without a unanimous jury finding of an aggravating circumstance, Florida is also one of three states to permit the jury to recommend death by a less than unanimous vote.⁵⁰
- The United States Supreme Court has repeatedly explained that “death is different” from every other form of punishment. *See, e.g., Ring*, 536 U.S. at 605–06, 122 S.Ct. 2428; *Harmelin v. Michigan*, 501 U.S. 957, 994, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991); *Gardner v. Florida*, 430 U.S. 349, 357, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977). The Supreme Court has also emphasized the “heightened reliability demanded by the Eighth Amendment in the determination whether the death penalty is appropriate in a particular case.”⁵¹

The case will be heard and decided during the court’s October 2015 term.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

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.

⁴⁸ *Id.*

⁴⁹ *Id.* at 451.

⁵⁰ *Id.*

⁵¹ *Id.* at 452.

By Senator Altman

16-00577D-15

2015664__

1 A bill to be entitled
 2 An act relating to sentencing in capital felonies;
 3 amending ss. 921.141 and 921.142, F.S.; requiring that
 4 an advisory sentence of death be made by a unanimous
 5 recommendation of the jury after a defendant's
 6 conviction or adjudication of guilt for a capital
 7 felony or capital drug trafficking felony; requiring
 8 the court to instruct the jury that, in order for the
 9 jury to recommend to the court that the death penalty
 10 be imposed, the jury must find that sufficient
 11 aggravating circumstances exist which outweigh the
 12 mitigating circumstances found to exist; requiring the
 13 court to instruct the jury that each aggravating
 14 circumstance used to support the jury's recommendation
 15 of death must be proven beyond a reasonable doubt by a
 16 unanimous vote; requiring that the court provide a
 17 special verdict form specifying each aggravating
 18 circumstance found; limiting the court's findings
 19 concerning aggravating circumstances to those found by
 20 the jury; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsections (2) and (3) of section 921.141,
 25 Florida Statutes, are amended to read:
 26 921.141 Sentence of death or life imprisonment for capital
 27 felonies; further proceedings to determine sentence.—
 28 (2) ADVISORY SENTENCE BY THE JURY.—After hearing all the
 29 evidence, the jury shall deliberate and render an advisory

Page 1 of 5

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

16-00577D-15

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30 sentence to the court, based upon the following matters:
 31 (a) Whether sufficient aggravating circumstances exist as
 32 enumerated in subsection (5);
 33 (b) Whether the aggravating circumstances found to exist
 34 are sufficient to outweigh the mitigating circumstances found to
 35 exist ~~sufficient mitigating circumstances exist which outweigh~~
 36 ~~the aggravating circumstances found to exist~~; and
 37 (c) Based on these considerations, whether the defendant
 38 should be sentenced to life imprisonment or death.
 39
 40 Effective for sentencing proceedings commencing on or after July
 41 1, 2015, an advisory sentence of death must be based on a
 42 unanimous vote for death by the jury. The verdict of the jury
 43 must be in writing, and an advisory sentence of death must
 44 certify the vote for death was unanimous. The court shall
 45 instruct the jury that, in order for the jury to recommend to
 46 the court that the death penalty be imposed, the jury must first
 47 find that sufficient aggravating circumstances exist which
 48 outweigh the mitigating circumstances found to exist. The court
 49 shall further instruct the jury that each aggravating
 50 circumstance used to support the jury's recommendation of death
 51 must be proven beyond a reasonable doubt as found by a unanimous
 52 vote. The court shall provide a special verdict form that
 53 specifies which, if any, aggravating circumstances were found to
 54 exist and certifies that the vote for each aggravating
 55 circumstance found was unanimous.
 56 (3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—
 57 Notwithstanding the recommendation of a ~~majority~~ of the jury,
 58 the court, after weighing the aggravating and mitigating

Page 2 of 5

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

16-00577D-15

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59 circumstances, shall enter a sentence of life imprisonment or
60 death, but if the court imposes a sentence of death, it shall
61 set forth in writing its findings upon which the sentence of
62 death is based as to the facts:

63 (a) That sufficient aggravating circumstances exist as
64 enumerated in subsection (5);~~r~~ and

65 (b) That the aggravating circumstances found to exist are
66 sufficient to outweigh the mitigating circumstances found to
67 exist ~~there are insufficient mitigating circumstances to~~
68 ~~outweigh the aggravating circumstances.~~

69
70 In each case in which the court imposes the death sentence, the
71 determination of the court shall be supported by specific
72 written findings of fact based upon the circumstances in
73 subsections (5) and (6) and upon the records of the trial and
74 the sentencing proceedings, except that the court's
75 consideration and finding of any fact based upon the
76 circumstances in subsection (5) shall be limited to those
77 unanimously found to exist by the jury. If the court does not
78 make the findings requiring the death sentence within 30 days
79 after the rendition of the judgment and sentence, the court
80 shall impose sentence of life imprisonment in accordance with s.
81 775.082.

82 Section 2. Subsections (3) and (4) of section 921.142,
83 Florida Statutes, are amended to read:

84 921.142 Sentence of death or life imprisonment for capital
85 drug trafficking felonies; further proceedings to determine
86 sentence.—

87 (3) ADVISORY SENTENCE BY THE JURY.—After hearing all the

Page 3 of 5

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

16-00577D-15

2015664

88 evidence, the jury shall deliberate and render an advisory
89 sentence to the court, based upon the following matters:

90 (a) Whether sufficient aggravating circumstances exist as
91 enumerated in subsection (6);

92 (b) Whether the aggravating circumstances found to exist
93 are sufficient to outweigh the mitigating circumstances found to
94 exist ~~sufficient mitigating circumstances exist which outweigh~~
95 ~~the aggravating circumstances found to exist;~~ and

96 (c) Based on these considerations, whether the defendant
97 should be sentenced to life imprisonment or death.

98
99 Effective for sentencing proceedings commencing on or after July
100 1, 2015, an advisory sentence of death must be based on a
101 unanimous vote for death by the jury. The verdict of the jury
102 must be in writing, and an advisory sentence of death must
103 certify the vote for death was unanimous. The court shall
104 instruct the jury that, in order for the jury to recommend to
105 the court that the death penalty be imposed, the jury must first
106 find that sufficient aggravating circumstances exist which
107 outweigh the mitigating circumstances found to exist. The court
108 shall further instruct the jury that each aggravating
109 circumstance used to support the jury's recommendation of death
110 must be proven beyond a reasonable doubt as found by a unanimous
111 vote. The court shall provide a special verdict form that
112 specifies which, if any, aggravating circumstances were found to
113 exist and certifies that the vote for each aggravating
114 circumstance found was unanimous.

115 (4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

116 Notwithstanding the recommendation of a ~~majority~~ of the jury,

Page 4 of 5

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

16-00577D-15

2015664__

117 the court, after weighing the aggravating and mitigating
118 circumstances, shall enter a sentence of life imprisonment or
119 death, but if the court imposes a sentence of death, it shall
120 set forth in writing its findings upon which the sentence of
121 death is based as to the facts:

122 (a) That sufficient aggravating circumstances exist as
123 enumerated in subsection (6);~~7~~ and

124 (b) That the aggravating circumstances found to exist are
125 sufficient to outweigh the mitigating circumstances found to
126 exist ~~there are insufficient mitigating circumstances to~~
127 ~~outweigh the aggravating circumstances.~~

128

129 In each case in which the court imposes the death sentence, the
130 determination of the court shall be supported by specific
131 written findings of fact based upon the circumstances in
132 subsections (6) and (7) and upon the records of the trial and
133 the sentencing proceedings, except that the court's
134 consideration and finding of any fact based upon the
135 circumstances in subsection (6) shall be limited to those
136 unanimously found to exist by the jury. If the court does not
137 make the findings requiring the death sentence within 30 days
138 after the rendition of the judgment and sentence, the court
139 shall impose sentence of life imprisonment in accordance with s.
140 775.082, and the defendant ~~that person~~ shall be ineligible for
141 parole.

142 Section 3. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

March 23, 2015

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla:

I respectfully request that SB 0664, related to *Sentencing in Capitol Felonies*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Tom Cibula, Staff Director, 515 Knott Building
Shirley Proctor, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

March 17, 2015

The Honorable Miguel Diaz De La Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Diaz De La Portilla:

I respectfully request that SB 664, related to, *Sentencing in Capitol Felonies* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Tom Cibula, Staff Director, 515 Knott Building
Shirley Proctor, Committee Administrative Assistant

TA/rak

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
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Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 794

INTRODUCER: Senator Ring

SUBJECT: Prejudgment Interest

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 794 requires a court, in its final judgment, to include prejudgment interest on the amount of money damages, including court costs and attorney fees, awarded to a plaintiff. Prejudgment interest accrues from the date of the plaintiff's injury or loss. As provided in current law, the applicable interest rate is based on the discount rate of the Federal Reserve Bank of New York plus 400 basis points.

The bill provides that it applies retroactively to all actions that are pending on the effective date of the act and any actions that are initiated on or after that date.

II. Present Situation:

Prejudgment interest is the interest on a judgment that is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is interest on a judgment that is calculated from the date of the final judgment until the plaintiff collects the award from the defendant.

Under English common law, prejudgment interest was permitted for claims that were "liquidated" but not for claims that were "unliquidated." A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount. In personal injury law, examples of these types of damages include pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.¹

Florida does not generally allow the award of prejudgment interest for plaintiffs in personal injury² and wrongful death claims, but does allow it in some tort areas.³ The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule is when a plaintiff can establish that he or she suffered the loss of a vested property right.⁴

One theory of prejudgment interest is that it is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.⁵ Proponents of prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation was protracted because the defendant had no incentive to settle the case.⁶

III. Effect of Proposed Changes:

This bill requires a court, in its final judgment, to include prejudgment interest on the amount of money damages, including court costs and attorney fees, awarded to a plaintiff.

The rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S., and accrues from the date of the plaintiff's injury or loss. Pursuant to s. 55.03, F.S., the Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current quarterly interest rate is 4.75 percent.⁷

The bill also applies retroactively to all actions that are pending on the effective date of the act and any actions that are initiated on or after that date.

This bill takes effect upon becoming law.

¹ *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.*, 474 So. 2d 212 (Fla. 1985).

² *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (1955).

³ *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.

⁴ *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).

⁵ *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.

⁶ According to the Florida Justice Association, 32 states and the District of Columbia now allow for prejudgment interest in personal injury and wrongful death cases. Florida Justice Association, *Prejudgment Interest*, (2015) (on file with the Senate Committee on Judiciary).

⁷ Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates*, <http://www.myfloridacfo.com/division/AA/Vendors/#.VPtaBk0cSUI> (last visited March 7, 2015).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not appear to affect the spending, revenues, or tax authority of cities or counties. As such, the bill does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill is retroactive to the extent that it increases the amount of damages that may be recoverable for personal injuries that occur before the effective date of the bill. Although the Legislature may enact statutory changes that are procedural or remedial, a statute may not apply retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.⁸ By increasing the amount of damages authorized for causes of action that accrue before the effective date of the bill, this bill potentially could be construed as an unconstitutional penalty.

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

None.

B. Private Sector Impact:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by being permitted to receive prejudgment interest from the date of their loss or injury.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ *State Farm Mutual Automobile Insurance Co. v Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

VIII. Statutes Affected:

This bill creates s. 55.031, 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.

B. Amendments:

None.

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



874734

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 16

and insert:

compensatory damages awarded at the rate established pursuant to

s.

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

And the title is amended as follows:

Delete line 4

and insert:



12 interest on the amount of compensatory damages awarded
13 to a



785410

LEGISLATIVE ACTION

Senate

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. .
. .

House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 22

and insert:

Section 2. This act applies to causes of action which
accrue on or after the effective date of the act.

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

And the title is amended as follows:

Delete lines 5 - 6

and insert:



785410

12
13

plaintiff in a final judgment; providing for
applicability; providing an effective date.

By Senator Ring

29-00635-15

2015794__

A bill to be entitled

An act relating to prejudgment interest; creating s. 55.031, F.S.; requiring a court to include prejudgment interest on the amount of money damages awarded to a plaintiff in a final judgment; providing for retroactive application; providing an effective date.

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

Section 1. Section 55.031, Florida Statutes, is created to read:

55.031 Prejudgment interest.—In an action in which a plaintiff is entitled to recover money damages, including, but not limited to, court costs or attorney fees, the court shall, in the final judgment, include interest on the amount of the money damages awarded at the rate established pursuant to s. 55.03, with such interest accruing from the date of injury or loss.

Section 2. Section 55.031, Florida Statutes, as created by this act, shall apply retroactively to all actions pending on the effective date of this act and any action initiated on or after such date.

Section 3. This act shall take effect upon becoming a law.

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 1064

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Insurance Claims

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1064 amends s. 627.422, F.S., to provide that a property insurance policy may prohibit the post-loss assignment of benefits except that a policyholder may assign the benefit of payment:

- Up to \$3,000, to an entity that provides services or materials to mitigate or repair damage that directly arises from a covered loss. The assignment, however, is limited solely to designating that entity as a copayee for the benefit of payment. Additionally, the policyholder retains the exclusive right to enforce payment of the post-loss benefits under the policy and may not assign that right to another person or entity.
- To compensate a public adjuster. The assignment may only be for compensation due to the public adjuster by the policyholder and may not include any assignment of other benefits under the policy.
- To an attorney who represents the policyholder only if the assignment provides that the benefits are to be paid to the attorney for disbursement of the funds by the attorney to repair the property at the direction of the policyholder.

The bill provides that a post-loss assignment in violation of provisions of the bill is void.

The bill provides that an insurable interest does not survive an assignment except to a subsequent purchaser who acquires an insurable interest following a loss.

The bill amends s. 626.8651, F.S., relating to the licensure of public adjuster apprentices. It expands the ability of a public adjuster apprentice to solicit contracts for the services of the supervisory public adjuster. The bill allows public adjuster apprentices to solicit contracts while under the “general supervision” of a supervisory public adjuster rather than the “direct supervision and guidance” of the supervisory public adjuster. The bill, however, maintains the direct supervision requirement in two situations: (1) the public adjuster apprentice has appears at a residence without a prior appointment; and (2) the public adjuster apprentice solicits contracts for natural disaster claims within 30 days after the declaration of the natural disaster.

II. Present Situation:

Background on Assignment of Benefits

An assignment is the transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee can file a lawsuit against the insurer to recover the benefits. Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries*,¹ the court held that a provision in an insurance contract prohibiting assignment was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was to protect an insurer against unbargained-for risks.² However, Florida courts have held that an assignment made after a loss is valid even if the contract states otherwise.³ In *Continental Casualty Company v. Ryan Incorporated*,⁴ the court noted that it is a “well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss. A court recently explained that the rationale for post-loss assignments is that “[a]n assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer’s contractual relationship to a party with whom it never intended to contract, but an assignment after loss is simply the transfer of the right to a claim for money” and “has no effect upon the insurer’s duty under the policy.”⁵

Assignments have been prohibited by statute in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,⁶ the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured’s assignments to out-of-network medical

¹ 704 So. 2d 1384 (Fla. 1998).

² *Id.* at 1386.

³ See *West Florida Grocery Company v. Teutonia Fire Insurance Company*, 77 So. 209 (Fla. 1917); *Better Construction, Inc. v. National Union Fire Insurance Company of Pittsburgh*, 651 So. 2d 141 (Fla. 3d DCA 1995) (reversal a dismissal based on a no-assignment provision because “a provision against assignment of an insurance policy does not bar an insured’s assignment of an after-loss claim”); *Gisela Investments v. Liberty Mutual Ins. Co.*, 452 So.2d 1056 (Fla. 3d DCA 1984) (holding that a “provision in a policy of insurance which prohibits assignment thereof except with consent of the insurer does not apply to prevent assignment of the claim or interest in the insurance money then due, after loss”).

⁴ 974 So.2d 368, 377 n. 7 (Fla. 2008).

⁵ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012).

⁶ 955 So.2d 1140 (Fla. 4th DCA 2007).

providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”⁷

Assignment of Benefits in Property Insurance Cases

Assignment of benefits is becoming increasingly common in property insurance claims, especially in water damage claims where a homeowner assigns his or her right to receive benefits under their property insurance policy to a contractor or vendor who repairs the damaged property. In a recent presentation to the Florida House of Representatives Insurance and Banking Subcommittee, Citizens Property Insurance Company (“Citizens”) provided its 2013 litigation study statistics. Water claims represented 50 percent of all new reported claims and 75 percent of all litigation.⁸ Citizens reported that during accident years 2007-2010, the percentage of water cases in which there was an assignment of benefits was less than 1 percent each year. In 2011, the percentage of water cases in which there was an assignment of benefits was 2.32 percent. In 2012, it was 8.26 percent and in 2013, it was 10.93 percent.⁹ Citizens reported that its loss adjustment expense in a litigated claim involving assignment of benefits is 60 percent higher than a litigated claim without an assignment of benefits.¹⁰

Ongoing Litigation Involving Assignment of Benefits

At least three cases are pending in state appellate courts relating to assignment of benefits. In *Security First Insurance Company v. Florida Office of Insurance Regulation*,¹¹ an insurer is appealing the Office of Insurance Regulation’s denial of policy language that would prohibit the assignment of “any benefit or post-loss right” without the consent of the insurer. On March 24, 2015, the Fourth District Court of Appeal heard oral arguments in three cases relating to assignment of benefits to water remediation companies. In those cases, the water remediation companies argued that post-loss benefits are freely assignable, and the insurers are arguing that the assignments of benefits to water remediation companies are invalid.¹²

On April 10, 2015, the Fifth District Court of Appeals issued a decision to construe s. 627.504, F.S., “to require the property owner who holds the policy to have an insurable interest at the time of loss” and that “insurable interest is imputed to a post-loss assignee.” The assignee does not need to have an insurable interest in the homeowner’s home at the time of loss. The interest imputed on a post-loss assignee allows the assignee to sue the insurance provider for breach of contract for failing to pay the full amount owed under the policy.¹³

⁷ *Id.* at 1144-1145.

⁸ See PowerPoint presentation by Citizens Property Insurance Company to the Florida House of Representatives Insurance and Banking Subcommittee, February 9, 2015 (on file with the Florida Senate Banking and Insurance Committee).

⁹ See *Id.*

¹⁰ See *Id.*

¹¹ Case No. 1D14-1865 (Fla. 1st DCA). Briefing is complete and oral argument is not scheduled. The court will likely decide the case on the briefs.

¹² *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-424 (Fla. 4th DCA), *Emergency Services 24, Inc. v. United Property Casualty Ins. Co.*, Case No. 4D14-576 (Fla. 4th DCA).

¹³ *Accident Cleaners, Inc. v. Universal Ins. Co.*, Case No. 5 D14-352 (Fla. 5th DCA), April 10, 2015.

