

Tab 1	CS/SB 124 by CF, Bean ; (Similar to H 00185) Custody of Minor Children by Extended Family					
633738	A	S	RCS	JU, Bean	Delete L.68:	12/12 09:25 AM
Tab 2	SB 150 by Brandes ; Sanitary Sewer Laterals					
Tab 3	SB 790 by Brandes ; (Compare to H 00591) Clerks of the Circuit Court					
Tab 4	SB 510 by Wright ; (Identical to H 00333) Bail Pending Appellate Review					
Tab 5	SB 580 by Bracy ; (Similar to H 00349) Uniform Partition of Heirs Property Act					
520502	D	S	RCS	JU, Bracy	Delete everything after	12/12 09:27 AM
Tab 6	SB 590 by Hooper ; Clerks of the Court					
Tab 7	SB 660 by Berman ; (Similar to H 00783) Uniform Commercial Real Estate Receivership Act					
Tab 8	SB 738 by Harrell ; (Identical to H 00393) Jury Service					
Tab 9	SB 802 by Perry ; (Identical to H 00733) Marketable Record Title Act					
555850	A	S	RCS	JU, Perry	Delete L.116 - 123.	12/12 09:25 AM
Tab 10	SB 868 by Albritton ; (Similar to H 00283) Construction Contracting					
Tab 11	SB 886 by Powell ; (Similar to H 00567) Errors in Deeds					
Tab 12	SB 400 by Gibson ; (Similar to CS/H 00253) Elder Abuse Fatality Review Teams					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Tuesday, December 10, 2019
TIME: 2:00—4:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 124 Children, Families, and Elder Affairs / Bean (Similar H 185)	Custody of Minor Children by Extended Family; Revising the purposes of ch. 751, F.S.; revising the requirements for individuals seeking concurrent custody; allowing any other provisions related to the best interest of the child to be considered in a petition for temporary or concurrent custody; authorizing courts to include provisions requested in petitions for temporary or concurrent custody which relate to the best interest of the child, etc. CF 11/05/2019 Fav/CS JU 12/10/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
2	SB 150 Brandes	Sanitary Sewer Laterals; Encouraging counties and municipalities to, by a specified date, establish a sanitary sewer lateral inspection program; requiring a seller of real property to disclose any known defects in the property's sanitary sewer lateral, etc. EN 11/13/2019 Favorable JU 12/10/2019 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 790 Brandes (Compare H 591)	Clerks of the Circuit Court; Specifying that certain revenues from service charges collected by the clerk for remittance to the Department of Revenue include only revenues for court-related functions; providing for revenues for county operations to be retained by the clerk; revising the distribution of revenue from filing fees from the institution of certain appellate proceedings; revising retroactive application regarding the collection of revenue for court-related functions for remittance to the department, etc. JU 12/10/2019 Favorable ACJ AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, December 10, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 510 Wright (Identical H 333)	Bail Pending Appellate Review; Prohibiting a court from granting bail to specified offenders pending review following a conviction for an offense requiring sexual offender or sexual predator registration if the victim was a minor, etc. CJ 11/12/2019 Favorable JU 12/10/2019 Favorable RC	Favorable Yeas 6 Nays 0
5	SB 580 Bracy (Similar H 349)	Uniform Partition of Heirs Property Act; Creating the "Uniform Partition of Heirs Property Act"; providing requirements relating to the court determination of heirs property; providing for the determination of property value; providing for buyout of cotenants; providing for sale of property through open-market sale, sealed bids, or auction, etc. JU 11/12/2019 Temporarily Postponed JU 12/10/2019 Fav/CS CA RC	Fav/CS Yeas 5 Nays 0
6	SB 590 Hooper	Clerks of the Court; Deleting a requirement that the Justice Administrative Commission provide funds to the clerks of the court to compensate jurors and pay for certain expenses and certain jury-related personnel costs; providing the purpose of the Clerks of the Court Trust Fund within the Department of Revenue; requiring the distribution of certain funds to cover projected revenue deficits; requiring the department to deposit certain funds into the trust fund for purposes of compensating jurors and paying certain expenses and certain jury-related personnel costs, etc. JU 12/10/2019 Favorable ACJ AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, December 10, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 660 Berman (Similar H 783)	Uniform Commercial Real Estate Receivership Act; Designating chapter 714, F.S., as the Uniform Commercial Real Estate Receivership Act; specifying that a court has exclusive jurisdiction to direct receivers and determine controversies under certain circumstances; providing requirements and authorizations relating to the appointment of a receiver; providing for defenses and immunities of a receiver; authorizing the court to enter certain orders if the court concludes that receivership property is likely to be insufficient to satisfy certain claims; requiring a receiver to file a final report containing certain information upon completion of the receiver's duties, etc. JU 12/10/2019 Favorable CM RC	Favorable Yeas 5 Nays 0
8	SB 738 Harrell (Identical H 393)	Jury Service; Requiring certain students actively enrolled in specified schools to be excused from jury service upon request, etc. JU 12/10/2019 Favorable ED RC	Favorable Yeas 4 Nays 0
9	SB 802 Perry (Identical H 733)	Marketable Record Title Act; Revising rights that are not affected or extinguished by marketable record titles; revising what types of interests are extinguished by a marketable record title; providing that discriminatory restrictions are unlawful, unenforceable, and declared null and void; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests, etc. JU 12/10/2019 Fav/CS IT RC	Fav/CS Yeas 4 Nays 0
10	SB 868 Albritton (Similar H 283)	Construction Contracting; Revising the manner by which certain claimants provide a notice of nonpayment to a surety; specifying the priority of certain liens in relation to subordinate conveyances, encumbrances, and demands; revising information required to be included in a notice of commencement; providing that certain provisions in a lien waiver or release are unenforceable, etc. JU 12/10/2019 Temporarily Postponed IT RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, December 10, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 886 Powell (Similar H 567)	Errors in Deeds; Providing that a deed containing a scrivener's error conveys title as if there had been no such error if certain requirements are met; providing a form for a curative notice; authorizing the clerks of the circuit court to accept and record curative notices; providing for the operation of a curative notice, etc. JU 12/10/2019 Favorable CM RC	Favorable Yeas 5 Nays 0
12	SB 400 Gibson (Similar CS/H 253)	Elder Abuse Fatality Review Teams; Authorizing the establishment of elder abuse fatality review teams in each judicial circuit, to be housed, for administrative purposes only, in the Department of Elderly Affairs; authorizing elder abuse fatality review teams in existence on a certain date to continue to exist; requiring each review team to annually submit to the department by a certain date a summary report containing specified information; providing immunity from monetary liability for review team members under certain conditions, etc. CF 11/05/2019 Favorable JU 12/10/2019 Favorable AP	Favorable Yeas 5 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 124

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Bean

SUBJECT: Custody of Minor Children by Extended Family

DATE: December 11, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 124 authorizes a court to include in its order granting “temporary” or “concurrent” custody to a child’s extended family member any provision requested by the petitioner which is in the best interest of the child. As under current law, an award of custody of a child for an indefinite period is considered “temporary” if the award excludes the parents, but “concurrent” if custody is shared with the parents.

The bill expands the definition of “extended family member” to include “fictive kin”—nonrelatives who have a familial relationship to the child—thus allowing them to petition for concurrent or temporary custody. As for the petition itself, the bill requires it to include “[a]ny other provisions that are related to the best interests of the child.” And the bill authorizes the court to include these provisions, including a transition plan, in its order granting temporary or concurrent custody.

Under the bill, as under current law, a court may order concurrent custody only if the parents do not object, and the court may order temporary custody only if the parents do not object or are unfit. And under current law a court *must* terminate a concurrent custody order if a parent objects to the order, and the court *must* terminate a temporary custody order if the parent becomes a fit parent. However, the bill authorizes a court to maintain a concurrent custody order after a parent objects, or to maintain a temporary custody order after the parents become fit, under certain circumstances. Particularly, a court may maintain these orders beyond objection or fitness to

ensure compliance with a transition plan or other provision of the order which is related to the best interest of the child.

II. Present Situation:

The Concept of Temporary or Concurrent Custody of a Child

Under ch. 751, F.S., a child's extended family member may obtain a court order granting him or her custody of the child for an indefinite period of time. This custody may be exclusive of, or concurrent with, the parent's custody. Custody that is exclusive of the parent's custody is referred to in the statutes as "temporary," and custody that is shared by the relative and the parent is "concurrent." Nonetheless, both are indefinite and tend to be temporary.

This system differs from "dependency," provided in ch. 39, F.S., in that it pertains to *non-dependent* children.

Petition for Temporary or Concurrent Custody

To obtain a court order granting temporary or custody of a child, an extended family member of the child must file a petition for temporary or concurrent custody.¹ In either type of petition, the petitioner must state several things to the court, to the best of his or her knowledge, including the places where the child has lived during the past 5 years, information about other custody proceedings involving the child, the petitioner's relationship to the child, and that it is in the child's best interest for petitioner to have custody.²

In a petition for concurrent custody, the petitioner must also state:

- The time periods during the last 12 months that the child resided with the petitioner;
- The type of document, if any, provided by the parent or parents to enable the petitioner to act on behalf of the child;
- The services or actions that the petitioner is unable to obtain or undertake without an order of custody; and
- Whether each parent has consented in writing to the entry of an order of concurrent custody.³

In a petition for temporary custody, the petitioner must also state that the parents consent or the petitioner must state "the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child" as defined in the dependency statutes.⁴

Hearing on the Petition for Temporary or Concurrent Custody

The court will then hold a hearing on the petition. At the hearing, the court must hear the evidence concerning the child's need for care by the petitioner, as well as the objection and other testimony of either parent, if present.⁵ The court must grant the petition if it is in the best

¹ See s. 751.03, F.S.

² *Id.*

³ Section 751.03(8), F.S.

⁴ Section 751.03(9), F.S.

⁵ Section 751.05(1), F.S.

interests of the child and the parents do not object.⁶ However, if at least one parent objects the court must proceed in different ways depending on the type of petition.

If at least one parent objects to a petition for concurrent custody, the court must deny the petition and give the petitioner the option of converting the petition to one for temporary custody.⁷ If the petitioner exercises this option, the converted petition will be heard at a later date.⁸

If at least one of the child's parents objects to a petition for temporary custody, the court must grant the petition only if it finds, based on clear and convincing evidence, that the parents are unfit to provide for the care and control of the child.⁹ "In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child," as defined in the dependency statutes.¹⁰

Order Granting Temporary or Concurrent Custody

Order Granting Temporary Custody

In an order granting temporary custody, the statutes authorize a court to grant visitation rights to a child's parent or parents, if it is in the best interest of the child.¹¹ The statutes do not expressly authorize the court to state what parents who have been found unfit must do later to prove their fitness, and thus regain the custody of their child.

Order Granting Concurrent Custody

The order granting concurrent custody may not eliminate or diminish the custodial rights of the child's parent or parents.¹² In fact, the order must expressly state that the grant of custody does not affect the ability of the child's parent or parents to obtain physical custody of the child at any time.^{13, 14}

Terminating Temporary or Concurrent Custody

Terminating Temporary Custody

After the entry of the order granting temporary custody, either parent may petition the court to modify or terminate the order.¹⁵ The court must grant the order upon a finding that the petitioning parent is fit, or upon consent of the relative that took custody of the child.¹⁶

⁶ Section 751.05(2), F.S.

⁷ Section 751.05(3)(a), F.S.

⁸ *Id.*

⁹ Section 751.05(3)(b), F.S.

¹⁰ *Id.*

¹¹ Section 751.05(2), F.S.

¹² Section 751.05(4)(a), F.S.

¹³ *Id.*

¹⁴ An order granting temporary or concurrent custody may require a parent to pay child support to the relative if the parent was served with process, the petition requests the court to child support, and there is evidence of the parent's ability to pay. However, the court may order the redirection of all or part of an existing child support payment to be paid to the relative who is being granted temporary or concurrent custody. Section 751.05(5), F.S.

¹⁵ Section 751.05(6), F.S.

¹⁶ Section 751.05(6), F.S.

If a court terminates temporary custody, the child might immediately return to his or her parent's custody, and nothing in statute precludes a parent from restricting contact between the child and the relative, regardless of how long the temporary custody lasted.

Terminating Concurrent Custody

The petitioner or either parent may make a motion to terminate concurrent custody at any time.¹⁷ The court must terminate concurrent custody on a parent's request.¹⁸

III. Effect of Proposed Changes:

The bill authorizes a court to include in a temporary or concurrent custody order any provision that is in the best interest of a child and that was included in the petition for the order. The bill also adds "fictive kin" to the class of people who may file a petition. "Fictive kin" means "a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child."¹⁹

The bill requires an extended family member to include in his or her petition for concurrent or temporary custody "[a]ny other provisions that are related to the best interests of the child." And the bill authorizes the court to include these provisions, including a transition plan, in its order granting temporary or concurrent custody.

Under the bill, as under current law, a court may order concurrent custody only if the parents do not object, and the court may order temporary custody only if the parents do not object or are unfit. And under current law a court *must* terminate a concurrent custody order if a parent objects to the order, and the court *must* terminate a temporary custody order if the parent becomes a fit parent. However, the bill authorizes a court to maintain a concurrent custody order after a parent objects, or to maintain a temporary custody order after the parents become fit, under certain circumstances. Particularly, a court may maintain these orders beyond objection or fitness to ensure compliance with a transition plan or other provision of the order which is related to the best interest of the child.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ Section 751.05(7), F.S.

¹⁸ *Id.*

¹⁹ Section 39.01(29), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Under the bill, a court may order anything requested by the petitioner which is in the best interest of a child. This could include a transition plan that would require parents to permit a nonparent to see their child following a period of temporary or concurrent custody.

This aspect of the bill might be unconstitutional, as Florida courts have repeatedly held that parents' constitutional right to determine who sees their child may be infringed only if harm to the child would otherwise result:

Florida's constitutional right to privacy recognizes the zone of autonomy around a nuclear family into which a judge, legislator, or official, no matter how well intentioned, simply cannot go. This zone protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *D.M.T. v. T.M.H.*, 129 So.3d 320, 336 (Fla. 2013) (citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). The only exception occurs if one of the members of the family is at risk of significant harm. In this regard, the Florida Supreme Court has held that "[n]either the legislature nor the courts may properly intervene in parental decision making absent significant harm to the child threatened by or resulting from those decisions." *Von Eiff*, 720 So.2d at 514. Under these principles, it is violation of a parent's right to privacy for the legislature to confer on non-parents, even biological relatives such as grandparents, the right to visit minor children against the parents will. *See Beagle v. Beagle*, 678 So.2d 1271, 1277 (Fla. 1996) (holding that the State cannot impose grandparent visitation upon a minor child "without first demonstrating a harm to the child").²⁰

Moreover, the courts have held that the removal of a beneficial relationship with a grandparent or other person who acted like a parent is not the type of harm necessary to grant custody to or visitation with a nonparent.²¹

²⁰ *De Los Milagros Castellet v. Pereira*, 225 So. 3d 368, 370-371 (Fla. 3d DCA 2017).