Insurable Interest

Section 627.405, F.S., provides that no contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss. “Insurable interest” means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.¹⁴ There is ongoing litigation over whether an assignee water remediation company has an insurable interest in the property. For example, in *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), the insurer is arguing that the water remediation company cannot bring a lawsuit to enforce the assigned insurance post-loss benefits because the company had no insurable interest in the property at the time of loss.¹⁵ The water remediation company argues that s. 627.405, F.S., does not prohibit the action because the company, as assignee, “stands in the shoes of the insured” and can bring the same actions the insured can bring.¹⁶

Public Adjusters

Public adjusters are required to be qualified and licensed by the Department of Financial Services (DFS). A public adjuster is a person “who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims.”¹⁷ There are currently other limitations and regulations regarding public adjusting. For example, a licensed contractor or subcontractor may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under ch. 626, F.S.¹⁸ However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered a loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.¹⁹ Current law also contains a public adjuster conflict of interest section that prohibits public adjusters from participating, directly or indirectly, in the reconstruction, repair, or remediation of the insured property that is the subject of the claim or engaging in any other activity that could reasonably be construed as a conflict of interest.

Public Adjuster Apprentices

Section 626.8541, F.S., defines a “public adjuster apprentice” as any person who is not a licensed public adjuster, who is employed by or has a contract with a licensed and appointed public

¹⁴ See s. 627.405(2), F.S.

¹⁵ See *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), Answer Brief of Appellee at p. 36.

¹⁶ See *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), Reply Brief of Appellant at p. 13.

¹⁷ See s. 626.854(1), F.S.

¹⁸ See s. 626.854(16), F.S.

¹⁹ *Id.*

adjuster in good standing with the DFS or a public adjusting firm that employs at least one licensed and appointed public adjuster in good standing with the DFS to assist a public adjuster in conducting business under the license. A public adjuster apprentice must work with a licensed and appointed public adjuster for a period of 12 months prior to being eligible for appointment as a licensed public adjuster.²⁰

Section 626.8651(11), F.S., prohibits a public adjuster apprentice from executing contracts for the services of a public adjuster. The statute also provides that a public adjuster apprentice may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster. “Direct supervision and guidance” and “solicit” are not defined in s. 626.8651(11), F.S. On at least two occasions, the DFS has attempted to define “direct supervision” and “solicitation” by rule, but has been subject to a rule challenge proceeding.²¹

According to the DFS, there are 1,422 licensed public adjusters (1,133 appointed) and 93 licensed public adjuster apprentices (65 appointed).²²

III. Effect of Proposed Changes:

Assignment of Benefits

The bill provides that a property insurance policy may prohibit the post-loss assignment of benefits, rights, causes of action, or other contractual rights under the policy, except that a policyholder may assign the benefit of payment:

- Up to \$3,000, to a person or entity that provides services or materials to mitigate or repair damage that directly arises from a covered loss. Such assignment is limited solely to designating the person or entity as a copayee for the benefit of payment for the reasonable value of services or materials provided. The policyholder, however, retains the exclusive right to enforce payment of the post-loss benefits under the policy and may not assign that right to another person or entity.
- To compensate a public adjuster for services authorized by s. 626.854(11), F.S. The assignment may only be for compensation due to the public adjuster by the policyholder and may not include any assignment of other benefits under the policy. The bill does not change the obligations, if any, of the insurer to issue to the policyholder a check for payment in the name of the policyholder or mortgageholder.
- To an attorney who represents the policyholder only if the assignment provides that the benefits are to be paid to the attorney for disbursement of the funds by the attorney to repair the property at the direction of the policyholder.

The bill provides that a post-loss assignment in violation of provisions of the bill is void.

²⁰ See s. 626.8541(2), F.S.

²¹ See *Florida Association of Public Insurance Adjusters, Inc. v. Department of Financial Services, Division of Agent and Agency Services*, Division of Administrative Hearings Case No. 13-1633RP (association argued that the DFS did not have the authority to define “direct supervision” as physical presence) and *Florida Association of Public Insurance Adjusters, Inc. v. Department of Financial Services, Division of Agent and Agency Services*, Division of Administrative Hearings Case No. 14-4196RP (association argued that the DFS did not have the authority to limit solicitation by public adjuster apprentices to those “under the direct supervision of the supervising public adjuster”).

²² Email from the DFS staff dated March 24, 2015 (on file with the Banking and Insurance Committee).

The bill provides that an insurable interest does not survive an assignment except to a subsequent purchaser who acquires an insurable interest following a loss. It is not clear whether the policyholder will retain an insurable interest in the policy if an assignment is made and later determined to be void.

Public Adjusters

This bill provides that any assignment or agreement purporting to transfer the authority to adjust, negotiate, or settle any portion of a claim to a contractor or subcontractor, or that is otherwise in derogation of the public adjuster contractor prohibition section is void. The bill appears to have the effect of prohibiting a vendor from disputing the amount of payment with the insurer under an assignment of benefits. Thus, if a property insurance policy permitted a post-loss assignment, the assignment would be limited to payment of a fixed amount presumably dictated by the policy to the vendor.

Public Adjuster Apprentices

This bill amends s. 626.8651, F.S., relating to the licensure of public adjuster apprentices. The bill expands the ability of a public adjuster apprentice to solicit contracts for the services of the supervisory public adjuster. The bill allows public adjuster apprentices to solicit contracts while under the “general supervision” of a supervisory public adjuster rather than the “direct supervision and guidance” of the supervisory public adjuster. The bill maintains the direct supervision requirement in two situations: (1) the public adjuster apprentice appears at a residence without a prior appointment; and (2) the public adjuster apprentice solicits contracts for natural disaster claims within 30 days after the declaration of the natural disaster.

The bill does not define “general supervision” or “direct supervision.” Current law does not define “natural disaster claims” or “declaration of the natural disaster.” The Insurance Adjusters Law does impose specified requirements on public adjusters based on “events that are the subject of a declaration of a state of emergency by the Governor.”

This bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 2, Fla. Const., provides that all persons have the right to acquire, possess and protect property. Opponents of the bill may argue that an insurance claim is chose in action and therefore is a property interest.²³ Accordingly, it could be argued that the assignment of a post-loss insurance claim cannot be prohibited. The Florida Supreme Court has held that property rights are not absolute:

Of course, even constitutionally protected property rights are not absolute, and are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are reasonably necessary to secure the health, safety, good order, and general welfare.²⁴

The court weighs whether the statute is reasonably necessary to accomplish the asserted state goals at the cost of offending property interests protected by the Florida Constitution. If this bill is challenged, the court would have to determine whether its provisions are reasonably necessary to justify the limitation on the property rights.²⁵

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

None.

B. Private Sector Impact:

The bill removes some restrictions on the activities of public adjuster apprentices. Removal of these restrictions may allow apprentices to solicit more business for the supervisory public adjuster.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 627.405, F.S., to state that “an insurable interest does not survive an assignment, except to a subsequent purchaser of the property who acquires insurable interest following a loss.” The intent of the language is to specify that the recipient of an assignment will not have an insurable interest. The bill, however, simply states that insurable interest does not

²³ See *Castellanos v. Citizens Property Insurance Corp.*, 98 So. 3d 1180, 1183 (Fla. 3d DCA 2012) (explaining that an “insurance claim is a chose in action” because personal property is an asset) (citations omitted); *Sunspan Engineering & Const. Co. v. Spring-Lock Scaffolding Co.*, 310 So. 2d 4, 8 (Fla. 1975) (noting that “it has been held that a vested cause of action, or ‘chose in action’ is personal property entitled to protection from arbitrary laws”).

²⁴ *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So. 2d 64 (Fla. 1990).

²⁵ *Id.*

survive an assignment. It is not clear whether the policyholder will retain an insurable interest in the policy if an assignment is made and later determined to be void.

The first exception in s. 626.8651(11), F.S., requiring direct supervision of a supervisory public adjuster of the apprentice is confusing by its structure and wording. It appears to allow an apprentice to solicit a contract at a residence on a subsequent visit with general supervision if the apprentice has first visited a residence without a prior appointment (also known as cold calling) under the direct supervision of a supervisory public adjuster.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.422, 626.854, 626.8651, and 627.405

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 Banking and Insurance on March 23, 2015:

The CS is a delete-all amendment that substantially changes the bill. Changes include:

- Adding a provision to void an assignment if it transfers the authority to adjust a claim to a contractor or subcontractor.
- Changing the supervision requirements for public adjuster apprentices.
- Providing that an insurable interest does not survive an assignment.

Allowing a property insurance contract to prohibit post-loss assignment of benefits with three exceptions and provide an invalid assignment is void.

- B. **Amendments:**

None.



805018

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 627.422, Florida Statutes, is amended to
read:

627.422 Assignment of policies; post-loss assignment of
benefits.—

(1) A policy may be assignable, or not assignable, as
provided by its terms. Subject to its terms relating to
assignability, any life or health insurance policy under the



805018

12 terms of which the beneficiary may be changed upon the sole
13 request of the policyowner may be assigned either by pledge or
14 transfer of title, by an assignment executed by the policyowner
15 alone and delivered to the insurer, regardless of whether or not
16 the pledgee or assignee is the insurer. Any such assignment
17 entitles shall entitle the insurer to deal with the assignee as
18 the owner or pledgee of the policy in accordance with the terms
19 of the assignment, until the insurer has received at its home
20 office written notice of termination of the assignment or pledge
21 or written notice by or on behalf of some other person claiming
22 some interest in the policy in conflict with the assignment.

23 (2) (a) A personal lines residential property insurance or
24 commercial residential property insurance policy may not
25 prohibit the post-loss assignment of benefits; however, a
26 policyowner is limited to assigning only the benefits of such
27 policy which are applicable to the work performed or to be
28 performed by the assignee as a result of the loss.

29 (b) Before an assignment may be made under paragraph (a),
30 an assignee shall provide the policyowner with a written listing
31 of the work to be performed. If it is later determined that
32 additional work is required as a result of the loss, the
33 policyowner must receive and approve a written listing of the
34 additional work before the additional work is performed. The
35 assignee must provide the policyowner with legible copies of all
36 estimates and invoices sent by the assignee to the insurer.

37 Section 2. This act shall take effect July 1, 2015.

38
39 ===== T I T L E A M E N D M E N T =====

40 And the title is amended as follows:



805018

41 Delete everything before the enacting clause
42 and insert:

43 A bill to be entitled
44 An act relating to assignment of post-loss insurance
45 policy benefits; amending s. 627.422, F.S.; providing
46 that certain residential property insurance policies
47 may not prohibit the post-loss assignment of benefits;
48 limiting policyowners of such policies to assigning
49 only the policy benefits that are applicable to the
50 work performed or to be performed by the assignee as a
51 result of the loss; requiring an assignee to provide
52 the policyholder with specified listings of work and
53 legible copies of all estimates and invoices sent by
54 the assignee to the insurer; providing an effective
55 date.



521920

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (7) and (8) are added to section
468.8411, Florida Statutes, to read:

468.8411 Definitions.—As used in this part, the term:
(7) "Professional water damage restorer" means any person
who performs water damage restoration.

(8) "Water damage restoration" means water removal,
demolition, dehumidification, or other treatment related to



521920

12 water damage or water-contaminated matter greater than 10 square
13 feet.

14 Section 2. Subsection (1) of section 468.8414, Florida
15 Statutes, is amended, present subsection (4) is redesignated as
16 subsection (6) of that section, and new subsections (4) and (5)
17 are added to that section, to read:

18 468.8414 Licensure.—

19 (1) The department shall license any applicant who the
20 department certifies is qualified to practice mold assessment,
21 ~~or~~ mold remediation, or water damage restoration.

22 (4) The department shall certify for licensure as a
23 professional water damage restorer an applicant who:

24 (a) Is of good moral character;

25 (b) Has the insurance coverage required under s. 468.8421;
26 and

27 (c) Satisfies the Institute of Inspection, Cleaning, and
28 Restoration Certification S500 standards.

29 (5) The prohibitions and penalties described in s. 468.8419
30 apply to a professional water damage restorer.

31 Section 3. This act shall take effect July 1, 2015.

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

34 And the title is amended as follows:

35 Delete everything before the enacting clause
36 and insert:

37 A bill to be entitled

38 An act relating to water damage restoration; amending
39 s. 468.8411, F.S.; defining the terms "professional
40 water damage restorer" and "water damage restoration";



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41 amending s. 468.8414, F.S.; requiring the Department
42 of Business and Professional Regulation to license an
43 applicant who the department certifies as qualified to
44 practice water damage restoration; specifying
45 requirements for such licensure; providing that
46 certain prohibitions and penalties apply to a licensed
47 professional water damage restorer; providing an
48 effective date.



142260

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (r) is added to subsection (1) of
section 489.129, Florida Statutes, to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against
any certificateholder or registrant: place on probation or
reprimand the licensee, revoke, suspend, or deny the issuance or
renewal of the certificate or registration, require financial



142260

12 restitution to a consumer for financial harm directly related to
13 a violation of a provision of this part, impose an
14 administrative fine not to exceed \$10,000 per violation, require
15 continuing education, or assess costs associated with
16 investigation and prosecution, if the contractor, financially
17 responsible officer, or business organization for which the
18 contractor is a primary qualifying agent, a financially
19 responsible officer, or a secondary qualifying agent responsible
20 under s. 489.1195 is found guilty of any of the following acts:

21 (r) Directly or indirectly receiving or accepting any
22 compensation, inducement, or reward from a person for the
23 referral of any business by the contractor.

24
25 For the purposes of this subsection, construction is considered
26 to be commenced when the contract is executed and the contractor
27 has accepted funds from the customer or lender. A contractor
28 does not commit a violation of this subsection when the
29 contractor relies on a building code interpretation rendered by
30 a building official or person authorized by s. 553.80 to enforce
31 the building code, absent a finding of fraud or deceit in the
32 practice of contracting, or gross negligence, repeated
33 negligence, or negligence resulting in a significant danger to
34 life or property on the part of the building official, in a
35 proceeding under chapter 120.

36 Section 2. Section 627.422, Florida Statutes, is amended to
37 read:

38 627.422 Assignment of policies; restrictions on post-loss
39 assignments of policy benefits.-

40 (1) A policy may be assignable, or not assignable, as



142260

41 provided by the policy ~~its~~ terms. Subject to its terms relating
42 to assignability, any life or health insurance policy under the
43 terms of which the beneficiary may be changed upon the sole
44 request of the policyowner may be assigned either by pledge or
45 transfer of title, by an assignment executed by the policyowner
46 alone and delivered to the insurer, regardless of whether ~~or not~~
47 the pledgee or assignee is the insurer. Any such assignment
48 entitles ~~shall entitle~~ the insurer to deal with the assignee as
49 the owner or pledgee of the policy in accordance with the terms
50 of the assignment, until the insurer has received at its home
51 office written notice of termination of the assignment or pledge
52 or written notice by or on behalf of some other person claiming
53 some interest in the policy in conflict with the assignment.

54 (2) If a policyowner of a property insurance policy acts
55 under urgent or emergency circumstances to protect his or her
56 property and enters into an agreement with another person to
57 provide services or materials to protect such property, the
58 provider of such services or materials may only receive at that
59 time, and for a period of 10 days after the conclusion of the
60 urgent or emergency circumstances, an assignment of the right to
61 receive an amount of benefits under the policy which is actually
62 necessary to alleviate the urgent or emergency circumstances and
63 to prevent additional damage from occurring to property covered
64 by the policy. A post-loss assignment of rights, benefits,
65 causes of action, or other contractual rights in violation of
66 this subsection is void.

67 Section 3. This act shall take effect July 1, 2015.

68
69 ===== T I T L E A M E N D M E N T =====



142260

70 And the title is amended as follows:

71 Delete everything before the enacting clause
72 and insert:

73 A bill to be entitled

74 An act relating to insurance claims; amending s.
75 489.129, F.S.; providing that the Construction
76 Industry Licensing Board may take specified
77 disciplinary action against contractors that receive
78 or accept any compensation, inducement, or reward for
79 the referral of business; amending s. 627.422, F.S.;
80 specifying restrictions for an assignment of benefits
81 by a policyowner of a property insurance policy under
82 certain urgent or emergency circumstances; providing
83 that a post-loss assignment in violation of the act is
84 void; providing an effective date.



519496

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Between lines 4 and 5

5 insert:

6 Section 1. Subsections (7) and (8) are added to section
7 468.8411, Florida Statutes, to read:

8 468.8411 Definitions.—As used in this part, the term:

9 (7) "Professional water damage restorer" means any person
10 who performs water damage restoration.

11 (8) "Water damage restoration" means water removal,



519496

12 demolition, dehumidification, or other treatment related to
13 water damage or water-contaminated matter greater than 10 square
14 feet.

15 Section 2. Subsection (1) of section 468.8414, Florida
16 Statutes, is amended, present subsection (4) is redesignated as
17 subsection (6) of that section, and new subsections (4) and (5)
18 are added to that section, to read:

19 468.8414 Licensure.—

20 (1) The department shall license any applicant who the
21 department certifies is qualified to practice mold assessment,
22 ~~or~~ mold remediation, or water damage restoration.

23 (4) The department shall certify for licensure as a
24 professional water damage restorer an applicant who:

25 (a) Is of good moral character;

26 (b) Has the insurance coverage required under s. 468.8421;

27 and

28 (c) Satisfies the Institute of Inspection, Cleaning and
29 Restoration Certification S500 standards.

30 (5) The prohibitions and penalties described in s. 468.8419
31 apply to a professional water damage restorer.

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

34 And the title is amended as follows:

35 Delete line 75

36 and insert:

37 468.8411, F.S.; defining the terms "professional water
38 damage restorer" and "water damage restoration";

39 amending s. 468.8414, F.S.; requiring the Department
40 of Business and Professional Regulation to license an



41 applicant who the department certifies as qualified to
42 practice water damage restoration; specifying
43 requirements for such licensure; providing that
44 certain prohibitions and penalties apply to a licensed
45 professional water damage restorer; amending s.
46 489.129, F.S.; providing that the Construction



344182

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Between lines 35 and 36
5 insert:

6 Section 2. Subsection (16) of section 626.854, Florida
7 Statutes, is amended to read:

8 626.854 "Public adjuster" defined; prohibitions.—The
9 Legislature finds that it is necessary for the protection of the
10 public to regulate public insurance adjusters and to prevent the
11 unauthorized practice of law.



344182

12 (16) (a) A licensed contractor under part I of chapter 489,
13 or a subcontractor, may not adjust a claim on behalf of an
14 insured unless licensed and compliant as a public adjuster under
15 this chapter. However, the contractor may discuss or explain a
16 bid for construction or repair of covered property with the
17 residential property owner who has suffered loss or damage
18 covered by a property insurance policy, or the insurer of such
19 property, if the contractor is doing so for the usual and
20 customary fees applicable to the work to be performed as stated
21 in the contract between the contractor and the insured.

22 (b) Submission of an invoice to an insurer by a licensed
23 contractor under part I of chapter 489 or a subcontractor which
24 is accompanied by an agreement to a discount in order to
25 expedite payment of the invoice does not constitute the
26 adjustment of a claim.