²¹ *Id.* at 372. The *Pereira* court explained that the removal of a beneficial relationship does not constitute sufficient harm to interfere with a parent's authority over a child as follows:

As our Supreme Court has held, "[t]here may be many beneficial relationships for a child, but it is not for the government to decide with whom the child builds these relationships. This concept implicates the very core of our constitutional freedoms and embodies the essence of Florida's constitutional right to

Nonetheless, because child custody awards under ch. 751, F.S., often involve unfit parents, as well as the consent of or lack of objection to custody by a parent at the outset of the proceedings, the provisions of the bill may be distinguishable from the court opinions in which a fit parent objected to child custody at the outset of legal proceedings. Whether these differences are sufficient to survive a challenge based on the privacy rights of a fit parent is not clear.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 751.01, 751.011, 751.02, 751.03, and 751.05.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on December 10, 2019:

The committee substitute requires a petitioner to include in his or her petition for concurrent or temporary custody any provision that he or she believes is in the best

privacy.” *Von Eiff*, 720 So.2d at 516. The child’s life may well be enhanced by the additional financial, social, spiritual, and emotional support the former partner might provide. But whether the benefits of such support, from a former partner who is neither the biological or legal parent, outweigh possible detriments lies in the hands of the birth mother: the State of Florida cannot wrest that choice from her.

interest of the child. Under the bill, the “parties” had to have agreed to these provisions, but the bill was unclear as to who exactly the “parties” would be.

CS by Children, Families, and Elder Affairs on November 5, 2019:

- Expands the definition of the term “extended family member” to include “fictive kin” as defined in Chapter 39, Florida Statutes.
- Revises the standard for transitions of custody from considering the child’s developmental stage and psychological needs to best interests which is the standard for other determinations in Chapter 751, Florida Statutes.
- Clarifies that any conditions related to the best interests of the child to be included in an order will be requested by the parties in the petition.

B. Amendments:

None.



633738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/12/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete line 68
and insert:
interest of the child,

By the Committee on Children, Families, and Elder Affairs; and
Senator Bean

586-01184-20

2020124c1

1 A bill to be entitled
2 An act relating to custody of minor children by
3 extended family; amending s. 751.01, F.S.; revising
4 the purposes of ch. 751, F.S.; amending s. 751.011,
5 F.S.; revising the definition of the term "extended
6 family member"; amending s. 751.02, F.S.; revising the
7 requirements for individuals seeking concurrent
8 custody; amending s. 751.03, F.S.; allowing any other
9 provisions related to the best interest of the child
10 to be considered in a petition for temporary or
11 concurrent custody; amending s. 751.05, F.S.;
12 authorizing courts to include provisions requested in
13 petitions for temporary or concurrent custody which
14 relate to the best interest of the child; authorizing
15 courts to require parties to comply with provisions
16 approved in the order which relate to the best
17 interest of the child; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (4) is added to section 751.01,
22 Florida Statutes, to read:

23 751.01 Purpose of act.—The purposes of this chapter are to:
24 (4) Protect the welfare of minor children by allowing
25 transitions of custody consistent with their best interest.

26 Section 2. Section 751.011, Florida Statutes, is amended to
27 read:

28 751.011 Definitions.—As used in this chapter, the term:
29 (1) "Concurrent custody" means that an eligible extended

Page 1 of 4

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

586-01184-20

2020124c1

30 family member is awarded custodial rights to care for a child
31 concurrently with the child's parent or parents.

32 (2) "Extended family member" means a person who is:

33 (a) A relative of a minor child within the third degree by
34 blood or marriage to the parent; ~~or~~

35 (b) The stepparent of a minor child if the stepparent is
36 currently married to the parent of the child and is not a party
37 in a pending dissolution, separate maintenance, domestic
38 violence, or other civil or criminal proceeding in any court of
39 competent jurisdiction involving one or both of the child's
40 parents as an adverse party; or

41 (c) An individual who qualifies as "fictive kin" as defined
42 in s. 39.01.

43 Section 3. Subsection (2) of section 751.02, Florida
44 Statutes, is amended to read

45 751.02 Temporary or concurrent custody proceedings;
46 jurisdiction.—

47 (2) In addition to the requirements of subsection (1), an
48 individual seeking concurrent custody must:

49 (a) Currently have physical custody of the child or ~~and~~
50 have had physical custody of the child for at least 10 days in
51 any 30-day period within the last 12 months; and

52 (b) Not have signed, written documentation from a parent
53 which is sufficient to enable the custodian to do all of the
54 things necessary to care for the child which are available to
55 custodians who have an order issued under s. 751.05.

56 Section 4. Subsection (13) of section 751.03, Florida
57 Statutes, is amended, and subsection (14) is added to that
58 section, to read:

Page 2 of 4

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59 751.03 Petition for temporary or concurrent custody;
 60 contents.—Each petition for temporary or concurrent custody of a
 61 minor child must be verified by the petitioner, who must be an
 62 extended family member, and must contain statements, to the best
 63 of the petitioner's knowledge and belief, providing:

64 (13) ~~A statement of~~ The period of time for which the
 65 petitioner is requesting temporary custody, including a
 66 statement of the reasons supporting that request.

67 (14) Any other provisions that are related to the best
 68 interest of the child which have been requested by the parties,
 69 including, but not limited to, a plan for transitioning custody.

70 Section 5. Subsections (4), (6), and (7) of section 751.05,
 71 Florida Statutes, are amended to read:

72 751.05 Order granting temporary or concurrent custody.—

73 (4) The order granting:

74 (a) Concurrent custody of the minor child may not eliminate
 75 or diminish the custodial rights of the child's parent or
 76 parents. The order must expressly state that the grant of
 77 custody does not affect the ability of the child's parent or
 78 parents to obtain physical custody of the child at any time,
 79 except that the court may approve provisions requested in the
 80 petition which are related to the best interest of the child.

81 (b) Temporary custody of the minor child to the petitioner
 82 may include provisions requested in the petition which are
 83 related to the best interest of the child and may also grant
 84 visitation rights to the child's parent or parents, if it is in
 85 the best interest of the child.

86 (6) At any time, either or both of the child's parents may
 87 petition the court to modify or terminate the order granting

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88 temporary custody. The court shall terminate the order upon a
 89 finding that the parent is a fit parent, or by consent of the
 90 parties, except that the court may require the parties to comply
 91 with provisions approved in the order which are related to the
 92 best interest of the child. The court may modify an order
 93 granting temporary custody if the parties consent or if
 94 modification is in the best interest of the child.

95 (7) At any time, the petitioner or either or both of the
 96 child's parents may move the court to terminate the order
 97 granting concurrent custody.

98 (a) The court shall terminate the order upon a finding that
 99 either or both of the child's parents object to the order,
 100 except that the court may require the parties to comply with
 101 provisions approved in the order which are related to the best
 102 interest of the child.

103 (b) The fact that an order for concurrent custody has been
 104 terminated does not preclude any person who is otherwise
 105 eligible to petition for temporary custody from filing such
 106 petition.

107 Section 6. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 6, 2019

I respectfully request that **Senate Bill # 124**, relating to Custody of Minor Children by Extended Family, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19

Meeting Date

CS/SB 124

Bill Number (if applicable)

Topic Custody of Minor by Extended Family Member

Amendment Barcode (if applicable)

Name Gabriella Hernandez

Job Title Student

Address 301 S. Martin Luther King Jr St

Phone (850) 644-9928

Street

Tallahassee

FL

32306

Email gnh14@my.fsu.edu

City

State

Zip

Speaking: [] For [x] Against [] Information

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

Representing

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)

12/10/19
Meeting Date

124
Bill Number (if applicable)

Topic CUSTODY OF MINOR CHILDREN

Amendment Barcode (if applicable)

Name BETH LUNA

Job Title GENERAL MAGISTRATE

Address 20 Box 380047

Phone 904 387-3334

Jacksonville FL 32205
City State Zip

Email

Speaking: For Against Information

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

Representing FAMILY LAW SECTION OF FLORIDA BAR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/14
Meeting Date

124
Bill Number (if applicable)

Topic CUSTODY OF MINOR CHILDREN by extended family

Amendment Barcode (if applicable)

Name ALAN ARONOWITZ

Job Title Executive Director

Address 400 S. CALDWAY

Phone 241-3232

Street

City

State

Zip

Palm Beach, FL 33411

Email alan.aronowitz@gov.fl.gov

Speaking: For Against Information

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

Representing GUARDIAN AD LITEM Program

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 150
 INTRODUCER: Senator Brandes
 SUBJECT: Sanitary Sewer Laterals
 DATE: December 9, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dyson</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

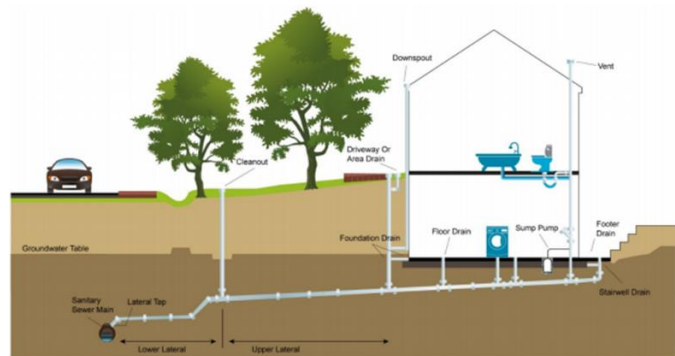
I. Summary:

SB 150 requires sellers of real property to disclose to purchasers any known defects in the property’s “sanitary sewer lateral,” which is the privately owned pipeline connecting a property to the public sewer system.

The bill also encourages counties and municipalities to establish programs to evaluate and rehabilitate private sewer laterals and to establish publicly accessible databases of known lateral defects.

II. Present Situation:

A private sanitary sewer lateral is an underground pipe that connects private plumbing systems to a public sewer network.¹



¹ See State of Florida Department of Environmental Protection, *Design and Specifications Guidelines for Low Pressure Sewer Systems* at xi, available at https://floridadep.gov/sites/default/files/guide_lowpres.pdf (last visited December 8, 2019).

² Water Environment Federation, *Sanitary Sewer Rehabilitation* at 2, available at <https://www.wef.org/globalassets/assets-wef/direct-download-library/public/03---resources/wsec-2017-fs-009---csc---sewer-rehabilitation---final---9.27.17.pdf> (last visited December 8, 2019).

The Florida Building Code requires every building in which plumbing fixtures are installed to be connected to a publicly or investor-owned sewage system, or if none is available, then to an approved onsite sewage treatment and disposal system.³

Cracked or broken private laterals can negatively affect the performance of the public sewer system and treatment plant by allowing groundwater and infiltrating rainwater to enter the sewer system, potentially leading to overflows.⁴ Generally, municipalities are responsible for maintaining sewer mains and the portions of sewer laterals in public rights-of-way, but the portion of the lateral on private property and in the home is the responsibility of the homeowner.⁵

Florida law requires sellers to disclose certain information as part of a sale to a prospective buyer before closing, including:

- A sinkhole claim;⁶
- The potential for coastal erosion;⁷
- Mandatory membership in a homeowner's association;⁸ and
- Radon gas having been found in buildings in Florida.⁹

The Florida Statutes do not expressly require sellers of real property to disclose sewer lateral defects, although Florida tort law requires sellers to disclose to buyers any known latent material defects that materially affect the property value.¹⁰ Notably, sellers must only disclose of defects actually known, but not of those constructively known, i.e. those that could have been discovered through reasonable inspection.¹¹

III. Effect of Proposed Changes:

The bill requires sellers of real property to disclose any known defects in the property's sanitary sewer lateral to a prospective purchaser. The bill defines "sanitary sewer lateral" as the privately owned pipeline connecting a property to the main sewer line. Consistent with the common law rule, the bill does not impose on sellers a duty to inspect the property for defects.

The bill also encourages counties and municipalities to establish an "evaluation and rehabilitation program" to identify and reduce extraneous flow from leaking sanitary sewer laterals, to consider economical methods for a property owner to repair or replace a defective lateral, and to establish and maintain a public database of defective laterals. These databases would contain the address of the property containing a defective lateral, the county or city officials notified of the defect, and the date and method of notification.

The bill takes effect on July 1, 2020.

³ Ch. 7, § 701.2 Florida Building Code – Plumbing 6th Edition (July 2017).

⁴ U.S. Environmental Protection Agency, *Private Sewer Laterals* at 1, available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>, (last visited December 8, 2019).

⁵ See, e.g., *Sewer Laterals*, available at http://www.beachapedia.org/Sewer_Laterals (last visited December 8, 2019).

⁶ Section 627.7073(2)(c), F.S.

⁷ Section 161.57(2), F.S.

⁸ Section 720.401(1), F.S.

⁹ Section 404.056(5), F.S.

¹⁰ *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

¹¹ See *Id.*; see also *Jensen v. Bailey*, 76 So. 3d 980, 983 (Fla. 2d DCA 2011).

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

The bill encourages counties and municipalities to establish an evaluation and rehabilitation program for sanitary sewer laterals. As this is not a requirement, the bill is not a mandate because it does not require the expenditure of funds to establish a program.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.301 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.

By Senator Brandes

24-00157-20

2020150__

1 A bill to be entitled
 2 An act relating to sanitary sewer laterals; defining
 3 the term "sanitary sewer lateral"; encouraging
 4 counties and municipalities to, by a specified date,
 5 establish a sanitary sewer lateral inspection program;
 6 providing parameters for such a program; creating s.
 7 689.301, F.S.; requiring a seller of real property to
 8 disclose any known defects in the property's sanitary
 9 sewer lateral; defining the term "sanitary sewer
 10 lateral"; providing an effective date.

11

12 WHEREAS, a sanitary sewer lateral is the portion of the
 13 sewer network which connects private properties to the public
 14 sewer system, conveying wastewater from homes and businesses to
 15 centralized wastewater treatment plants, and

16 WHEREAS, a property owner is typically responsible for all
 17 maintenance, operation, cleaning, repair, and reconstruction of
 18 a sanitary sewer lateral on his or her private property, and

19 WHEREAS, defects in private sanitary sewer laterals may
 20 occur due to system aging, structural failure, lack of proper
 21 maintenance, or poor construction and design practices, and

22 WHEREAS, defective sanitary sewer laterals can cause
 23 blockages, backups, or overflows into the environment;
 24 contribute to water pollution; and have a significant impact on
 25 the performance of a sewer system and treatment plant, and

26 WHEREAS, defective sanitary sewer laterals on private
 27 property can be difficult to detect, and

28 WHEREAS, inspections of sanitary sewer laterals are not
 29 required by state law, and

Page 1 of 3

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

24-00157-20

2020150__

30 WHEREAS, facts that materially affect the value of real
 31 estate must be disclosed in real estate transactions, NOW,
 32 THEREFORE,
 33

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

35

36 Section 1. Sanitary sewer lateral inspection program.—

37 (1) As used in this section, the term "sanitary sewer
 38 lateral" means a privately owned pipeline connecting a property
 39 to the main sewer line and which is maintained and repaired by
 40 the property owner.

41 (2) By July 1, 2022, counties and municipalities are
 42 encouraged to establish an evaluation and rehabilitation program
 43 for sanitary sewer laterals on residential and commercial
 44 properties within the county's or municipality's jurisdiction to
 45 identify and reduce extraneous flow from leaking sanitary sewer
 46 laterals. At a minimum, the program may do all of the following:

47 (a) Establish a system to identify defective, damaged, or
 48 deteriorated sanitary sewer laterals on residential and
 49 commercial properties within the jurisdiction of the county or
 50 the municipality.

51 (b) Consider economical methods for a property owner to
 52 repair or replace a defective, damaged, or deteriorated sanitary
 53 sewer lateral.

54 (c) Establish and maintain a publicly accessible database
 55 to store information concerning properties where a defective,
 56 damaged, or deteriorated sanitary sewer lateral has been
 57 identified. For each property, the database must include, but is
 58 not limited to, the address of the property, the names of any

Page 2 of 3

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

24-00157-20

2020150__

59 persons the county or municipality notified concerning the
60 faulty sanitary sewer lateral, and the date and method of such
61 notification.

62 Section 2. Section 689.301, Florida Statutes, is created to
63 read:

64 689.301 Disclosure of known defects in sanitary sewer
65 laterals to prospective purchaser.—Before executing a contract
66 for sale, a seller of real property shall disclose to a
67 prospective purchaser any defects in the property's sanitary
68 sewer lateral which are known to the seller. As used in this
69 section, the term "sanitary sewer lateral" means the privately
70 owned pipeline connecting a property to the main sewer line.

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 2nd, 2019

I respectfully request that **Senate Bill #150**, relating to the **Sanitary Sewer Lateral Lines**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10
Meeting Date

SB150
Bill Number (if applicable)

Topic Sanitary Sewer Laterals

Amendment Barcode (if applicable)

Name Paul Owens

Job Title

Address 308 N. Monroe St.

Phone 407-222-2301

Tallahassee FL
City State Zip

Email powens@1000fof.org

Speaking: For Against Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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 790

INTRODUCER: Senator Brandes

SUBJECT: Clerks of the Circuit Court

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 790 provides that the clerks of court must remit certain fees to the Department of Revenue only if those fees are collected for performing “court-related” functions, and allows the clerks to retain certain fees collected for performing “county-related” functions.

The bill also requires clerks to remit the Department of Revenue \$20 of the \$100 filing fee for appeals from the county or circuit courts to the district courts of appeal or the Supreme Court.

The Clerks of Court Operations Corporation identifies this as a “glitch” bill intended to clarify 2008, 2017, and 2019 modifications to the service charge and filing fee statutes, without reversing those modifications.

II. Present Situation:

Service Charges

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.¹ Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are “court-related” functions, while other services are “county-related” functions performed by the clerk in its capacity as County Recorder,² such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested. For example, s. 28.24(3), F.S., describes a charge for certifying copies of any instrument in the public records. If the requested record is a court filing, the clerk’s providing of certified copies of this record is a court-related function, while if the

¹ Section 28.24, F.S.

² See s. 28.222(1), F.S.

requested record is from the county official records, the clerk's providing of certified copies of this record is a county-related function.

In 2008, the Legislature amended s. 28.24, F.S., increasing many service charges for both county- and court-related functions.³ Included in the 2008 amendments was a provision prohibiting the revenue increases generated by the 2008 amendments from being used by the Clerks of Court Operations Corporation (CCOC)⁴ to increase the court clerk's budgets.⁵ As a result, court clerks began retaining services charges for court-related functions only in the pre-2008 amounts, and began remitting the difference to the Department of Revenue for deposit in the General Revenue Fund; the clerks continued to retain the entirety of the charges for the performance of county-related functions.⁶

In 2019, the Legislature again amended s. 28.24, F.S., specifically requiring court clerks to remit portions of service charges (portions equal to the difference between the pre- and post-2008 charge amounts) to the Department of Revenue for deposit into the General Revenue fund, effectively a codification of the practice the clerks were already engaged in.⁷ The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments were to be remitted only when the fees were collected for the performance of court-related functions.

Appellate Filing Fees

Prior to 2008, s. 28.241(2), F.S., required court clerks to impose \$250 filing fee for appeals from the county to circuit courts and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.⁸ Clerks were required to remit \$50 of these fees to the Department of Revenue for deposit into the General Revenue Fund.⁹ Therefore, the clerks were able to retain \$200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.¹⁰

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from \$250 to \$280 and increasing fee for appeals from the circuit courts to the DCAs or Supreme Court from \$50 to \$100.¹¹ The amendment required the clerks to remit \$80 from both fees to the Department of Revenue for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the Department of Revenue for deposit into the Clerks of Court Trust Fund.^{12,13} Thus, the clerks' retention of the fee for

³ Ch. 2008-111, § 6, Laws of Fla.

⁴ The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. Section 28.35, F.S.

⁵ *Id.* at § 47.

⁶ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 5.

⁷ Ch. 2019-58, § 6, Laws of Fla.; *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 5.

⁸ *See* Ch. 2008-111, § 8, Laws of Fla.

⁹ *See Id.*

¹⁰ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 1.

¹¹ *Id.*

¹² *Id.*

¹³ The Clerks of Court Trust Fund exists within the Department of Revenue and receives funds from clerks of court, to be used "for purposes set forth in legislation." Section 213.131, F.S.—Amendment Notes (2009).

appeal from the county to circuit courts remained at \$200, but the clerks were now allowed to retain \$20 of the DCA and Supreme Court appellate fee.¹⁴ But the 2008 amendments included a provision stating that the Florida Court Clerks of Court Operations Corporation (CCOC) could not approve increases in court clerks' budgets based on increased revenue generated by the amendments.¹⁵ As a result, the new money collected in excess of the \$80 filing fee, i.e. the \$20 retained from the fees for appeals to the DCAs or Supreme Court, sent to the Department of Revenue for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, for the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court, all \$100 was deposited in the General Revenue Fund.¹⁶

In 2017, the Legislature again amended s. 28.241(2), F.S., removing the requirement that clerks remit \$80 of the appellate filing fees to the Department of Revenue for deposit in the General Revenue Fund.¹⁷ But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained intact, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fee to the Department of Revenue for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain all of the \$280 fee for appeals from the county to the circuit courts, and retain \$80 of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.¹⁸

The Legislature amended s. 28.241(2), F.S., again in 2019, requiring the clerks to remit \$20 from the \$280 filing fee for appeal from the county to the circuit courts to the Department of Revenue for deposit into the General Revenue Fund.¹⁹ The 2019 amendments to, inter alia, s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²⁰

According to the CCOC, the \$20 remittal added in 2019 "was applied to the wrong fee" and "should have been applied" to the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.²¹ The 2019 amendment, according to the CCOC, was meant to codify the clerks' practice of remitting \$20 of the \$100 fee to the Department of Revenue.

III. Effect of Proposed Changes:

The bill adds subsection (29) to s. 28.24, F.S., clarifying that the moneys required by that section to be remitted to the General Revenue Fund (i.e. the amount by which services charges increased after the 2008 amendments) include only those revenues collected for court-related functions. Revenues from county-related functions must continue to be retained by the clerks. This codifies a practice which, according to the Clerk of Court Operations Corporation, the court clerks are already engaged in.

¹⁴ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 2.

¹⁵ See Ch. 2008-111, § 47, Laws of Fla.

¹⁶ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 2.

¹⁷ Ch. 2017-126, § 2, Laws of Fla.

¹⁸ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 3.

¹⁹ Ch. 2019-58, § 8, laws of Fla.

²⁰ *Id.* at § 30.

²¹ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 3.

The bill states that the term “court-related functions” have the same meaning as it does in s. 28.35(3), F.S. That section lists the following as court-related functions:

- case maintenance;
- records management;
- court preparation and attendance;
- processing the assignment, reopening, and reassignment of cases;
- processing of appeals;
- collection and distribution of fines, fees, service charges, and court costs;
- processing of bond forfeiture payments;
- data collection and reporting;
- determinations of indigent status; and
- paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 28.35 states that clerks may not use filing fees to fund functions not included in the above list. The bill amends Section 30 of chapter 2019-58, Laws of Florida, clarifying that its amendments only apply court-related functions, and that the term “court-related functions” has the same meaning as it does in s. 28.35, F.S.

The bill also clarifies that for appeals from the county or circuit courts to an appellate court, the clerks shall charge a \$100 filing fee, and shall remit \$20 of that fee to the Department of Revenue for deposit into the General Revenue Fund. This codifies a practice which, according to CCOC, the clerks already engage in.

The bill also deletes language in s. 28.241, F.S., stating that the \$280 filing fee applied both to appeals from lower courts to circuit courts and to appeals from county or circuit courts to appellate courts. This deletion clarifies that the \$280 fee applies to appeals from lower courts to circuit courts, while the \$100 fee applies to appeals from county or circuit courts to appellate courts (i.e. the DCAs and the Supreme Court).

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill states that clerks are no longer required to remit to the Department of Revenue \$20 from the \$280 fee for appeals from lower courts to circuit courts. The Clerk of Court Operations Corporation reports that there were 2,462 such appeals in the previous three fiscal years, and the non-remittance of \$20 for each case will result in a \$49,240 decrease in revenue. The bill requires clerks to remit \$20 of the \$100 filing fee for appeals to the DCAs and Supreme Court, but, as the CCOC says that clerks are already engaged in this practice, the fee will not result in an increase in revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.24 and 28.241; the bill also amends section 30 of chapter 2019-58 of the Laws of Florida.

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 Brandes

24-00830-20

2020790__

1 A bill to be entitled
 2 An act relating to clerks of the circuit court;
 3 amending s. 28.24, F.S.; specifying that certain
 4 revenues from service charges collected by the clerk
 5 for remittance to the Department of Revenue include
 6 only revenues for court-related functions; defining
 7 the term "court-related functions"; providing for
 8 revenues for county operations to be retained by the
 9 clerk; amending s. 28.241, F.S.; revising the
 10 distribution of revenue from filing fees from the
 11 institution of certain appellate proceedings; amending
 12 chapter 2019-58, Laws of Florida; revising retroactive
 13 application regarding the collection of revenue for
 14 court-related functions for remittance to the
 15 department; defining the term "court-related
 16 functions"; providing for revenues for county
 17 operations to be retained by the clerk; providing an
 18 effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Subsection (29) is added to section 28.24,
 23 Florida Statutes, to read:

24 28.24 Service charges.—The clerk of the circuit court shall
 25 charge for services rendered manually or electronically by the
 26 clerk's office in recording documents and instruments and in
 27 performing other specified duties. These charges may not exceed
 28 those specified in this section, except as provided in s.
 29 28.345.

Page 1 of 3

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

24-00830-20

2020790__

30 (29) Moneys required by this section to be remitted to the
 31 Department of Revenue for deposit into the General Revenue Fund
 32 include only those revenues collected for court-related
 33 functions. For purposes of this subsection, the term "court-
 34 related functions" has the same meaning as provided in s.
 35 28.35(3). Any other revenues that, by law, are collected for
 36 county operations must continue to be retained by the clerk.

37 Section 2. Subsection (2) of section 28.241, Florida
 38 Statutes, is amended to read:

39 28.241 Filing fees for trial and appellate proceedings.—

40 (2) Upon the institution of any appellate proceeding from
 41 any lower court to the circuit court of any such county,
 42 including appeals filed by a county or municipality as provided
 43 in s. 34.041(5), ~~or from the county or circuit court to an~~
 44 ~~appellate court of the state,~~ the clerk shall charge and collect
 45 from the party or parties instituting such appellate proceedings
 46 a filing fee not to exceed \$280, ~~from which the clerk shall~~
 47 ~~remit \$20 to the Department of Revenue for deposit into the~~
 48 ~~General Revenue Fund,~~ for filing a notice of appeal from the
 49 county court to the circuit court. For any appellate proceedings
 50 from the county or circuit court to an appellate court and, in
 51 addition to the filing fee required under s. 25.241 or s. 35.22,
 52 the clerk shall charge and collect from the party or parties
 53 instituting such appellate proceedings \$100 for filing a notice
 54 of appeal from the county or circuit court to the district court
 55 of appeal or to the Supreme Court. The clerk shall remit \$20 of
 56 the \$100 filing fee to the Department of Revenue for deposit
 57 into the General Revenue Fund. If the party is determined to be
 58 indigent, the clerk must ~~shall~~ defer payment of the fee

Page 2 of 3

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

24-00830-20

2020790__

59 otherwise required by this subsection.

60 Section 3. Section 30 of chapter 2019-58, Laws of Florida,
61 is amended to read:

62 Section 30. The amendments made by this act to ss. 27.52,
63 28.24, 28.2401, 28.241, 34.041, 45.035, 55.505, 61.14, 316.193,
64 318.14, 318.15, 318.18, 322.245, 327.35, 327.73, 379.401,
65 713.24, 721.83, 744.365, 744.3678, 766.104, and 938.05, Florida
66 Statutes, which relate to revenues collected for court-related
67 functions for remittance to the Department of Revenue for
68 deposit in the General Revenue Fund are remedial and clarifying
69 in nature and apply retroactively to July 1, 2008. For purposes
70 of this section, the term "court-related functions" has the same
71 meaning as provided in s. 28.35(3), Florida Statutes 2019.
72 Amendments to the revenues collected pursuant to those sections
73 which, by law, are to be provided for county operations must
74 continue to be retained by the clerk.