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete line 79

31 and insert:

32 the referral of business; amending s. 626.854, F.S.;

33 providing that submission of an invoice by certain

34 contractors and subcontractors to an insurer under

35 specified circumstances does not constitute the

36 adjustment of a claim; amending s. 627.422, F.S.;



558652

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Delete lines 38 - 66

5 and insert:

6 627.422 Assignment of policies.-

7 (1) Except as provided in subsection (2), a policy may be
8 assignable, or not assignable, as provided by its terms. Subject
9 to its terms relating to assignability, any life or health
10 insurance policy under the terms of which the beneficiary may be
11 changed upon the sole request of the policyowner may be assigned



558652

12 either by pledge or transfer of title, by an assignment executed
13 by the policyowner alone and delivered to the insurer,
14 regardless of whether ~~or not~~ the pledgee or assignee is the
15 insurer. Any such assignment entitles ~~shall entitle~~ the insurer
16 to deal with the assignee as the owner or pledgee of the policy
17 in accordance with the terms of the assignment, until the
18 insurer has received at its home office written notice of
19 termination of the assignment or pledge or written notice by or
20 on behalf of some other person claiming some interest in the
21 policy in conflict with the assignment.

22 (2) A residential property insurance policy may not
23 restrict a policyowner's post-loss assignment of benefits and
24 must contain a notice that includes the following statement in
25 at least 12-point, boldfaced, uppercase type: AS THE INSURED,
26 YOU HAVE A LEGAL CONTRACTUAL RIGHT TO ASSIGN YOUR POST-LOSS
27 BENEFITS FOR NEEDED REPAIRS OR REPLACEMENT OF DAMAGED PROPERTY.

28 (3) Upon an assignment of benefits, a policyowner may not
29 be held liable for billing and payment disputes between an
30 insurer and the assignee if the reason for the repairs or
31 replacement of damaged property is found by the insurer or a
32 court of competent jurisdiction to be covered under the policy.

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete lines 80 - 84

37 and insert:

38 prohibiting a residential property insurance policy
39 from restricting a policyowner's post-loss assignment
40 of benefits; requiring such policy to contain a



558652

41 specified disclosure statement regarding the
42 policyowner's right to assign certain post-loss
43 benefits; providing that a policyowner may not be held
44 liable for certain billing and payment disputes;
45 providing an effective date.



711706

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Joyner) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Delete line 54

5 and insert:

6 (2) If a policyowner of a residential property insurance
7 policy acts

8
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 Delete line 81



711706

12 and insert:
13 by a policyowner of a residential property insurance
14 policy under



884880

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Delete lines 54 - 66

5 and insert:

6 (2) (a) A personal lines residential property insurance or
7 commercial residential property insurance policy may not
8 prohibit the post-loss assignment of benefits; however, a
9 policyowner is limited to assigning only the benefits of such
10 policy which are applicable to the work performed or to be
11 performed by the assignee as a result of the loss.



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12 (b) Before an assignment may be made under paragraph (a),
13 an assignee shall provide the policyowner with a written listing
14 of the work to be performed. If it is later determined that
15 additional work is required as a result of the loss, the
16 policyowner must receive and approve a written listing of the
17 additional work before the additional work is performed. The
18 assignee must provide the policyowner with legible copies of all
19 estimates and invoices sent by the assignee to the insurer.

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete lines 80 - 84

24 and insert:

25 providing that certain residential property insurance
26 policies may not prohibit the post-loss assignment of
27 benefits; limiting policyowners of such policies to
28 assigning only the policy benefits that are applicable
29 to the work performed or to be performed by the
30 assignee as a result of the loss; requiring an
31 assignee to provide the policyholder with specified
32 listings of work and legible copies of all estimates
33 and invoices sent by the assignee to the insurer;
34 providing an effective date.



769250

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Delete lines 64 - 66
5 and insert:
6 by the policy.

7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete lines 83 - 84
11 and insert:



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12

an effective date.



740412

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

1 **Senate Amendment to Amendment (142260) (with title**
2 **amendment)**

3
4 Between lines 66 and 67

5 insert:

6 Section 3. Paragraph (a) of subsection (1) and paragraph
7 (a) of subsection (5) of section 627.70131, Florida Statutes,
8 are amended to read:

9 627.70131 Insurer's duty to acknowledge communications
10 regarding claims; investigation.—

11 (1)(a) Upon an insurer's receiving a communication with



740412

12 respect to a claim, the insurer shall, within 7 ~~14~~ calendar
13 days, review and acknowledge receipt of such communication
14 unless payment is made within that period of time or unless the
15 failure to acknowledge is caused by factors beyond the control
16 of the insurer which reasonably prevent such acknowledgment. If
17 the acknowledgment is not in writing, a notification indicating
18 acknowledgment shall be made in the insurer's claim file and
19 dated. A communication made to or by an agent of an insurer with
20 respect to a claim shall constitute communication to or by the
21 insurer. If a residential property insurer receives a
22 communication in writing from a third party identified in s.
23 627.422(2) with respect to the claim requesting that the insurer
24 acknowledge the existence of a policy of insurance on the
25 property, the insurer must respond to the communication within 7
26 days after the request. If the insurer's acknowledgment is not
27 in writing, a notification indicating acknowledgment must be
28 made in the insurer's claim file and dated.

29 (5) (a) Within 45 ~~90~~ days after an insurer receives notice
30 of an initial, reopened, or supplemental property insurance
31 claim from a policyholder, the insurer shall pay or deny such
32 claim or a portion of the claim unless the failure to pay is
33 caused by factors beyond the control of the insurer which
34 reasonably prevent such payment. Any payment of an initial or
35 supplemental claim or portion of such claim made 45 ~~90~~ days
36 after the insurer receives notice of the claim, or made more
37 than 15 days after there are no longer factors beyond the
38 control of the insurer which reasonably prevented such payment,
39 whichever is later, bears interest at the rate set forth in s.
40 55.03. Interest begins to accrue from the date the insurer



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41 receives notice of the claim. The provisions of this subsection
42 may not be waived, voided, or nullified by the terms of the
43 insurance policy. If there is a right to prejudgment interest,
44 the insured shall select whether to receive prejudgment interest
45 or interest under this subsection. Interest is payable when the
46 claim or portion of the claim is paid. Failure to comply with
47 this subsection constitutes a violation of this code. However,
48 failure to comply with this subsection does not form the sole
49 basis for a private cause of action.

50 Section 4. Section 627.7142, Florida Statutes, is amended
51 to read:

52 627.7142 Homeowner Claims Bill of Rights.—An insurer
53 issuing a personal lines residential property insurance policy
54 in this state must provide a Homeowner Claims Bill of Rights to
55 a policyholder within 7 ~~14~~ days after receiving an initial
56 communication with respect to a claim, unless the claim follows
57 an event that is the subject of a declaration of a state of
58 emergency by the Governor. The purpose of the bill of rights is
59 to summarize, in simple, nontechnical terms, existing Florida
60 law regarding the rights of a personal lines residential
61 property insurance policyholder who files a claim of loss. The
62 Homeowner Claims Bill of Rights is specific to the claims
63 process and does not represent all of a policyholder's rights
64 under Florida law regarding the insurance policy. The Homeowner
65 Claims Bill of Rights does not create a civil cause of action by
66 any individual policyholder or class of policyholders against an
67 insurer or insurers. The failure of an insurer to properly
68 deliver the Homeowner Claims Bill of Rights is subject to
69 administrative enforcement by the office but is not admissible



740412

70 as evidence in a civil action against an insurer. The Homeowner
71 Claims Bill of Rights does not enlarge, modify, or contravene
72 statutory requirements, including, but not limited to, ss.
73 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does
74 not prohibit an insurer from exercising its right to repair
75 damaged property in compliance with the terms of an applicable
76 policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner
77 Claims Bill of Rights must state:

78
79 HOMEOWNER CLAIMS

80 BILL OF RIGHTS

81 This Bill of Rights is specific to the claims process
82 and does not represent all of your rights under
83 Florida law regarding your policy. There are also
84 exceptions to the stated timelines when conditions are
85 beyond your insurance company's control. This document
86 does not create a civil cause of action by an
87 individual policyholder, or a class of policyholders,
88 against an insurer or insurers and does not prohibit
89 an insurer from exercising its right to repair damaged
90 property in compliance with the terms of an applicable
91 policy.

92
93 YOU HAVE THE RIGHT TO:

94 1. Receive from your insurance company an
95 acknowledgment of your reported claim within 7 ~~14~~ days
96 after the time you communicated the claim.

97 2. Upon written request, receive from your
98 insurance company within 15 ~~30~~ days after you have



740412

99 submitted a complete proof-of-loss statement to your
100 insurance company, confirmation that your claim is
101 covered in full, partially covered, or denied, or
102 receive a written statement that your claim is being
103 investigated.

104 3. Within 45 ~~90~~ days, subject to any dual
105 interest noted in the policy, receive full settlement
106 payment for your claim or payment of the undisputed
107 portion of your claim, or your insurance company's
108 denial of your claim.

109 4. Free mediation of your disputed claim by the
110 Florida Department of Financial Services, Division of
111 Consumer Services, under most circumstances and
112 subject to certain restrictions.

113 5. Neutral evaluation of your disputed claim, if
114 your claim is for damage caused by a sinkhole and is
115 covered by your policy.

116 6. Contact the Florida Department of Financial
117 Services, Division of Consumer Services' toll-free
118 helpline for assistance with any insurance claim or
119 questions pertaining to the handling of your claim.
120 You can reach the Helpline by phone at...(toll-free
121 phone number)..., or you can seek assistance online at
122 the Florida Department of Financial Services, Division
123 of Consumer Services' website at...(website
124 address)....

125

126 YOU ARE ADVISED TO:

127 1. Contact your insurance company before entering



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128 into any contract for repairs to confirm any managed
129 repair policy provisions or optional preferred
130 vendors.