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 22, 2019

I respectfully request that **Senate Bill #790**, relating to **Clerks of the Circuit Court**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/2019

SB 790

Meeting Date

Bill Number (if applicable)

Topic Clerks of the Circuit Court

Amendment Barcode (if applicable)

Name Jason Welty

Job Title Budget & Communications Director

Address 2560 Barrington Court

Phone 850-386-2223

Street

Tallahassee

FL

32308

Email jwelty@flccoc.org

City

State

Zip

Speaking: For Against Information

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

Representing CCOC

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)

12/10/2019

Meeting Date

SB 790

Bill Number (if applicable)

Topic Clerks of the Circuit Court

Amendment Barcode (if applicable)

Name Jason Harrell

Job Title Legislative & Public Affairs Director

Address 215 S. Monroe

Phone 850-921-0808

Street

Tallahassee

FL

32301

Email jasonharrell@flclerks.com

City

State

Zip

Speaking: For Against Information

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

Representing CCOC

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 510

INTRODUCER: Senator Wright

SUBJECT: Bail Pending Appellate Review

DATE: December 10, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 510 prohibits a person from being released on bail when appealing a felony conviction for an offense requiring registration as a sexual offender or sexual predator where the offender was 18 years of age or older and the victim was a minor.

The bill is effective October 1, 2020.

II. Present Situation:

Bail includes any form of pretrial release, but frequently requires a monetary or cash component.¹ Bail on appeal may be set post-conviction if a defendant appeals the conviction. Bail is set by the court to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant.²

Bail on Appeal

Bail on appeal is a separate undertaking than the original bail issued pre-trial. If a defendant is convicted and the case is appealed, the court may issue bail on appeal, because bail issued at first appearance may not be continued for appeal. A new bail is considered to reflect the increased risk and longer time considerations.³ A defendant may be granted bail on appeal at the discretion of the trial court.⁴ However, defendants who are convicted of capital felony offenses are not

¹ Section 903.011, F.S.

² Section 903.046(1), F.S.

³ Section 903.132(3), F.S.

⁴ *Greene v. State*, 238 So. 2d 296, 298 (Fla. 1970).

eligible for bail on appeal.⁵ If a defendant is denied bail on appeal, he or she has a right to appeal the denial.⁶

Section 903.132, F.S., provides that a defendant may be granted bail on appeal from a conviction of a felony only if the defendant establishes that the appeal is in good faith, is fairly debatable, and not frivolous. However, a defendant may not receive bail on appeal if probable cause has been found for another pending felony, or if the defendant has a previous felony conviction, and:

- The commission of the previous conviction occurred before the crime that is the subject of the appeal; and
- The defendant's civil rights have not been restored.⁷

Section 903.133, F.S., prohibits bail on appeal for defendants convicted of specified crimes. Any defendant adjudicated guilty of a first degree felony of:

- Second degree murder or felony murder (s. 782.04(2) or (3), F.S.).
- Kidnapping (s. 787.01, F.S.).
- Sexual battery (s. 794.011(4), F.S.).
- Arson (s. 806.01, F.S.).
- Sale, manufacture, deliver or possess with intent to sell a controlled substance (s. 893.13, F.S.).
- Drug trafficking (s. 893.135, F.S.).

If a defendant commits and is convicted of a separate felony offense while free on bail on appeal, that bail must be revoked.⁸

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.⁹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,¹⁰ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

⁵ *Rowe v. State*, 417 So. 2d 981, 983 (Fla. 1982) (holding that Fla. R. Crim. Pro. 3.961 prohibits the granting of bail on appeal for a defendant convicted of a capital offense and sentenced to life in prison).

⁶ Section 903.132(2), F.S.

⁷ Section 903.132(1), F.S.

⁸ Section 903.131, F.S.

⁹ Sections 775.21 and 943.0435, F.S.

¹⁰ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;¹¹
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.¹²

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.¹³

Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);¹⁴
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the Internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the Internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);

¹¹ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

¹² Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

¹³ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

¹⁴ However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor. *State v. Robinson*, 873 So. 2d 1205 (Fla. 2004).

- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.¹⁵ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

The Florida Courts Rules of Procedure

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

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.¹⁶ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.¹⁷

Currently, post-conviction bail under the rules of procedure mirror that of the statutes.¹⁸ If bail is denied, the Judge must issue written findings with reasons for the denial. If the defendant is released pending an appeal, the conditions of the release must include that the defendant duly prosecute the case, and surrender themselves to the court upon the appeal being affirmed or modified.¹⁹ If the judgment is reversed and remanded for a new trial, the defendant must appear before the court and not flee the jurisdiction.

¹⁵ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us*, Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Nov. 5, 2019). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Nov. 5, 2019).

¹⁶ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses' hearsay exception of the requirement that the witness be unavailable.

¹⁷ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

¹⁸ Specifically, Fla. R. Crim. P. 3.691 says: "no person may be admitted to bail on appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and the person's civil rights have not been restored or if other felony charges are pending against the person and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made."

¹⁹ When deciding post-conviction bail based on a good faith fairly debatable appeal, the courts must also consider: (1) the habits of the individual as to respect for the law, (2) his local attachments to the community, by way of family ties, business,

Sex Offense Convictions and Dispositions

The FDLE, as part of the Uniform Crime Report administered by the Federal Bureau of Investigations, publishes an annual list of crimes known to and suspected by law enforcement agencies. Although not inclusive of all crimes related to sexual offenders or predators, the 2018 report shows that there were 2,562²⁰ arrests based on forcible²¹ sex offenses and 2,238 arrests based on non-forcible²² sex offenses that were documented by law enforcement agencies.

The Office of the State Courts Administrator tracks the number of convictions, pleas, and dismissals throughout the state trial courts. For the 2017-2018 fiscal year, 2,562 cases were filed based on sexual offenses in circuit²³ criminal courts.²⁴ That same fiscal year, there were 1,796 dispositions²⁵ based on sexual offenses, with 1,166 resolving through pleas, 196 being convicted post trial, and the remainder either resolving through dismissal, acquittal, transfer, or some another alternative to prosecution. In that same fiscal year, the Florida Department of Corrections reported that 1,549 individuals were admitted to a state prison based on a sexual offense, having an average sentence of 12 years.²⁶ Each of these agencies use a different methodology for their reported statistics, and thus, it is expected that the statistics are comparable as opposed to identical.²⁷

or investments, (3) the severity of the punishment imposed for the offense, and any other circumstances relevant to the question of whether the person would be tempted to remove himself from the jurisdiction of the court. In a case where the term of imprisonment imposed is short, the trial court might also consider whether the denial of bail would render nugatory the right to appeal from the judgment of conviction. *Youngmans v. State*, 90 So. 2d 308, 310 (Fla. 1956).

²⁰ Despite the total arrest number for forcible sex offenses being 2,562, there were a total of 11,907 forcible sex offenses reported to law enforcement agencies.

²¹ Forcible Sex Offenses for the purpose of the FDLE Uniform Crime Report include any sexual act directed against another person, forcibly and/or against that person's will or not forcibly or against the person's will where the victim is incapable of giving consent. Generally, this may include: rape, attempted rape, sodomy, fondling, child molestation, lewd or lascivious molestation, and lewd or lascivious conduct.

²² Non-Forcible Sex Offenses for the purpose of the FDLE Uniform Crime Report include unlawful sexual intercourse, sexual contact, or the unlawful behavior or conduct intended to result in sexual gratification without force or threat of force and where the victim is incapable of giving consent. Generally, this may include: incest, indecent exposure, obscenity, obscene communications and telephone calls, and obscene material or photography.

²³ Circuit criminal courts primarily receive cases that stem from a felony arrest or charge. Misdemeanors that are unrelated to a felony case are generally heard in the County Court division.

²⁴ Office of the States Courts Administrator, Circuit Criminal Overview FY 2017-18, <https://www.flcourts.org/content/download/430404/4673767/Chapter-3-Circuit-Criminal-FY-2017-18.pdf>.

²⁵ Dispositions generally mean the conclusion and final court order of a case. Importantly, dispositions could take several months or years to occur depending on the complexity of the case and the judge's docket. Thus, disposition numbers likely include cases based on incidents that occurred in previous years.

²⁶ Florida Dept. of Corrections, 2017-18 Annual Report, http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.

²⁷ The FDLE, State Courts Administrator, and Florida Department of Corrections each use a different methodology for their statistics. For one, the State Courts Administrator includes sexual misconduct of by corrections officers under s. 944.35, F.S., sexual misconduct by psychotherapists, sexual battery by multiple perpetrators under s. 794.023, F.S., bigamy and incest under chapter 826, F.S. The Department of Corrections does not provide data based on statutory citations, and instead counts capital sexual battery, life sexual battery, first degree sexual battery, second degree sexual battery, sexual assault, and lewd and lascivious behavior towards the number of sexual offense based admissions. Likewise, FDLE counts each arrest as a single incident and only the primary incident is reported toward the Uniform Crime Report. If a capital murder case also involved a sexual assault, for example, the FDLE would count the capital murder towards statistics on murder and not on sexual assault.

Effect of Proposed Changes:

The bill amends s. 903.133, F.S., to add to the list of criminal convictions that make a person ineligible for release on bail during an appeal of the conviction. As amended, the statute prohibits a person from being granted bail on appeal for any offense requiring sexual offender registration under s. 943.0435(1)(h), F.S., or sexual predator registration under s. 775.21(4), F.S., when the offender is over 18 years of age and the victim is a minor.

This bill is effective October 1, 2020.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections may see a positive indeterminate prison bed impact due to defendants' ineligibility to receive bail on appeal.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 903.133 of the Florida Statutes.

VIII. 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 Wright

14-00828-20

2020510__

A bill to be entitled

An act relating to bail pending appellate review; amending s. 903.133, F.S.; prohibiting a court from granting bail to specified offenders pending review following a conviction for an offense requiring sexual offender or sexual predator registration if the victim was a minor; providing an effective date.

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

Section 1. Section 903.133, Florida Statutes, is amended to read:

903.133 Bail on appeal; prohibited for certain felony convictions.—Notwithstanding ~~the provisions of~~ s. 903.132, no person shall be admitted to bail pending review either by posttrial motion or appeal if he or she was adjudged guilty of:

(1) A felony of the first degree for a violation of s. 782.04(2) or (3), s. 787.01, s. 794.011(4), s. 806.01, s. 893.13, or s. 893.135; ~~or adjudged guilty of~~

(2) A violation of s. 794.011(2) or (3); or

(3) Any other offense requiring sexual offender registration under s. 943.0435(1)(h) or sexual predator registration under s. 775.21(4) when, at the time of the offense, the offender was 18 years of age or older and the victim was a minor, ~~shall be admitted to bail pending review either by posttrial motion or appeal.~~

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

November 12, 2019

The Honorable David Simmons
404, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 510 – Bail Pending Appellate Review

Dear Chair Simmons:

Senate Bill 510, relating to Bail Pending Appellate Review has been referred to the Committee on Judiciary. I am requesting your consideration on placing SB 510 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 "Tom A. Wright".

Tom A. Wright, District 14

cc: Tom Cibula, Staff Director of the Committee on Judiciary
Joyce Butler, Administrative Assistant of the Committee on Judiciary

REPLY TO:

- 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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: CS/SB 580

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Uniform Partition of Heirs Property Act

DATE: December 12, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 580 adopts the Uniform Partition of Heirs Property Act by the Uniform Law Commission. The bill provides special procedures for the partition of “heirs property,” which generally includes inherited real property owned by relatives as tenants in common. A partition involves a legal action by a cotenant to force the sale or division of real property.

The bill essentially provides a right of first refusal, allowing heirs property cotenants to purchase the property interests of cotenants seeking partition before the property is divided or sold. The bill requires a court to determine the fair market value of the property, either through court-ordered appraisal or based on the agreement of the parties, before the court proceeds to partition. The bill generally requires partitions by sale to be made in an open-market sale by a court appointed real estate broker, instead of an auction as the statutes currently require.

II. Present Situation:

In Florida, when a person dies intestate, i.e., without a will, and the decedent has no surviving spouse, the decedent’s real property is distributed per stripes to heirs in the following order: to the decedent’s descendants (typically children or grandchildren); if no descendants, then to the decedent’s parents; if no surviving parents, then to any siblings.¹ When multiple people receive property in this manner, they own the property as tenants in common.² “[T]he distinguishing

¹ Sections 732.102-104, F.S.

² See s. 689.15, F.S. (stating that transfers of property create tenancies in common absent an instrument stating otherwise).

feature of a tenancy in common is unity of possession,”³ and as such, “[t]enants in common each own a proportional undivided interest in the property rather than the whole.”⁴

Tenants in common do not have a right to survivorship, i.e., when a tenant in common dies, his or her property interest does not transfer to the other tenants in common, but rather transfers to the deceased tenants’ heirs (by will or through intestate succession).⁵ Therefore, as heirs beget heirs, the amount of tenants in common can increase.⁶

The interests of the decedent’s property can be spread further, as a tenant in common “may freely transfer or encumber his or her undivided [...] interest without transferring or encumbering the undivided one-half interest owned by the other.”⁷ A tenant in common’s interest “is like any other asset that person owns as far as the person’s creditors is concerned,” i.e., a “creditor may levy and execute on the interest. Similarly, a judgment lien will attach to the undivided interest of one tenant in common without attaching to the undivided interest of the other tenant in common.”⁸ Additionally, a developer may acquire properties owing back taxes through tax deed sales.⁹

A single heir can sell his or her fractional interest or lose it to a creditor; the purchaser or creditor then becomes a tenant in common and can petition the court for a partition sale to receive their fractional interest: “As a general rule tenants in common are entitled to partition as a matter of right.”¹⁰

A cotenant seeking partition of property must, in a complaint, describe the property to be partitioned and name all interested parties “to the best knowledge and belief of [the] plaintiff.”¹¹ If the names of any interested parties are unknown, “the action may proceed as though such unknown persons were named in the complaint.”¹²

A court may order partition “if it appears that the parties are entitled to it.”¹³ If the court determines a plaintiff’s interest in the property, it can order a partition of that interest, “leaving for future adjustment in the same action the interest of any other defendants” whose interests were not determined in the action.¹⁴

³ *In re Estate of Cleeves*, 509 So. 2d 1256, 1259 (Fla. 2d DCA 1987).

⁴ *In re Willoughby*, 212 B.R. 1011, 1015 (Bankr. M.D. Fla. 1997).

⁵ *See, e.g., In re Suggs Estate*, 405 So. 2d 1360, 1361 (Fla. 5th DCA 1981).

⁶ *See* The Florida Bar Journal, *The Disproportionate Impact of Heirs Property in Florida’s Low Income Communities of Color* (available at <https://www.floridabar.org/the-florida-bar-journal/the-disproportionate-impact-of-heirs-property-in-floridas-low-income-communities-of-color/>), last visited December 12, 2019).

⁷ *Willoughby*, 212 B.R. 1011, 1015.

⁸ *Id.* at 1015-16.

⁹ Sections 197.502 and 197.542, F.S.

¹⁰ *Condrey v. Condrey*, 92 So. 2d 423, 427 (Fla. 1957); Section 64.031, F.S. However, the right of a tenant in common to partition of realty may be waived by the tenant in common, or he may be estopped to enforce the right by agreement not to partition, either express or implied. *Id.*

¹¹ Section 64.041, F.S.

¹² *Id.*

¹³ Section 64.051, F.S.

¹⁴ *Id.*

If the court orders partition, it must appoint three commissioners to make the partition.¹⁵ If the commissioners determine that the property is indivisible and cannot be divided without prejudice to one or more of the owners, and the court “is satisfied” that the determination is correct, “the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.”¹⁶ Every party is required to pay the costs of the process, including attorneys’ fees, proportionate to each party’s interest in the property.¹⁷ The court may order these costs and fees be paid out of the proceeds of the property sale.¹⁸

III. Effect of Proposed Changes:

This bill provides procedures for the partition of “heirs property.” Heirs property is real property held by tenants in common where there is no existing agreement governing the partition of the property, one or more of the cotenants acquired his or her property interest from a relative, and either (1) twenty percent of the property is owned by cotenants who are relatives (or twenty percent of the owners are relatives) or (2) twenty percent of the property is owned by cotenants who received their interests from a relative.

Under the bill, if a cotenant seeks partition of property, the court must determine whether the property is heirs property. If the court determines the property is heirs property, and the plaintiff seeks to provide notice by publication, the plaintiff must post a notice of action issued under s. 49.08, F.S., on the property. This notice contains the names of known defendants to the action, a description of unknown defendants claiming any interest in the action, the nature of the action, the name of the court in which the action was brought, and a description of the property.

If the court determines that the property is heirs property, it shall order an appraisal of the property, unless the cotenants have agreed to the property’s value or the court determines that the cost of an appraisal would outweigh the appraisal’s “evidentiary value.”

If the court orders an appraisal, it must appoint a disinterested licensed appraiser to determine the property’s fair market value and file a sworn or verified appraisal with the court. In addition to the appraisal, the court must consider “equitable accounting,” i.e., contributions to the property made by individual cotenants, including property taxes. The court must adjust the purchase cotenants’ purchase prices based on this accounting. After the appraisal is filed, the court must notify all known parties as to the property’s value and inform the parties that the appraisal is available for review and that each party may object to the appraisal within 30 days after the notice.

If an appraisal is filed, the court must conduct a hearing to determine the value of the property not sooner than 30 days after the notice has been sent to the interested parties. The court must

¹⁵ Section 64.061, F.S.

¹⁶ Section 64.071, F.S.

¹⁷ Section 64.081, F.S.

¹⁸ *Id.*

determine the value of the property before proceeding to the partition action. The court must give notice to the parties of the market value.¹⁹

If any cotenant requested partition by sale, the bill essentially grants a right of first refusal to the other cotenants, requiring that the court notice any other cotenants who did not request the sale, informing them that they may buy all of the interest of the cotenant who requested the sale. The value of each tenant's interest is proportional to his or her fractional interest in the property. Within 45 days after the notice of the requested partition by sale, the other cotenants may give notice that they elect to purchase the interest of the cotenant seeking the sale. The court shall notify the parties if only one other cotenant gives notice that he or she wishes to purchase the interest of the party seeking sale. If multiple cotenants give notice that they wish to purchase the interest of the party seeking partition by sale, the court must allocate the right to purchase that interest proportional to each cotenant's existing fractional ownership of the property. If one or more cotenants give notice of their desire to purchase the interest of a party seeking partition by sale, the court must set a payment due date at least 60 days after the date that the court gave notice of the desire to purchase.

The court must reallocate the property interests if the parties pay their apportioned price within the time limit set by the court; if one or more of the parties do not pay within that timeframe, the court must notice the other cotenants of the price of the remaining interests not purchased, and those other cotenants have 20 days to purchase the remaining interest. If none of the parties pay within the time frame set by the court, the court must proceed with the partition action as if none of the interests were purchased.

Within 45 days after the initial complaint requesting partition by sale, any cotenant entitled to purchase an interest may request that the court authorize the sale of the interests of any defendants named in the complaint who did not file an appearance to the action. The court may grant the request if the court has determined a fair market value of the non-appearing party's interest under the procedures outlined by the bill.

If the interests of the cotenants who requested partition are not purchased or if there remains one or more parties who request partition in kind after the buyout outlined in the bill, the court must order a partition in kind unless the commissioners described in s. 64.061, F.S., find that a partition in kind will result in manifest injustice, considering a list of factors including: whether physical division is practicable, whether the division would result in inequitably valued parcels, a party's sentimental attachment to the property, the degree to which parties have contributed their pro-rated share of property taxes, and any other relevant factors. If the court does not order partition in kind, it may order partition by sale or dismiss the partition action.

A court ordering partition must enter a judgment of partition to be recorded in the official records of the county where the property is located. This judgment of partition must include a legal description of the property before partition, a description of each parcel of partitioned property, and the names of the owners of each parcel. The judgment must be recorded by the court clerk.

¹⁹ The bill does not set a timeline for the notice of the fair market value determination as it does for the notice of appraised value.

If the court orders a sale of property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or auction would be in the best interests of the tenants. The court must appoint a licensed real estate broker within 10 days to sell the property in a commercially reasonable manner. For an open-market sale, the broker must report an offer at the court-determined property value within 7 days after receiving the offer.

The bill also provides that cotenants owning real property that does not meet the definition of “heirs property” may agree to partition their property under the procedures described in the bill, jointly notifying the court of such agreement.

The bill adds an additional requirement for commissioners appointed under s. 64.061, F.S., requiring that they be “disinterested and impartial and not a party or a participant in the action.”

The bill does not contain an attorney fee provisions, so parties are still responsible for their own costs and fees proportional to their interest in the property, per s. 64.081, F.S.

Under the federal Agricultural Improvement Act of 2018, entities in states having adopted the Uniform Partition of Heirs Property Act are given preference in receiving loans from the U.S. Secretary of Agriculture to assist in the resolution of interests on farmland with multiple owners.²⁰ Additionally, farm operators in states having adopted the Uniform Partition of Heirs Property Act are eligible to receive a “farm number,” a prerequisite to participate in certain programs provided by the Secretary of Agriculture under the Agricultural Improvement Act.²¹

The bill takes effect July 1, 2020, and applies prospectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²⁰ Agricultural Improvement Act, Pub. Law 115-334, 132 Stat. 4670.

²¹ *Id.* at 5015.

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

None.

B. Private Sector Impact:

The bill requires a court to determine the market value of heirs property before commencing partition proceedings and requires partition by sale to be conducted on the open market by a licensed real estate broker, rather than at auction (unless a court determines that auction or sealed bids would be more economically advantageous). This may affect the sale price of heirs property partitioned by sale.

C. Government Sector Impact:

The new procedures for the partition of heirs property appear likely to result in a slight increase in judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 64.201, 64.202, 64.203, 64.204, 64.205, 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213, and 64.214.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on December 10, 2019**

The Committee Substitute made the following changes to the underlying bill:

- Provides that cotenants owning real property that does not meet the definition of “heirs property” may agree to partition their property under the procedures described in the bill, jointly notifying the court of the agreement.
- Revises procedures for providing notice by publication.
- Requires a court to consider “equitable accounting,” including contributions to the property made by cotenants, in determining the fair purchase price for each cotenant.
- Requires a court ordering partition to enter a “judgment of partition,” which must be recorded in the official records of the county.

- Provides that the commissioners described s. 64.061, F.S., and not the court, make the determination as to whether partition in kind would prejudice any of the cotenants.
- Clarifies that the bill establishes a preference for partitions in kind over partition sales.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/12/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Sections 64.011, 64.022, 64.031, 64.041, 64.051, 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are designated as part I of chapter 64, Florida Statutes, and entitled "General Provisions."

Section 2. Part II of chapter 64, Florida Statutes, consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205, 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213,



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12 and 64.214, is created to read:

13 PART II

14 UNIFORM PARTITION OF HEIRS PROPERTY ACT

15 64.201 Short title.—This part may be cited as the “Uniform
16 Partition of Heirs Property Act”.

17 64.202 Definitions.—As used in this part, the term:

18 (1) “Ascendant” means an individual who precedes another
19 individual in lineage, in the direct line of ascent from the
20 other individual.

21 (2) “Collateral” means an individual who is related to
22 another individual under the law of intestate succession of this
23 state but who is not the other individual’s ascendant or
24 descendant.

25 (3) “Descendant” means an individual who follows another
26 individual in lineage, in the direct line of descent from the
27 other individual.

28 (4) “Determination of value” means a court order
29 determining the fair market value of heirs property under s.
30 64.206 or s. 64.210 or adopting the valuation of the property
31 agreed to by all cotenants.

32 (5) “Equitable accounting” means considering contributions
33 and adjustments of accounts between cotenants which are related
34 to the real property and are based upon such contributions and
35 adjustments, s. 64.081, and common law.

36 (6) “Heirs property” means real property held in tenancy in
37 common which satisfies all of the following requirements as of
38 the filing of a partition action:

39 (a) There is no agreement in a record binding all the
40 cotenants which governs the partition of the property;



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41 (b) One or more of the cotenants acquired title from a
42 relative, whether living or deceased; and

43 (c) Any of the following applies:

44 1. Twenty percent or more of the interests are held by
45 cotenants who are relatives;

46 2. Twenty percent or more of the interests are held by an
47 individual who acquired title from a relative, whether living or
48 deceased; or

49 3. Twenty percent or more of the cotenants are relatives.

50 (7) "Partition by sale" means a court-ordered sale of the
51 entire heirs property, whether by open-market sale, sealed bids,
52 or auction conducted under s. 64.210.

53 (8) "Partition in kind" means the division of heirs
54 property into physically distinct and separately titled parcels.

55 (9) "Record" means information that is inscribed on a
56 tangible medium or that is stored in an electronic or other
57 medium and is retrievable in perceivable form.

58 (10) "Relative" means an ascendant, descendant, or
59 collateral or an individual otherwise related to another
60 individual by blood, marriage, adoption, or law of this state
61 other than this part.

62 64.203 Applicability; relation to other law.—

63 (1) This part applies to partition actions filed on or
64 after July 1, 2020.

65 (2) Provided that a partition action is otherwise available
66 under part I of this chapter, the court shall determine whether
67 the property is heirs property. If the court determines that the
68 property is heirs property, the property must be partitioned
69 under this part unless all of the cotenants otherwise agree in a



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70 record.

71 (3) This part supplements part I of this chapter and, if an
72 action is governed by this part, replaces provisions of part I
73 of this chapter that are inconsistent with this part.

74 64.204 Service; notice by posting.-

75 (1) This part does not limit or affect the method by which
76 service of a complaint in a partition action may be made.

77 (2) If the plaintiff in a partition action seeks notice by
78 publication, the court shall order the clerk of the court to
79 issue a notice of action to the plaintiff in the form set forth
80 in s. 49.08 and the plaintiff must, not later than 10 days after
81 receipt, post the notice of action on the property that is the
82 subject of the action.

83 64.205 Commissioners.-If the court appoints commissioners
84 pursuant to s. 64.061, each commissioner, in addition to the
85 requirements and disqualifications applicable to commissioners
86 in part I of this chapter, must be disinterested and impartial
87 and not a party to or a participant in the action.

88 64.206 Determination of value.-

89 (1) Except as otherwise provided in subsections (2) and
90 (3), if the court determines that the property that is the
91 subject of a partition action is heirs property, the court shall
92 determine the fair market value of the property by ordering an
93 appraisal pursuant to subsection (4).

94 (2) If all cotenants have agreed to the value of the
95 property or to another method of valuation, the court shall
96 adopt that value or the value produced by the agreed method of
97 valuation.

98 (3) If the court determines that the evidentiary value of



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99 an appraisal is outweighed by the cost of the appraisal, the
100 court, after an evidentiary hearing, shall determine the fair
101 market value of the property and send notice to the parties of
102 the value.

103 (4) If the court orders an appraisal, the court shall
104 appoint a disinterested real estate appraiser licensed in this
105 state to determine the fair market value of the property
106 assuming sole ownership of the fee simple estate. On completion
107 of the appraisal, the appraiser shall file a sworn or verified
108 appraisal with the court.

109 (5) If an appraisal is conducted pursuant to subsection
110 (4), not later than 10 days after the appraisal is filed, the
111 court shall send notice to each party with a known address,
112 stating:

113 (a) The appraised fair market value of the property.

114 (b) That the appraisal is available at the clerk's office.

115 (c) That a party may file with the court an objection to
116 the appraisal not later than 30 days after the notice is sent,
117 stating the grounds for the objection.

118 (6) If an appraisal is filed with the court pursuant to
119 subsection (4), the court shall conduct a hearing to determine
120 the fair market value of the property not sooner than 31 days
121 after a copy of the notice of the appraisal is sent to each
122 party under subsection (5), whether or not an objection to the
123 appraisal is filed under paragraph (5)(c). In addition to the
124 court-ordered appraisal, the court may consider any other
125 evidence of value offered by a party.

126 (7) After a hearing under subsection (6), but before
127 considering the merits of the partition action, the court shall



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128 determine the fair market value of the property and send notice
129 to the parties of the value.

130
131 In addition to a determination of value under this section, the
132 court shall determine the amount of the equitable accounting
133 upon the request of any cotenant and shall appropriately adjust
134 any price, purchase price, apportioned price, buyout, judgment,
135 or partition granted under this part based on the results of the
136 equitable accounting.

137 64.207 Cotenant buyout.—

138 (1) If any cotenant requested partition by sale, after the
139 determination of value under s. 64.206, the court shall send
140 notice to the parties that any cotenant except a cotenant that
141 requested partition by sale may buy all the interests of the
142 cotenants that requested partition by sale.

143 (2) Not later than 45 days after the notice is sent under
144 subsection (1), any cotenant, except a cotenant that requested
145 partition by sale, may give notice to the court that it elects
146 to buy all the interests of the cotenants that requested
147 partition by sale.

148 (3) The purchase price for each of the interests of a
149 cotenant that requested partition by sale is the value of the
150 entire parcel determined under s. 64.206 multiplied by the
151 cotenant's fractional ownership of the entire parcel.

152 (4) After expiration of the period in subsection (2), the
153 following rules apply:

154 (a) If only one cotenant elects to buy all the interests of
155 the cotenants that requested partition by sale, the court shall
156 notify all the parties of that fact.



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157 (b) If more than one cotenant elects to buy all the
158 interests of the cotenants that requested partition by sale, the
159 court shall allocate the right to buy those interests among the
160 electing cotenants based on each electing cotenant's existing
161 fractional ownership of the entire parcel divided by the total
162 existing fractional ownership of all cotenants electing to buy
163 and send notice to all the parties of that fact and of the price
164 to be paid by each electing cotenant.

165 (c) If no cotenant elects to buy all the interests of the
166 cotenants that requested partition by sale, the court shall send
167 notice to all the parties of that fact and resolve the partition
168 action under s. 64.208(1) and (2).