131 2. Make and document emergency repairs that are
132 necessary to prevent further damage. Keep the damaged
133 property, if feasible, keep all receipts, and take
134 photographs of damage before and after any repairs.

135 3. Carefully read any contract that requires you
136 to pay out-of-pocket expenses or a fee that is based
137 on a percentage of the insurance proceeds that you
138 will receive for repairing or replacing your property.

139 4. Confirm that the contractor you choose is
140 licensed to do business in Florida. You can verify a
141 contractor's license and check to see if there are any
142 complaints against him or her by calling the Florida
143 Department of Business and Professional Regulation.
144 You should also ask the contractor for references from
145 previous work.

146 5. Require all contractors to provide proof of
147 insurance before beginning repairs.

148 6. Take precautions if the damage requires you to
149 leave your home, including securing your property and
150 turning off your gas, water, and electricity, and
151 contacting your insurance company and provide a phone
152 number where you can be reached.

153
154 ===== T I T L E A M E N D M E N T =====

155 And the title is amended as follows:

156 Delete line 84



740412

157 and insert:
158 void; amending s. 627.70131, F.S.; revising timeframes
159 and other requirements for residential property
160 insurers in responding to certain communications
161 relating to claims; revising the timeframes in which
162 residential property insurers must pay or deny certain
163 claims; amending s. 627.7142, F.S.; revising the
164 timeframe in which certain information must be
165 provided by a personal lines residential property
166 insurer in response to certain communications relating
167 to a claim; revising the timeframes applicable to
168 certain rights specified in the Homeowner Claims Bill
169 of Rights; providing an effective date.



361920

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

1 **Senate Substitute for Amendment (142260) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsection (11) of section 626.8651, Florida
7 Statutes, is amended to read:

8 626.8651 Public adjuster apprentice license;
9 qualifications.—

10 (11) A public adjuster apprentice has the same authority as
11 the licensed public adjuster or public adjusting firm that



361920

12 employs the apprentice except that an apprentice may not execute
13 contracts for the services of a public adjuster or public
14 adjusting firm and is limited in his or her ability to ~~may not~~
15 ~~solicit contracts for the services except under the direct~~
16 ~~supervision and guidance~~ of the supervisory public adjuster. A
17 public adjuster apprentice may solicit contracts for the
18 supervisory public adjuster only under the general supervision
19 of the supervisory public adjuster, provided, however, that the
20 public adjuster apprentice may only solicit contracts if the
21 public adjuster apprentice has appeared at a residence without a
22 prior appointment if the apprentice is under the direct
23 supervision of the supervisory public adjuster. A public
24 adjuster apprentice may not solicit contracts for natural
25 disaster claims within 30 days after the declaration of the
26 natural disaster except under the direct supervision of a
27 supervisory public adjuster. An individual may not be, act as,
28 or hold himself or herself out to be a public adjuster
29 apprentice unless the individual is licensed and holds a current
30 appointment by a licensed public all-lines adjuster or a public
31 adjusting firm that employs a licensed all-lines public
32 adjuster.

33 Section 2. Section 627.422, Florida Statutes, is amended to
34 read:

35 627.422 Assignment of policies; limitations on post-loss
36 assignments of policy benefits.-

37 (1) A policy may be assignable, or not assignable, as
38 provided by its terms. Subject to its terms relating to
39 assignability, any life or health insurance policy under the
40 terms of which the beneficiary may be changed upon the sole



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41 request of the policyowner may be assigned either by pledge or
42 transfer of title, by an assignment executed by the policyowner
43 alone and delivered to the insurer, regardless of whether ~~or not~~
44 the pledgee or assignee is the insurer. Any such assignment
45 entitles ~~shall entitle~~ the insurer to deal with the assignee as
46 the owner or pledgee of the policy in accordance with the terms
47 of the assignment, until the insurer has received at its home
48 office written notice of termination of the assignment or pledge
49 or written notice by or on behalf of some other person claiming
50 some interest in the policy in conflict with the assignment.

51 (2) A personal lines residential property insurance policy
52 and a commercial lines residential property insurance policy may
53 not prohibit the post-loss assignment of benefits. However, an
54 agreement assigning post-loss benefits under such insurance
55 policies must:

56 (a) Require the assignee to notify the insurer within 7
57 days after the date of the assignment, provided, however, that
58 if the contact information for the insurer is unavailable for
59 the first 7 days, the assignee shall contact the company as soon
60 as practicable. A facsimile number and an e-mail address
61 dedicated solely to the use of receiving notices of assignments
62 must be posted on the carrier's website and be operational 24
63 hours a day, 7 days a week. A facsimile confirmation held by an
64 assignee is prima facie evidence that the notice was properly
65 given. Insurers must also accept this notice by regular mail.

66 (b) Limit the assignment to the contracted work to be
67 performed. Such assignment is restricted to claims for damage to
68 the dwelling and other structures and items covered under the
69 policy.



361920

70 (c) Specify the estimated scope and price of the work in
71 writing before it is performed, provided, however, that revised
72 estimates subject to the assignment may be provided where the
73 need for additional or supplemental repairs is determined
74 subsequent to the original estimate.

75 (d) Prohibit the assignee from charging the policyowner for
76 any portion of the repair or replacement beyond the applicable
77 deductible contained in the insurance policy, provided, however,
78 that a policyowner may contract for upgrades or additional work
79 not covered under the policy at the policyowner's expense.

80 (e) Prohibit a person performing any portion of the repair
81 or replacement on behalf of the assignee from charging the
82 policyowner, provided, however, that the policyowner may
83 contract for upgrades or additional work not covered under the
84 policy at the policyowner's expense.

85 (f) Prohibit the assignee from retaining insurance proceeds
86 for payment of work performed or to be performed by vendors
87 other than the assignee, provided, however, that this paragraph
88 does not apply to a general contractor who retains
89 subcontractors to perform work covered under the policy.

90 (g) Require the assignee to guarantee that the work
91 performed for the loss event conforms to the most recent,
92 accepted industry standards, including, but not limited to,
93 applicable local building codes.

94 (3) An assignment that fails to substantially comply with
95 this section may be rescinded by the policyowner in writing with
96 notice of rescission provided to both the contractor and the
97 insurer.

98 Section 3. This act shall take effect July 1, 2015.



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99

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

101 And the title is amended as follows:

102 Delete everything before the enacting clause
103 and insert:

104 A bill to be entitled
105 An act relating act relating to insurance claims;
106 amending s. 626.8651, F.S.; revising the authority of
107 public adjuster apprentices; amending s. 627.422,
108 F.S.; providing that personal and commercial lines
109 residential property insurance policies may not
110 prohibit the post-loss assignment of benefits;
111 providing procedures, requirements, and limitations
112 for an agreement assigning the post-loss benefits
113 under such insurance policies; providing for
114 rescission of an assignment by a policyowner under
115 certain circumstances; providing an effective date.



448464

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (11) of section 626.8651, Florida
Statutes, is amended to read:

626.8651 Public adjuster apprentice license;
qualifications.—

(11) A public adjuster apprentice has the same authority as
the licensed public adjuster or public adjusting firm that
employs the apprentice except that an apprentice may not execute



448464

12 contracts for the services of a public adjuster or public
13 adjusting firm and is limited in his or her ability to ~~may not~~
14 ~~solicit contracts for the services except under the direct~~
15 ~~supervision and guidance of the supervisory public adjuster.~~ A
16 public adjuster apprentice may solicit contracts for the
17 supervisory public adjuster only under the general supervision
18 of the supervisory public adjuster, provided, however, that the
19 public adjuster apprentice may only solicit contracts if the
20 public adjuster apprentice has appeared at a residence without a
21 prior appointment if the apprentice is under the direct
22 supervision of the supervisory public adjuster. A public
23 adjuster apprentice may not solicit contracts for natural
24 disaster claims within 30 days after the declaration of the
25 natural disaster except under the direct supervision of a
26 supervisory public adjuster. An individual may not be, act as,
27 or hold himself or herself out to be a public adjuster
28 apprentice unless the individual is licensed and holds a current
29 appointment by a licensed public all-lines adjuster or a public
30 adjusting firm that employs a licensed all-lines public
31 adjuster.

32 Section 2. Section 627.422, Florida Statutes, is amended to
33 read:

34 627.422 Assignment of policies; limitations on post-loss
35 assignments of policy benefits.-

36 (1) A policy may be assignable, or not assignable, as
37 provided by its terms. Subject to its terms relating to
38 assignability, any life or health insurance policy under the
39 terms of which the beneficiary may be changed upon the sole
40 request of the policyowner may be assigned either by pledge or



448464

41 transfer of title, by an assignment executed by the policyowner
42 alone and delivered to the insurer, regardless of whether or not
43 the pledgee or assignee is the insurer. Any such assignment
44 entitles shall entitle the insurer to deal with the assignee as
45 the owner or pledgee of the policy in accordance with the terms
46 of the assignment, until the insurer has received at its home
47 office written notice of termination of the assignment or pledge
48 or written notice by or on behalf of some other person claiming
49 some interest in the policy in conflict with the assignment.

50 (2) A personal lines residential property insurance policy
51 and a commercial lines residential property insurance policy may
52 not prohibit the post-loss assignment of benefits. However, an
53 agreement assigning post-loss benefits under such insurance
54 policies must:

55 (a) Require the assignee to notify the insurer within 7
56 days after the date of the assignment, provided, however, that
57 if the contact information for the insurer is unavailable for
58 the first 7 days, the assignee shall contact the company as soon
59 as practicable. A facsimile number and an e-mail address
60 dedicated solely to the use of receiving notices of assignments
61 must be posted on the carrier's website and be operational 24
62 hours a day, 7 days a week. A facsimile confirmation held by an
63 assignee is prima facie evidence that the notice was properly
64 given. Insurers must also accept this notice by regular mail.

65 (b) Limit the assignment to the contracted work to be
66 performed. Such assignment is restricted to claims for damage to
67 the dwelling and other structures and items covered under the
68 policy.

69 (c) Specify the estimated scope and price of the work in



448464

70 writing before it is performed, provided, however, that revised
71 estimates subject to the assignment may be provided where the
72 need for additional or supplemental repairs is determined
73 subsequent to the original estimate.

74 (d) Prohibit the assignee from charging the policyowner for
75 any portion of the repair or replacement beyond the applicable
76 deductible contained in the insurance policy, provided, however,
77 that a policyowner may contract for upgrades or additional work
78 not covered under the policy at the policyowner's expense.

79 (e) Prohibit a person performing any portion of the repair
80 or replacement on behalf of the assignee from charging the
81 policyowner, provided, however, that the policyowner may
82 contract for upgrades or additional work not covered under the
83 policy at the policyowner's expense.

84 (f) Prohibit the assignee from retaining insurance proceeds
85 for payment of work performed or to be performed by vendors
86 other than the assignee, provided, however, that this paragraph
87 does not apply to a general contractor who retains
88 subcontractors to perform work covered under the policy.

89 (g) Require the assignee to guarantee that the work
90 performed for the loss event conforms to the most recent,
91 accepted industry standards, including, but not limited to,
92 applicable local building codes.

93 (3) An assignment that fails to substantially comply with
94 this section may be rescinded by the policyowner in writing with
95 notice of rescission provided to both the contractor and the
96 insurer.

97 Section 3. This act shall take effect July 1, 2015.
98



448464

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

100 And the title is amended as follows:

101 Delete everything before the enacting clause

102 and insert:

103 A bill to be entitled

104 An act relating to insurance claims; amending s.

105 626.8651, F.S.; revising the authority of public

106 adjuster apprentices; amending s. 627.422, F.S.;

107 providing that personal and commercial lines

108 residential property insurance policies may not

109 prohibit the post-loss assignment of benefits;

110 providing procedures, requirements, and limitations

111 for an agreement assigning the post-loss benefits

112 under such insurance policies; providing for

113 rescission of an assignment by a policyowner under

114 certain circumstances; providing an effective date.



489830

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 36 - 39

and insert:

(b) Submission of an invoice by a licensed contractor under part I of chapter 489 or a subcontractor to an insurance company and an agreement to a discount in order to expedite payment of the invoice does not constitute the adjustment of a claim.

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

And the title is amended as follows:



489830

12 Delete lines 3 - 6
13 and insert:
14 626.854, F.S.; providing that submission of an invoice
15 by certain contractors and subcontractors to an
16 insurance company under specified circumstances does
17 not constitute the adjustment of a claim; amending s.
18 626.8651,



540944

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 66 - 71.

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

And the title is amended as follows:

Delete lines 8 - 10

and insert:

apprentices; amending s.



449256

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 76 - 114

and insert:

(1) Except as provided in subsection (2), a policy may be assignable, or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer,



449256

12 regardless of whether ~~or not~~ the pledgee or assignee is the
13 insurer. Any such assignment entitles ~~shall entitle~~ the insurer
14 to deal with the assignee as the owner or pledgee of the policy
15 in accordance with the terms of the assignment, until the
16 insurer has received at its home office written notice of
17 termination of the assignment or pledge or written notice by or
18 on behalf of some other person claiming some interest in the
19 policy in conflict with the assignment.

20 (2) A residential property insurance policy may not
21 restrict a policyowner's post-loss assignment of benefits and
22 must contain a notice that includes the following statement in
23 at least 12-point, boldfaced, uppercase type: AS THE INSURED,
24 YOU HAVE A LEGAL CONTRACTUAL RIGHT TO ASSIGN YOUR POST-LOSS
25 BENEFITS FOR NEEDED REPAIRS OR REPLACEMENT OF DAMAGED PROPERTY.

26 (3) Upon an assignment of benefits, a policyowner may not
27 be held liable for billing and payment disputes between an
28 insurer and the assignee if the reason for the repairs or
29 replacement of damaged property is found by the insurer or a
30 court of competent jurisdiction to be covered under the policy.

31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete lines 11 - 15

35 and insert:

36 627.422, F.S.; prohibiting a residential property
37 insurance policy from restricting a policyowner's
38 post-loss assignment of benefits; requiring such
39 policy to contain a specified disclosure regarding the
40 policyowner's right to assign certain post-loss



449256

41 | benefits; providing that a policyowner may not be held
42 | liable for certain billing and payment disputes;
43 | providing



267362

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete line 90

and insert:

(2) A residential property insurance policy may restrict
the post-loss

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

And the title is amended as follows:

Delete lines 11 - 12

and insert:



267362

12 627.422, F.S.; authorizing a residential property
13 insurance policy to restrict the post-loss assignment
14 of certain



121740

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment

Delete lines 94 - 109

and insert:

(a) To compensate a public adjuster for services authorized by s. 626.854(11). The assignment may only be for compensation due to the public adjuster by the policyholder and may not include any assignment of other benefits under the policy. This paragraph does not change the obligations, if any, of the insurer to issue to the policyholder a check for payment in the name of the policyholder or mortgageholder.



121740

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(b) To an attorney who represents the policyholder only if



791422

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment

Delete lines 99 - 101

and insert:

provided.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment

Delete lines 102 - 109

and insert:

(b) To an attorney who represents the policyholder only if



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 113 - 114.

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

And the title is amended as follows:

Delete lines 14 - 15

and insert:

providing exceptions; providing



297062

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 114 and 115

insert:

Section 5. Paragraph (a) of subsection (1) and paragraph (a) of subsection (5) of section 627.70131, Florida Statutes, are amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1) (a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 7 ~~14~~ calendar



297062

12 days, review and acknowledge receipt of such communication
13 unless payment is made within that period of time or unless the
14 failure to acknowledge is caused by factors beyond the control
15 of the insurer which reasonably prevent such acknowledgment. If
16 the acknowledgment is not in writing, a notification indicating
17 acknowledgment shall be made in the insurer's claim file and
18 dated. A communication made to or by an agent of an insurer with
19 respect to a claim shall constitute communication to or by the
20 insurer. If a residential property insurer receives a
21 communication in writing from a third party identified in s.
22 627.422(2) with respect to the claim requesting that the insurer
23 acknowledge the existence of a policy of insurance on the
24 property, the insurer must respond to the communication within 7
25 days after the request. If the insurer's acknowledgment is not
26 in writing, a notification indicating acknowledgment must be
27 made in the insurer's claim file and dated.

28 (5) (a) Within 45 ~~90~~ days after an insurer receives notice
29 of an initial, reopened, or supplemental property insurance
30 claim from a policyholder, the insurer shall pay or deny such
31 claim or a portion of the claim unless the failure to pay is
32 caused by factors beyond the control of the insurer which
33 reasonably prevent such payment. Any payment of an initial or
34 supplemental claim or portion of such claim made 45 ~~90~~ days
35 after the insurer receives notice of the claim, or made more
36 than 15 days after there are no longer factors beyond the
37 control of the insurer which reasonably prevented such payment,
38 whichever is later, bears interest at the rate set forth in s.
39 55.03. Interest begins to accrue from the date the insurer
40 receives notice of the claim. The provisions of this subsection



297062

41 may not be waived, voided, or nullified by the terms of the
42 insurance policy. If there is a right to prejudgment interest,
43 the insured shall select whether to receive prejudgment interest
44 or interest under this subsection. Interest is payable when the
45 claim or portion of the claim is paid. Failure to comply with
46 this subsection constitutes a violation of this code. However,
47 failure to comply with this subsection does not form the sole
48 basis for a private cause of action.

49 Section 6. Section 627.7142, Florida Statutes, is amended
50 to read

51 627.7142 Homeowner Claims Bill of Rights.—An insurer
52 issuing a personal lines residential property insurance policy
53 in this state must provide a Homeowner Claims Bill of Rights to
54 a policyholder within 7 ~~14~~ days after receiving an initial
55 communication with respect to a claim, unless the claim follows
56 an event that is the subject of a declaration of a state of
57 emergency by the Governor. The purpose of the bill of rights is
58 to summarize, in simple, nontechnical terms, existing Florida
59 law regarding the rights of a personal lines residential
60 property insurance policyholder who files a claim of loss. The
61 Homeowner Claims Bill of Rights is specific to the claims
62 process and does not represent all of a policyholder's rights
63 under Florida law regarding the insurance policy. The Homeowner
64 Claims Bill of Rights does not create a civil cause of action by
65 any individual policyholder or class of policyholders against an
66 insurer or insurers. The failure of an insurer to properly
67 deliver the Homeowner Claims Bill of Rights is subject to
68 administrative enforcement by the office but is not admissible
69 as evidence in a civil action against an insurer. The Homeowner



297062

70 Claims Bill of Rights does not enlarge, modify, or contravene
71 statutory requirements, including, but not limited to, ss.
72 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does
73 not prohibit an insurer from exercising its right to repair
74 damaged property in compliance with the terms of an applicable
75 policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner
76 Claims Bill of Rights must state:

77

78

HOMEOWNER CLAIMS

79

BILL OF RIGHTS

80

This Bill of Rights is specific to the claims process
81 and does not represent all of your rights under
82 Florida law regarding your policy. There are also
83 exceptions to the stated timelines when conditions are
84 beyond your insurance company's control. This document
85 does not create a civil cause of action by an
86 individual policyholder, or a class of policyholders,
87 against an insurer or insurers and does not prohibit
88 an insurer from exercising its right to repair damaged
89 property in compliance with the terms of an applicable
90 policy.