169 (5) If the court sends notice to the parties under
170 paragraph (4) (a) or paragraph (4) (b), the court shall set a
171 date, not sooner than 60 days after the date the notice was
172 sent, by which electing cotenants must pay their apportioned
173 price into the court. After this date, the following rules
174 apply:

175 (a) If all electing cotenants timely pay their apportioned
176 price into the court, the court shall issue a judgment of
177 partition reallocating all the interests of the cotenants,
178 disburse the amounts held by the court to the persons entitled
179 to them, and direct the clerk of the court to record the
180 judgment in the official records of the county where the
181 property is located.

182 (b) If no electing cotenant timely pays its apportioned
183 price, the court shall resolve the partition action under s.
184 64.208(1) and (2) as if the interests of the cotenants that
185 requested partition by sale were not purchased.



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186 (c) If one or more but not all of the electing cotenants
187 fail to pay their apportioned price on time, the court shall
188 give notice to the electing cotenants that paid their
189 apportioned price of the interest remaining and the price for
190 all that interest.

191 (6) Not later than 20 days after the court gives notice
192 pursuant to paragraph (5) (c), any cotenant that paid may elect
193 to purchase all of the remaining interest by paying the entire
194 price into the court. After the 20-day period, the following
195 rules apply:

196 (a) If only one cotenant pays the entire price for the
197 remaining interest, the court shall issue a judgment of
198 partition reallocating the remaining interest to that cotenant
199 and reallocating the interests of all of the cotenants. The
200 court shall also disburse the amounts held by the court to the
201 persons entitled to them and direct the clerk of the court to
202 record such judgment in the official records of the county where
203 the property is located.

204 (b) If no cotenant pays the entire price for the remaining
205 interest, the court shall resolve the partition action under s.
206 64.208(1) and (2) as if the interests of the cotenants that
207 requested partition by sale were not purchased.

208 (c) If more than one cotenant pays the entire price for the
209 remaining interest, the court shall reapportion the remaining
210 interest among those paying cotenants, based on each paying
211 cotenant's original fractional ownership of the entire parcel
212 divided by the total original fractional ownership of all
213 cotenants that paid the entire price for the remaining interest.
214 The court shall issue promptly a judgment of partition



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215 reallocating all of the cotenants' interests, disburse the
216 amounts held by the court to the persons entitled to them,
217 promptly refund any excess payment held by the court, and direct
218 the clerk of the court to record the judgment in the official
219 records of the county where the property is located.

220 (7) Not later than 45 days after the court sends notice to
221 the parties pursuant to subsection (1), any cotenant entitled to
222 buy an interest under this section may request the court to
223 authorize the sale as part of the pending action of the
224 interests of cotenants named as defendants and served with the
225 complaint but that did not appear in the action.

226 (8) If the court receives a timely request under subsection
227 (7), the court, after hearing, may deny the request or authorize
228 the requested additional sale on such terms as the court
229 determines are fair and reasonable, provided the court ensures
230 the due process rights of the nonappearing cotenants, subject to
231 the following limitations:

232 (a) A sale authorized under this subsection may occur only
233 after the purchase prices for all interests subject to sale
234 under subsections (1) through (6) have been paid into court and
235 those interests have been reallocated among the cotenants as
236 provided in those subsections.

237 (b) The purchase price for the interest of a nonappearing
238 cotenant is based on the court's determination of value under s.
239 64.206.

240 64.208 Partition alternatives.—

241 (1) If any cotenant requested partition in kind, or if all
242 the interests of all cotenants that requested partition by sale
243 are not purchased by other cotenants pursuant to s. 64.207, or,



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244 if after conclusion of the buyout under s. 64.207, a cotenant
245 remains that has requested partition in kind, the court shall
246 enter a judgment of partition in kind unless the court is
247 satisfied that commissioners appointed pursuant to s. 64.061
248 have considered the factors listed in s. 64.209 and found that
249 partition in kind will result in prejudice to the cotenants as a
250 group. In considering whether to order partition in kind, the
251 court shall approve a request by two or more parties to have
252 their individual interests aggregated. Such judgment of
253 partition must include the legal description of the real
254 property before partition, the legal description of each new
255 parcel, and the name of each parcel's owner and shall be
256 recorded by the clerk of the court.

257 (2) If the court does not order partition in kind under
258 subsection (1), the court shall order partition by sale pursuant
259 to s. 64.210 or, if no cotenant requested partition by sale, the
260 court shall dismiss the action.

261 (3) If the court orders partition in kind pursuant to
262 subsection (1), the court may require that one or more cotenants
263 pay one or more other cotenants amounts so that the payments,
264 taken together with the value of the in-kind distributions to
265 the cotenants, will make the partition in kind just and
266 proportionate in value to the fractional interests held.

267 (4) If the court orders partition in kind, the court shall
268 allocate to the cotenants that are unknown, unlocatable, or the
269 subject of a default judgment, if their interests were not
270 bought out pursuant to s. 64.207, a part of the property
271 representing the combined interests of these cotenants as
272 determined by the court and this part of the property shall



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273 remain undivided.

274 64.209 Considerations for partition in kind.—

275 (1) In determining under s. 64.208(1) whether partition in
276 kind would result in prejudice to the cotenants as a group, the
277 commissioners shall consider the following:

278 (a) Whether the heirs property practicably can be divided
279 among the cotenants.

280 (b) Whether partition in kind would apportion the property
281 in such a way that the aggregate fair market value of the
282 parcels resulting from the division would be materially less
283 than the value of the property if it were sold as a whole,
284 taking into account the condition under which a court-ordered
285 sale likely would occur.

286 (c) Evidence of the collective duration of ownership or
287 possession of the property by a cotenant and one or more
288 predecessors in title or predecessors in possession to the
289 cotenant who are or were relatives of the cotenant or each
290 other.

291 (d) A cotenant's sentimental attachment to the property,
292 including any attachment arising because the property has
293 ancestral or other unique or special value to the cotenant.

294 (e) The lawful use being made of the property by a cotenant
295 and the degree to which the cotenant would be harmed if the
296 cotenant could not continue the same use of the property.

297 (f) The degree to which the cotenants have contributed
298 their pro rata share of the property taxes, insurance, and other
299 expenses associated with maintaining ownership of the property
300 or have contributed to the physical improvement, maintenance, or
301 upkeep of the property.



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302 (g) Any other relevant factor.
303 (2) The commissioners may not consider any one factor in
304 subsection (1) to be dispositive without weighing the totality
305 of all relevant factors and circumstances.
306 64.210 Open-market sale, sealed bids, or auction.-
307 (1) If the court orders a sale of heirs property, the sale
308 must be an open-market sale unless the court finds that a sale
309 by sealed bids or an auction would be more economically
310 advantageous and in the best interest of the cotenants as a
311 group.
312 (2) If the court orders an open-market sale and the
313 parties, not later than 10 days after the entry of the order,
314 agree on a real estate broker licensed in this state to offer
315 the property for sale, the court shall appoint the broker and
316 establish a reasonable commission. If the parties do not agree
317 on a broker, the court shall appoint a disinterested real estate
318 broker licensed in this state to offer the property for sale and
319 shall establish a reasonable commission. The broker shall offer
320 the property for sale in a commercially reasonable manner at a
321 price no lower than the determination of value and on the terms
322 and conditions established by the court.
323 (3) If the broker appointed under subsection (2) obtains
324 within a reasonable time an offer to purchase the property for
325 at least the determination of value:
326 (a) The broker shall comply with the reporting requirements
327 in s. 64.211; and
328 (b) The sale may be completed in accordance with the laws
329 of this state other than this part.
330 (4) If the broker appointed under subsection (2) does not



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331 obtain within a reasonable time an offer to purchase the
332 property for at least the determination of value, the court,
333 after hearing, may:

334 (a) Approve the highest outstanding offer, if any;

335 (b) Redetermine the value of the property and order that
336 the property continue to be offered for an additional time; or

337 (c) Order that the property be sold by sealed bids or at an
338 auction.

339 (5) If the court orders a sale by sealed bids or an
340 auction, the court shall set terms and conditions of the sale.

341 If the court orders an auction, the auction must be conducted
342 under part I of this chapter.

343 (6) If a purchaser is entitled to a share of the proceeds
344 of the sale, the purchaser is entitled to a credit against the
345 price in an amount equal to the purchaser's share of the
346 proceeds.

347 64.211 Report of open-market sale.-

348 (1) Unless required to do so within a shorter time by part
349 I of this chapter, a broker appointed under s. 64.210(2) to
350 offer heirs property for open-market sale shall file a report
351 with the court not later than 7 days after receiving an offer to
352 purchase the property for at least the value determined under s.
353 64.206 or s. 64.210.

354 (2) The report required by subsection (1) must contain the
355 following information:

356 (a) A description of the property to be sold to each buyer.

357 (b) The name of each buyer.

358 (c) The proposed purchase price.

359 (d) The terms and conditions of the proposed sale,



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360 including the terms of any owner financing.

361 (e) The amounts to be paid to lienholders.

362 (f) A statement of contractual or other arrangements or
363 conditions of the broker's commission.

364 (g) Other material facts relevant to the sale.

365 64.212 Uniformity of application and construction.—In
366 applying and construing this uniform act, consideration must be
367 given to the need to promote uniformity of the law with respect
368 to its subject matter among states that enact it.

369 64.213 Relation to Electronic Signatures in Global and
370 National Commerce Act.—This part modifies, limits, and
371 supersedes the Electronic Signatures in Global and National
372 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
373 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
374 or authorize electronic delivery of any of the notices described
375 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

376 64.214 Access for all residents.—Notwithstanding any
377 provision to the contrary in this part, cotenants owning real
378 property that is not heirs property may agree to partition such
379 real property under this part. All of the cotenants must jointly
380 notify the court of such agreement.

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

382
383 ===== T I T L E A M E N D M E N T =====

384 And the title is amended as follows:

385 Delete everything before the enacting clause
386 and insert:

387 A bill to be entitled
388 An act relating to the Uniform Partition of Heirs



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389 Property Act; designating part I of ch. 64, F.S.,
390 entitled "General Provisions"; creating part II of ch.
391 64, F.S., entitled "Uniform Partition of Heirs
392 Property Act"; creating s. 64.201, F.S.; providing a
393 short title; creating s. 64.202, F.S.; defining terms;
394 creating s. 64.203, F.S.; providing applicability;
395 providing requirements relating to the court
396 determination of heirs property; specifying the
397 relation of the act to other law; creating s. 64.204,
398 F.S.; providing construction; providing for service
399 and notice; creating s. 64.205, F.S.; providing for
400 appointment and qualifications of commissioners;
401 creating s. 64.206, F.S.; providing for the
402 determination of property value; creating s. 64.207,
403 F.S.; providing for buyout of cotenants; creating s.
404 64.208, F.S.; providing for alternatives to partition;
405 creating s. 64.209, F.S.; providing factors to be
406 considered in determining whether partition in kind
407 may be ordered; creating s. 64.210, F.S.; providing
408 for sale of property through open-market sale, sealed
409 bids, or auction; creating s. 64.211, F.S.; providing
410 requirements for reporting of an open-market sale of
411 property; creating s. 64.212, F.S.; providing for
412 uniformity of application and construction; creating
413 s. 64.213, F.S.; specifying the relation of the act to
414 the Electronic Signatures in Global and National
415 Commerce Act; creating s. 64.214, F.S.; authorizing
416 certain cotenants to agree to certain partitions of
417 real property; requiring such cotenants to jointly



418 notify the court of such agreement; providing an
419 effective date.

By Senator Bracy

11-00510A-20

2020580__

1 A bill to be entitled
 2 An act relating to the Uniform Partition of Heirs
 3 Property Act; designating part I of ch. 64, F.S.,
 4 entitled "General Provisions"; creating part II of ch.
 5 64, F.S., entitled "Uniform Partition of Heirs
 6 Property Act"; creating s. 64.201, F.S.; providing a
 7 short title; creating s. 64.202, F.S.; defining terms;
 8 creating s. 64.203, F.S.; providing applicability;
 9 providing requirements relating to the court
 10 determination of heirs property; specifying the
 11 relation of the act to other law; creating s. 64.204,
 12 F.S.; providing for service and notice; creating s.
 13 64.205, F.S.; providing for appointment and
 14 qualifications of commissioners; creating s. 64.206,
 15 F.S.; providing for the determination of property
 16 value; creating s. 64.207, F.S.; providing for buyout
 17 of cotenants; creating s. 64.208, F.S.; providing for
 18 alternatives to partition; creating s. 64.209, F.S.;
 19 providing factors to be considered in determining
 20 whether partition in kind may be ordered; creating s.
 21 64.210, F.S.; providing for sale of property through
 22 open-market sale, sealed bids, or auction; creating s.
 23 64.211, F.S.; providing requirements for reporting of
 24 an open-market sale of property; creating s. 64.212,
 25 F.S.; providing for uniformity of application and
 26 construction; creating s. 64.213, F.S.; specifying the
 27 relation of the act to the Electronic Signatures in
 28 Global and National Commerce Act; providing an
 29 effective date.

Page 1 of 14

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

11-00510A-20

2020580__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Sections 64.011, 64.022, 64.031, 64.041, 64.051,
 34 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are
 35 designated as part I of chapter 64, Florida Statutes, and
 36 entitled "General Provisions."
 37 Section 2. Part II of chapter 64, Florida Statutes,
 38 consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205,
 39 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, and
 40 64.213, is created to read:
 41 PART II
 42 UNIFORM PARTITION OF HEIRS PROPERTY ACT
 43 64.201 Short title.—This part may be cited as the "Uniform
 44 Partition of Heirs Property Act".
 45 64.202 Definitions.—As used in this part, the term:
 46 (1) "Ascendant" means an individual who precedes another
 47 individual in lineage, in the direct line of ascent from the
 48 other individual.
 49 (2) "Collateral" means an individual who is related to
 50 another individual under the law of intestate succession of this
 51 state but who is not the other individual's ascendant or
 52 descendant.
 53 (3) "Descendant" means an individual who follows another
 54 individual in lineage, in the direct line of descent from the
 55 other individual.
 56 (4) "Determination of value" means a court order
 57 determining the fair market value of heirs property under s.
 58 64.206 or s. 64.210 or adopting the valuation of the property

Page 2 of 14

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

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59 agreed to by all cotenants.

60 (5) "Heirs property" means real property held in tenancy in
 61 common which satisfies all of the following requirements as of
 62 the filing of a partition action:

63 (a) There is no agreement in a record binding all the
 64 cotenants which governs the partition of the property;

65 (b) One or more of the cotenants acquired title from a
 66 relative, whether living or deceased; and

67 (c) Any of the following applies:

68 1. Twenty percent or more of the interests are held by
 69 cotenants who are relatives;

70 2. Twenty percent or more of the interests are held by an
 71 individual who acquired title from a relative, whether living or
 72 deceased; or

73 3. Twenty percent or more of the cotenants are relatives.

74 (6) "Partition by sale" means a court-ordered sale of the
 75 entire heirs property, whether by open-market sale, sealed bids,
 76 or auction conducted under s. 64.210.

77 (7) "Partition in kind" means the division of heirs
 78 property into physically distinct and separately titled parcels.

79 (8) "Record" means information that is inscribed on a
 80 tangible medium or that is stored in an electronic or other
 81 medium and is retrievable in perceivable form.

82 (9) "Relative" means an ascendant, descendant, or
 83 collateral or an individual otherwise related to another
 84 individual by blood, marriage, adoption, or law of this state
 85 other than this part.

86 64.203 Applicability; relation to other law.-

87 (1) This part applies to partition actions filed on or

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88 after July 1, 2020.

89 (2) In an action to partition real property under part I of
 90 this chapter, the court shall determine whether the property is
 91 heirs property. If the court determines that the property is
 92 heirs property, the property must be partitioned under this part
 93 unless all of the cotenants otherwise agree in a record.

94 (3) This part supplements part I of this chapter and, if an
 95 action is governed by this part, replaces provisions of part I
 96 of this chapter that are inconsistent with this part.

97 64.204 Service; notice by posting.-

98 (1) This part does not limit or affect the method by which
 99 service of a complaint in a partition action may be made.

100 (2) If the plaintiff in a partition action seeks notice by
 101 publication and the court determines that the property may be
 102 heirs property, the plaintiff, not later than 10 days after the
 103 court's determination, shall post, and maintain while the action
 104 is pending, a conspicuous sign on the property that is the
 105 subject of the action. The sign must state that the action has
 106 commenced and must identify the name and address of the court
 107 and the common designation by which the property is known. The
 108 court may require the plaintiff to publish on the sign the name
 109 of the plaintiff and the known defendants.

110 64.205 Commissioners.-If the court appoints commissioners
 111 pursuant to s. 64.061, each commissioner, in addition to the
 112 requirements and disqualifications applicable to commissioners
 113 in part I of this chapter, must be disinterested and impartial
 114 and not a party to or a participant in the action.

115 64.206 Determination of value.-

116 (1) Except as otherwise provided in subsections (2) and

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117 (3), if the court determines that the property that is the
 118 subject of a partition action is heirs property, the court shall
 119 determine the fair market value of the property by ordering an
 120 appraisal pursuant to subsection (4).

121 (2) If all cotenants have agreed to the value of the
 122 property or to another method of valuation, the court shall
 123 adopt that value or the value produced by the agreed method of
 124 valuation.

125 (3) If the court determines that the evidentiary value of
 126 an appraisal is outweighed by the cost of the appraisal, the
 127 court, after an evidentiary hearing, shall determine the fair
 128 market value of the property and send notice to the parties of
 129 the value.

130 (4) If the court orders an appraisal, the court shall
 131 appoint a disinterested real estate appraiser licensed in this
 132 state to determine the fair market value of the property
 133 assuming sole ownership of the fee simple estate. On completion
 134 of the appraisal, the appraiser shall file a sworn or verified
 135 appraisal with the court.

136 (5) If an appraisal is conducted pursuant to subsection
 137 (4), not later than 10 days after the appraisal is filed, the
 138 court shall send notice to each party with a known address,
 139 stating:

140 (a) The appraised fair market value of the property.

141 (b) That the appraisal is available at the clerk's office.

142 (c) That a party may file with the court an objection to
 143 the appraisal not later than 30 days after the notice is sent,
 144 stating the grounds for the objection.

145 (6) If an appraisal is filed with the court pursuant to

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146 subsection (4), the court shall conduct a hearing to determine
 147 the fair market value of the property not sooner than 31 days
 148 after a copy of the notice of the appraisal is sent to each
 149 party under subsection (5), whether or not an objection to the
 150 appraisal is filed under paragraph (5)(c). In addition to the
 151 court-ordered appraisal, the court may consider any other
 152 evidence of value offered by a party.

153 (7) After a hearing under subsection (6), but before
 154 considering the merits of the partition action, the court shall
 155 determine the fair market value of the property and send notice
 156 to the parties of the value.

157 64.207 Cotenant buyout.—

158 (1) If any cotenant requested partition by sale, after the
 159 determination of value under s. 64.206, the court shall send
 160 notice to the parties that any cotenant except a cotenant that
 161 requested partition by sale may buy all the interests of the
 162 cotenants that requested partition by sale.

163 (2) Not later than 45 days after the notice is sent under
 164 subsection (1), any cotenant, except a cotenant that requested
 165 partition by sale, may give notice to the court that it elects
 166 to buy all the interests of the cotenants that requested
 167 partition by sale.

168 (3) The purchase price for each of the interests of a
 169 cotenant that requested partition by sale is the value of the
 170 entire parcel determined under s. 64.206 multiplied by the
 171 cotenant's fractional ownership of the entire parcel.

172 (4) After expiration of the period in subsection (2), the
 173 following rules apply:

174 (a) If only one cotenant elects to buy all the interests of

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175 the cotenants that requested partition by sale, the court shall
176 notify all the parties of that fact.

177 (b) If more than one cotenant elects to buy all the
178 interests of the cotenants that requested partition by sale, the
179 court shall allocate the right to buy those interests among the
180 electing cotenants based on each electing cotenant's existing
181 fractional ownership of the entire parcel divided by the total
182 existing fractional ownership of all cotenants electing to buy
183 and send notice to all the parties of that fact and of the price
184 to be paid by each electing cotenant.

185 (c) If no cotenant elects to buy all the interests of the
186 cotenants that requested partition by sale, the court shall send
187 notice to all the parties of that fact and resolve the partition
188 action under s. 64.208(1) and (2).

189 (5) If the court sends notice to the parties under
190 paragraph (4) (a) or paragraph (4) (b), the court shall set a
191 date, not sooner than 60 days after the date the notice was
192 sent, by which electing cotenants must pay their apportioned
193 price into the court. After this date, the following rules
194 apply:

195 (a) If all electing cotenants timely pay their apportioned
196 price into court, the court shall issue an order reallocating
197 all the interests of the cotenants and disburse the amounts held
198 by the court to the persons entitled to them.

199 (b) If no electing cotenant timely pays its apportioned
200 price, the court shall resolve the partition action under s.
201 64.208(1) and (2) as if the interests of the cotenants that
202 requested partition by sale were not purchased.

203 (c) If one or more but not all of the electing cotenants

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204 fail to pay their apportioned price on time, the court shall
205 give notice to the electing cotenants that paid their
206 apportioned price of the interest remaining and the price for
207 all that interest.

208 (6) Not later than 20 days after the court gives notice
209 pursuant to paragraph (5) (c), any cotenant that paid may elect
210 to purchase all of the remaining interest by paying the entire
211 price into the court. After the 20-day period, the following
212 rules apply:

213 (a) If only one cotenant pays the entire price for the
214 remaining interest, the court shall issue an order reallocating
215 the remaining interest to that cotenant. The court shall issue
216 promptly an order reallocating the interests of all of the
217 cotenants and disburse the amounts held by it to the persons
218 entitled to them.

219 (b) If no cotenant pays the entire price for the remaining
220 interest, the court shall resolve the partition action under s.
221 64.208(1) and (2) as if the interests of the cotenants that
222 requested partition by sale were not purchased.

223 (c) If more than one cotenant pays the entire price for the
224 remaining interest, the court shall reappportion the remaining
225 interest among those paying cotenants, based on each paying
226 cotenant's original fractional ownership of the entire parcel
227 divided by the total original fractional ownership of all
228 cotenants that paid the entire price for the remaining interest.
229 The court shall issue promptly an order reallocating all of the
230 cotenants' interests, disburse the amounts held by it to the
231 persons entitled to them, and promptly refund any excess payment
232 held by the court.

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233 (7) Not later than 45 days after the court sends notice to
 234 the parties pursuant to subsection (1), any cotenant entitled to
 235 buy an interest under this section may request the court to
 236 authorize the sale as part of the pending action of the
 237 interests of cotenants named as defendants and served with the
 238 complaint but that did not appear in the action.

239 (8) If the court receives a timely request under subsection
 240 (7), the court, after hearing, may deny the request or authorize
 241 the requested additional sale on such terms as the court
 242 determines are fair and reasonable, subject to the following
 243 limitations:

244 (a) A sale authorized under this subsection may occur only
 245 after the purchase prices for all interests subject to sale
 246 under subsections (1) through (6) have been paid into court and
 247 those interests have been reallocated among the cotenants as
 248 provided in those subsections.

249 (b) The purchase price for the interest of a nonappearing
 250 cotenant is based on the court's determination of value under s.
 251 64.206.

252 64.208 Partition alternatives.—

253 (1) If all the interests of all cotenants that requested
 254 partition by sale are not purchased by other cotenants pursuant
 255 to s. 64.207, or, if after conclusion of the buyout under s.
 256 64.207, a cotenant remains that has requested partition in kind,
 257 the court shall order partition in kind unless the court, after
 258 consideration of the factors listed in s. 64.209, finds that
 259 partition in kind will result in manifest prejudice to the
 260 cotenants as a group. In considering whether to order partition
 261 in kind, the court shall approve a request by two or more

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262 parties to have their individual interests aggregated.

263 (2) If the court does not order partition in kind under
 264 subsection (1), the court shall order partition by sale pursuant
 265 to s. 64.210 or, if no cotenant requested partition by sale, the
 266 court shall dismiss the action.

267 (3) If the court orders partition in kind pursuant to
 268 subsection (1), the court may require that one or more cotenants
 269 pay one or more other cotenants amounts so that the payments,
 270 taken together with the value of the in-kind distributions to
 271 the cotenants, will make the partition in kind just and
 272 proportionate in value to the fractional interests held.

273 (4) If the court orders partition in kind, the court shall
 274 allocate to the cotenants that are unknown, unlocatable, or the
 275 subject of a default judgment, if their interests were not
 276 bought out pursuant to s. 64.207, a part of the property
 277 representing the combined interests of these cotenants as
 278 determined by the court and this part of the property shall
 279 remain undivided.

280 64.209 Considerations for partition in kind.—

281 (1) In determining under s. 64.208(1) whether partition in
 282 kind would result in manifest prejudice to the cotenants as a
 283 group, the court shall consider the following:

284 (a) Whether the heirs property practicably can be divided
 285 among the cotenants.

286 (b) Whether partition in kind would apportion the property
 287 in such a way that the aggregate fair market value of the
 288 parcels resulting from the division would be materially less
 289 than the value of the property if it were sold as a whole,
 290 taking into account the condition under which a court-ordered

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291 sale likely would occur.

292 (c) Evidence of the collective duration of ownership or
 293 possession of the property by a cotenant and one or more
 294 predecessors in title or predecessors in possession to the
 295 cotenant who are or were relatives of the cotenant or each
 296 other.

297 (d) A cotenant's sentimental attachment to the property,
 298 including any attachment arising because the property has
 299 ancestral or other unique or special value to the cotenant.

300 (e) The lawful use being made of the property by a cotenant
 301 and the degree to which the cotenant would be harmed if the
 302 cotenant could not continue the same use of the property.

303 (f) The degree to which the cotenants have contributed
 304 their pro rata share of the property taxes, insurance, and other
 305 expenses associated with maintaining ownership of the property
 306 or have contributed to the physical improvement, maintenance, or
 307 upkeep of the property.

308 (g) Any other relevant factor.

309 (2) The court may not consider any one factor in subsection
 310 (1) to be dispositive without weighing the totality of all
 311 relevant factors and circumstances.

312 64.210 Open-market sale, sealed bids, or auction.—

313 (1) If the court orders a sale of heirs property, the sale
 314 must be an open-market sale unless the court finds that a sale
 315 by sealed bids or an auction would be more economically
 316 advantageous and in the best interest of the cotenants as a
 317 group.

318 (2) If the court orders an open-market sale and the
 319 parties, not later than 10 days after the entry of the order,

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320 agree on a real estate broker licensed in this state to offer
 321 the property for sale, the court shall appoint the broker and
 322 establish a reasonable commission. If the parties do not agree
 323 on a broker, the court shall appoint a disinterested real estate
 324 broker licensed in this state to offer the property for sale and
 325 shall establish a reasonable commission. The broker shall offer
 326 the property for sale in a commercially reasonable manner at a
 327 price no lower than the determination of value and on the terms
 328 and conditions established by the court.

329 (3) If the broker appointed under subsection (2) obtains
 330 within a reasonable time an offer to purchase the property for
 331 at least the determination of value:

332 (a) The broker shall comply with the reporting requirements
 333 in s. 64.211; and

334 (b) The sale may be completed in accordance with the laws
 335 of this state other than this part.

336 (4) If the broker appointed under subsection (2) does not
 337 obtain within a reasonable time an offer to purchase the
 338 property for at least the determination of value, the court,
 339 after hearing, may:

340 (a) Approve the highest outstanding offer, if any;

341 (b) Redetermine the value of the property and order that
 342 the property continue to be offered for an additional time; or

343 (c) Order that the property be sold by sealed bids or at an
 344 auction.

345 (5) If the court orders a sale by sealed bids or an
 346 auction, the court shall set terms and conditions of the sale.
 347 If the court orders an auction, the auction must be conducted
 348 under part I of this chapter.

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349 (6) If a purchaser is entitled to a share of the proceeds
 350 of the sale, the purchaser is entitled to a credit against the
 351 price in an amount equal to the purchaser's share of the
 352 proceeds.

353 64.211 Report of open-market sale.—

354 (1) Unless required to do so within a shorter time by part
 355 I of this chapter, a broker appointed under s. 64.210(2) to
 356 offer heirs property for open-market sale shall file a report
 357 with the court not later than 7 days after receiving an offer to
 358 purchase the property for at least the value determined under s.
 359 64.206 or s. 64.210.

360 (2) The report required by subsection (1) must contain the
 361 following information:

362 (a) A description of the property to be sold to each buyer.

363 (b) The name of each buyer.

364 (c) The proposed purchase price.

365 (d) The terms and conditions of the proposed sale,
 366 including the terms of any owner financing.

367 (e) The amounts to be paid to lienholders.

368 (f) A statement of contractual or other arrangements or
 369 conditions of the broker's commission.

370 (g) Other material facts relevant to the sale.

371 64.212 Uniformity of application and construction.—In
 372 applying and construing this uniform act, consideration must be
 373 given to the need to promote uniformity of the law with respect
 374 to its subject matter among states that enact it.