91

92

YOU HAVE THE RIGHT TO:

93

1. Receive from your insurance company an
94 acknowledgment of your reported claim within 7 ~~14~~ days
95 after the time you communicated the claim.

96

2. Upon written request, receive from your
97 insurance company within 15 ~~30~~ days after you have
98 submitted a complete proof-of-loss statement to your



297062

99 insurance company, confirmation that your claim is
100 covered in full, partially covered, or denied, or
101 receive a written statement that your claim is being
102 investigated.

103 3. Within 45 ~~90~~ days, subject to any dual
104 interest noted in the policy, receive full settlement
105 payment for your claim or payment of the undisputed
106 portion of your claim, or your insurance company's
107 denial of your claim.

108 4. Free mediation of your disputed claim by the
109 Florida Department of Financial Services, Division of
110 Consumer Services, under most circumstances and
111 subject to certain restrictions.

112 5. Neutral evaluation of your disputed claim, if
113 your claim is for damage caused by a sinkhole and is
114 covered by your policy.

115 6. Contact the Florida Department of Financial
116 Services, Division of Consumer Services' toll-free
117 helpline for assistance with any insurance claim or
118 questions pertaining to the handling of your claim.
119 You can reach the Helpline by phone at...(toll-free
120 phone number)..., or you can seek assistance online at
121 the Florida Department of Financial Services, Division
122 of Consumer Services' website at...(website
123 address)....

124
125 YOU ARE ADVISED TO:

126 1. Contact your insurance company before entering
127 into any contract for repairs to confirm any managed



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128 repair policy provisions or optional preferred
129 vendors.

130 2. Make and document emergency repairs that are
131 necessary to prevent further damage. Keep the damaged
132 property, if feasible, keep all receipts, and take
133 photographs of damage before and after any repairs.

134 3. Carefully read any contract that requires you
135 to pay out-of-pocket expenses or a fee that is based
136 on a percentage of the insurance proceeds that you
137 will receive for repairing or replacing your property.

138 4. Confirm that the contractor you choose is
139 licensed to do business in Florida. You can verify a
140 contractor's license and check to see if there are any
141 complaints against him or her by calling the Florida
142 Department of Business and Professional Regulation.
143 You should also ask the contractor for references from
144 previous work.

145 5. Require all contractors to provide proof of
146 insurance before beginning repairs.

147 6. Take precautions if the damage requires you to
148 leave your home, including securing your property and
149 turning off your gas, water, and electricity, and
150 contacting your insurance company and provide a phone
151 number where you can be reached.

152
153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete line 15

156 and insert:



297062

157 assignment in violation of the act is void; amending
158 s. 627.70131, F.S.; revising timeframes and other
159 requirements for residential property insurers in
160 responding to certain communications relating to
161 claims; revising the timeframes in which residential
162 property insurers must pay or deny certain claims;
163 amending s. 627.7142, F.S.; revising the timeframe in
164 which certain information must be provided by a
165 personal lines residential property insurer in
166 response to certain communications relating to a
167 claim; revising the timeframes applicable to certain
168 rights specified in the Homeowner Claims Bill of
169 Rights; providing

By the Committee on Banking and Insurance; and Senator Hukill

597-02742-15

20151064c1

1 A bill to be entitled
 2 An act relating to insurance claims; amending s.
 3 626.854, F.S.; providing that an assignment or
 4 agreement that transfers authority to adjust,
 5 negotiate, or settle a claim or that violates other
 6 specified provisions is void; amending s. 626.8651,
 7 F.S.; revising the authority of public adjuster
 8 apprentices; amending s. 627.405, F.S.; prohibiting
 9 assignment of an insurable interest except to
 10 subsequent purchasers after a loss; amending s.
 11 627.422, F.S.; authorizing a property insurance policy
 12 to prohibit the post-loss assignment of certain
 13 benefits or rights that apply to specified losses;
 14 providing exceptions; providing that a post-loss
 15 assignment in violation of the act is void; providing
 16 an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (16) of section 626.854, Florida
 21 Statutes, is amended to read:

22 626.854 "Public adjuster" defined; prohibitions.—The
 23 Legislature finds that it is necessary for the protection of the
 24 public to regulate public insurance adjusters and to prevent the
 25 unauthorized practice of law.

26 (16) (a) A licensed contractor under part I of chapter 489,
 27 or a subcontractor, may not adjust a claim on behalf of an
 28 insured unless licensed and compliant as a public adjuster under
 29 this chapter. However, the contractor may discuss or explain a

Page 1 of 4

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

597-02742-15

20151064c1

30 bid for construction or repair of covered property with the
 31 residential property owner who has suffered loss or damage
 32 covered by a property insurance policy, or the insurer of such
 33 property, if the contractor is doing so for the usual and
 34 customary fees applicable to the work to be performed as stated
 35 in the contract between the contractor and the insured.

36 (b) An assignment or agreement that transfers the authority
 37 to adjust, negotiate, or settle any portion of a claim to such
 38 contractor or subcontractor or that is otherwise in violation of
 39 this section is void.

40 Section 2. Subsection (11) of section 626.8651, Florida
 41 Statutes, is amended to read:

42 626.8651 Public adjuster apprentice license;
 43 qualifications.—

44 (11) A public adjuster apprentice has the same authority as
 45 the licensed public adjuster or public adjusting firm that
 46 employs the apprentice except that an apprentice may not execute
 47 contracts for the services of a public adjuster or public
 48 adjusting firm and is limited in his or her ability to ~~may not~~
 49 ~~solicit contracts for the services~~ ~~except under the direct~~
 50 ~~supervision and guidance~~ of the supervisory public adjuster. A
 51 public adjuster apprentice may only solicit contracts for the
 52 supervisory public adjuster under the general supervision of the
 53 supervisory public adjuster; provided, however, that the public
 54 adjuster apprentice may only solicit contracts if the public
 55 adjuster apprentice has appeared at a residence without a prior
 56 appointment if the apprentice is under the direct supervision of
 57 the supervisory public adjuster. A public adjuster apprentice
 58 may not solicit contracts for natural disaster claims within 30

Page 2 of 4

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597-02742-15 20151064c1

59 days after the declaration of the natural disaster except under
 60 the direct supervision of a supervisory public adjuster. An
 61 individual may not be, act as, or hold himself or herself out to
 62 be a public adjuster apprentice unless the individual is
 63 licensed and holds a current appointment by a licensed public
 64 all-lines adjuster or a public adjusting firm that employs a
 65 licensed all-lines public adjuster.

66 Section 3. Subsection (4) is added to section 627.405,
 67 Florida Statutes, to read:

68 627.405 Insurable interest; property.—

69 (4) An insurable interest does not survive an assignment,
 70 except to a subsequent purchaser of the property who acquires
 71 insurable interest following a loss.

72 Section 4. Section 627.422, Florida Statutes, is amended to
 73 read:

74 627.422 Assignment of policies; limitations on post-loss
 75 assignment of benefits.—

76 (1) A policy may be assignable, or not assignable, as
 77 provided by its terms. Subject to its terms relating to
 78 assignability, any life or health insurance policy under the
 79 terms of which the beneficiary may be changed upon the sole
 80 request of the policyowner may be assigned either by pledge or
 81 transfer of title, by an assignment executed by the policyowner
 82 alone and delivered to the insurer, ~~regardless of whether or not~~
 83 the pledgee or assignee is the insurer. Any such assignment
 84 entitles ~~shall entitle~~ the insurer to deal with the assignee as
 85 the owner or pledgee of the policy in accordance with the terms
 86 of the assignment, until the insurer has received at its home
 87 office written notice of termination of the assignment or pledge

597-02742-15 20151064c1

88 or written notice by or on behalf of some other person claiming
 89 some interest in the policy in conflict with the assignment.

90 (2) A property insurance policy may prohibit the post-loss
 91 assignment of benefits, rights, causes of action, or other
 92 contractual rights under the policy, except that a policyholder
 93 may assign the benefit of payment:

94 (a) Up to \$3,000, to a person or entity that provides
 95 services or materials to mitigate or repair damage that directly
 96 arises from a covered loss. Such assignment is limited solely to
 97 designating the person or entity as a copayee for the benefit of
 98 payment for the reasonable value of services or materials
 99 provided. The policyholder has the exclusive right to enforce
 100 payment of the post-loss benefits under the policy and may not
 101 assign that right to another person or entity.

102 (b) To compensate a public adjuster for services authorized
 103 by s. 626.854(11). The assignment may only be for compensation
 104 due to the public adjuster by the policyholder and may not
 105 include any assignment of other benefits under the policy. This
 106 paragraph does not change the obligations, if any, of the
 107 insurer to issue to the policyholder a check for payment in the
 108 name of the policyholder or mortgageholder.

109 (c) To an attorney who represents the policyholder only if
 110 the assignment provides that the benefits are to be paid to the
 111 attorney for disbursement of the funds by the attorney to repair
 112 the property at the direction of the policyholder.

113 (3) A post-loss assignment in violation of subsection (2)
 114 is void.

115 Section 5. This act shall take effect July 1, 2015.

116



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

March 23, 2015

The Honorable Miguel Diaz de la Portilla
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1064 – Assignment of Post-loss Insurance Policy Benefits

Dear Chairman Diaz de la Portilla:

Senate Bill 1064, relating Assignment of Post-loss Insurance Policy Benefits has been referred to the Judiciary Committee. I am requesting your consideration on placing SB 1064 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Tom Cibula, Staff Director of the Judiciary Committee
Shirley Proctor, Administrative Assistant of the Judiciary Committee

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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