375 64.213 Relation to Electronic Signatures in Global and
 376 National Commerce Act.—This part modifies, limits, and
 377 supersedes the Electronic Signatures in Global and National

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378 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 379 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
 380 or authorize electronic delivery of any of the notices described
 381 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Criminal Justice
Finance and Tax
Innovation, Industry, and Technology

SENATOR RANDOLPH BRACY

11th District

November 4, 2019

The Honorable Chairman David Simmons
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simmons:

I write to respectfully ask that the following bill be placed on the agenda of the Senate Judiciary Committee:

- SB 580, Uniform Partition of Heirs Property Act: This bill provides simple due process protections (notice, appraisal, and right of first refusal) for heir property tenants-in-common to prevent a forced sale when one co-tenant desires to sell his/her interest in the property.

Your consideration is tremendously appreciated. Please don't hesitate to let me know if you have any questions or concerns regarding the aforementioned legislation.

Sincerely,

A handwritten signature in cursive script that reads "Randolph Bracy".

Senator Randolph Bracy

REPLY TO:

- 6965 Piazza Grande Avenue, Suite 211, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

SB 580

Bill Number (if applicable)

520602

Amendment Barcode (if applicable)

Topic Uniform Partition of Heirs Property Act

Name FRENCH BROWN

Job Title Lobbyist

Address 215 S. Monroe St. Suite 815

Phone 850-459-0992

Street

Tallahassee

FL

32301

City

State

Zip

Email fbrown@gmail.com

Speaking: For Against Information

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

Representing The Heirs Property, Probate and Trust Law Section of the FL BAR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

December 10, 2019

Meeting Date

580

SB850

Bill Number (if applicable)

Topic Uniform Partition of Heirs Property Act

Amendment Barcode (if applicable)

Name Professor Thomas W. Mitchell

Job Title Professor of Law

Address Texas A&M University School of Law, 1515 Commerce Street

Phone (817) 212-3935

Street

Fort Worth

Texas

76102

Email thomas.mitchell@law.tamu.edu

City

State

Zip

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

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

Representing Uniform Law Commission

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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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

580
Bill Number (if applicable)

Topic Heir's Property

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee FL

32301

City

State

Zip

Email fefep@yahoo.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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THE FLORIDA SENATE

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

12/10/19

Meeting Date

580

Bill Number (if applicable)

Topic Heir's Property

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title _____

Address P.O. Box 10788

Phone 334-224-4309

Street

Tallahassee, FL 32302

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Southern Poverty Law Action Fund

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)

12/10/19

Meeting Date

580

Bill Number (if applicable)

Topic Uniform Partition of Heirs Property Act

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title

Address P.O. Box 2020

Phone 727-421-6902

Street

St. Petersburg

FL

33731

Email travis@moore-relations.com

City

State

Zip

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

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

Representing Defenders of Wildlife

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

Lobbyist registered with Legislature: [X] 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)

12-10-19

Meeting Date

585

Bill Number (if applicable)

Topic HEIRS PROPERTY

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 9830 ELM ST

Street

Phone _____

DC

City

MD

State

20942

Zip

Email _____

Speaking: For Against Information

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

Representing SIERRA CLUB

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)

12-10-2019

Meeting Date

580

Bill Number (if applicable)

Topic Heirs Property SB 580

Amendment Barcode (if applicable)

Name Jami Coleman

Job Title Attorney

Address 701 East Tennessee Street

Phone 850-222-0013

Street

Tallahassee FL 32308

City

State

Zip

Email jcoleman@williamscoleman.com

Speaking: For Against Information

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

Representing Private attorney

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)

12/10

Meeting Date

580

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Pete Dunbar

Job Title _____

Address 215 S. Monroe

Phone 999-4100

Street

Tall _____

Email p.dunbar@deanwood.com

City

State

Zip

Speaking: For Against Information

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

Representing RPPIL

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 590

INTRODUCER: Senator Hooper

SUBJECT: Clerks of the Court

DATE: December 9, 2019

REVISED: _____

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

I. Summary:

SB 590 revises the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system. The current procedure provides for *pre-imburement* in which clerks send a quarterly funding estimate of their costs to the Clerks of Court Operations Corporation (CCOC) for review. The CCOC completes its review, and forwards the estimate to the Justice Administrative Commission (JAC) for further review and verification that the funds are available. The JAC then submits the request to the Division of Financial Services to provide quarterly pre-imburement payments to the clerks.

The new process is not a pre-imburement process but a *reimbursement* process for actual costs that have been incurred in the previous quarter. The bill removes the responsibility of paying jury management costs from the JAC and assigns that responsibility to the Department of Revenue. Consistent with that change, the JAC will no longer provide oversight and management of the funds to the counties. The CCOC will assume the responsibility to review the reimbursement requests and forward to the Department of Revenue the amounts necessary to reimburse each clerk.

Additionally, the bill specifies a purpose for the use of the Clerks of the Courts Trust Fund. The Trust Fund will be a depository for excess revenue collected monthly by the clerks that exceed one-twelfth of the clerks' total budget. Those excess revenues must be used to provide funds to clerks who project a revenue deficit, which is a codification of current practice. The CCOC will conduct an end-of-year reconciliation of the excess funds deposited in the Trust Fund to make certain that clerks receive their approved budget amounts as required by statute.

II. Present Situation:

Clerks of the Court

The State Constitution establishes the office of clerk of the circuit court in each of the state's 67 counties. Each clerk is elected by the voters to a 4-year term. The State Constitution further provides that the clerk's duties may be divided by special or general law between two officers. Under that arrangement, one serves as clerk of the court and one serves as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.¹

Jury Management

Court clerks are tasked with many responsibilities, including the specific responsibility of managing the jury process. This includes determining the qualifications of jurors, issuing jury summons, providing selection lists, reporting, and compensating jurors when necessary to prevent financial hardship.² It is estimated that Florida clerks summon almost 2 million jurors annually.³

Florida Clerks of Court Operations Corporation

The Legislature created the Florida Clerks of Court Operations Corporation (CCOC) in 2003. It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties, the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state. All clerks of the circuit court are members and hold their position and authority as ex officio members. The responsibilities assigned to the corporation are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.⁴

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.⁵ The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.

¹ FLA. CONST. art. V, s. 16 and art. VIII, s. (1)(d).

² See s. 40.001, F.S.

³ Florida Clerks of Court Operations Corporation, *Senate Bill 590 Analysis* (Dec. 2, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29742>.

⁴ Section 28.35(1), F.S.

⁵ Florida Clerks of Court Operations Corporation, *Welcome to Florida Clerks of Court Operations Corporation (CCOC)*, available at <https://flccoc.org/>.

- Approving the proposed budgets submitted by clerks.⁶

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference); *plus*
- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; *plus*
- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to the General Revenue Fund as required by law.⁷

Budget Procedure for Payment of Costs

The Justice Administration Commission (JAC) is required by s. 40.29(5), F.S., to provide funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs. Since 2016, the Legislature has provided \$11.7 million from General Revenue to cover the projected costs of managing the jury process.⁸ The funds are released quarterly. Before 2008, jury costs were funded by the Legislature through the Office of the State Court Administrator.⁹

The process established in s. 40.29, F.S., for clerks to submit information to the JAC to request funding, has been modified slightly from statute by agreement between the clerks and the CCOC. The process is as follows:

- (1) Each clerk of the circuit court forwards to the CCOC a *quarterly estimate* of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the *upcoming* quarter. Each clerk must include a signed and dated certification letter by the 10th of the month immediately before the beginning of the requested quarter.
- (2) The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- (3) The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and sends the information to the Division of Financial Services for pre-imburement payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the General Appropriations Act (GAA) among the counties. The apportionment is based upon the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer will then issue the appropriate apportioned

⁶ Section 28.35(2)(c), (d), (e), and (f), F.S.

⁷ Section 28.35(2)(f), F.S.

⁸ For the 2019 appropriation, see ch. 2019-115, s. 4, Laws of Fla., Specific Appropriation 770 (Reimbursement of Expenditures Related to Circuit and County Juries Required by Statute from General Revenue Fund . . . \$11,700,000).

⁹ Section 40.31, F.S. (2007).

amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA. However, the JAC reports that the CCOC has never requested more than the \$11.7 million allocation provided by the Legislature.¹⁰

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001¹¹ within the Department of Revenue (DOR). The Trust Fund was transferred to the JAC in 2009 when the clerks' budget was placed in the state budget process. The Trust Fund was transferred back to the Department of Revenue in 2013 when the clerks' budget was removed from the GAA.¹² The Trust Fund exists as a one sentence item in the statutes with no mention of a purpose.

According to the CCOC, the Trust Fund is used as a repository for funds from counties that have a projected revenue surplus. Section 28.37(2), F.S., provides that, since November 1, 2013, all fines, fees, service charges, and costs that are collected by the clerks for the previous month which exceed one-twelfth of the clerks' total budget for performing court-related functions must be remitted to DOR for deposit into the Clerks of the Court Trust Fund. Those funds are distributed by DOR to clerks in counties that have a projected revenue deficit. The CCOC also uses the Trust Fund to annually reconcile the clerks' expenditures. In the reconciliation process at the end of the year, a clerk's total revenues are compared to total expenditures. Some clerks will receive additional money to meet expenses, and other clerks will be required to return money because he or she had a surplus of revenue after covering expenses.

III. Effect of Proposed Changes:

The bill makes two significant changes to the process by which clerks receive funds for the jury management process. Notably, the bill removes the responsibility for paying jury management costs from the JAC and assigns that responsibility to the Department of Revenue. Consistent with that change, the JAC will no longer provide oversight and management of the funds to the counties. That oversight responsibility will be assumed by CCOC. Additionally, the current practice under which clerks receive *pre-impbursements* for their costs is changed and the clerks will receive *reimbursements* for the costs they have incurred.

Clerks of the Court Trust Fund

The Clerks of the Court Trust Fund is established in statute as a depository for the portion of the fines, fees, service, charges, and costs that are collected by the clerks which exceed one-twelfth of the individual clerks' total budget. Additional funds that may be deposited in the Trust Fund are revenues designated for that purpose by statute, funds appropriated by the Legislature, and grants from public or private entities.

¹⁰ Telephone interview with Cris Martinez and Greg Cowan, Justice Administrative Commission, in Tallahassee, Fla. (Dec. 4, 2019).

¹¹ Section 213.131, F.S.

¹² Florida Clerks of Court Operations Corporation, *supra*, note 3.

Excess Funds and Reconciliation

The funds collected in a month that exceed one-twelfth of the clerks' total budget are designated solely for the purpose of providing funds to clerks who project a revenue deficit. The CCOC must conduct an end-of-year reconciliation in which it reviews a clerk's total revenues and compares that figure to the total expenditures to guarantee that clerks receive the approved budget amounts.

The New ProcedureDepartment of Revenue

The bill requires the Department of Revenue to deposit into the Clerks of the Court Trust Fund the funds appropriated to the clerks in the General Appropriations Act to cover the compensation of jurors, payment for meals and lodging for jurors, and payment for jury-related personnel and operational costs as provided in the General Appropriations Act.

Clerks

The clerks are required to submit a request for *reimbursement* to the CCOC within 30 days after each quarter ends. They must attest to their actual costs to compensate jurors, to pay for meals and lodging provided to jurors, and to pay for jury-related personnel and operational costs.

CCOC

The CCOC must then review the request for reimbursement to make certain that the costs are reasonable and directly related to jury management. After completing their review tasks, the CCOC must forward to the Department of Revenue the amount necessary to reimburse each clerk. As in current law, the clerks remain responsible for any compensation costs that exceed the funding provided in the GAA.

The bill takes effect July 1, 2020.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will remove clerk oversight responsibilities from the JAC which will reduce its workload as far as clerk responsibilities are concerned. There will also be a workload reduction for the clerks who will no longer be required to submit the four quarterly estimate forms to the CCOC. Finally, the CCOC's workload will be reduced because it will not be receiving forms four times each year from the 67 clerks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 40.29 and 213.131.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Hooper

16-00648B-20

2020590__

A bill to be entitled

An act relating to clerks of the court; amending s. 40.29, F.S.; deleting a requirement that the Justice Administrative Commission provide funds to the clerks of the court to compensate jurors and pay for certain expenses and certain jury-related personnel costs; amending s. 213.131, F.S.; providing the purpose of the Clerks of the Court Trust Fund within the Department of Revenue; requiring the distribution of certain funds to cover projected revenue deficits; requiring the Florida Clerks of Court Operations Corporation to conduct an end-of-year reconciliation of certain funds to ensure that the clerks of the court receive approved budget amounts; requiring the department to deposit certain funds into the trust fund for purposes of compensating jurors and paying certain expenses and certain jury-related personnel costs; providing requirements relating to such reimbursement; specifying that the clerks of the court are responsible for any such costs that exceed the amount appropriated by the Legislature; providing an effective date.

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

Section 1. Subsection (5) of section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs.—

~~(5) The Justice Administrative Commission shall provide~~

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

16-00648B-20

2020590__

~~funds to the clerks of the court to compensate jurors, to pay for meals or lodging provided to jurors, and to pay for jury-related personnel costs as provided in this section. Each clerk of the court shall forward to the Justice Administrative Commission a quarterly estimate of funds necessary to compensate jurors and pay for meals or lodging provided to jurors during the upcoming quarter. The Florida Clerks of Court Operations Corporation shall forward to the Justice Administrative Commission a quarterly estimate of the amount necessary to reimburse each clerk of the court for its personnel and other costs related to jury management. Upon receipt of such estimates, the Justice Administrative Commission shall determine the amount deemed necessary for payment to the clerks of the court during the upcoming quarter and submit a request for payment to the Chief Financial Officer. If the Justice Administrative Commission believes that the amount appropriated by the Legislature is insufficient to meet such costs during the remaining part of the state fiscal year, the commission may apportion the funds appropriated in the General Appropriations Act for those purposes among the several counties, basing the apportionment upon the amount expended for such purposes in each county during the prior fiscal year, in which case, the Chief Financial Officer shall issue the appropriate apportioned amount by warrant to each county. The clerks of the court are responsible for any compensation to jurors, for payments for meals or lodging provided to jurors, and for jury-related personnel costs that exceed the funding provided in the General Appropriations Act for these purposes.~~

Section 2. Section 213.131, Florida Statutes, is amended to

Page 2 of 4

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16-00648B-20

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59 read:

60 213.131 Clerks of the Court Trust Fund within the
61 Department of Revenue.—

62 (1) The Clerks of the Court Trust Fund is created within
63 the Department of Revenue.

64 (2) The trust fund is established as a depository for the
65 portion of all fines, fees, service charges, and costs collected
66 monthly by the clerks of the court which is in excess of one-
67 twelfth of the clerks' total budget. Other funds that may be
68 deposited in the trust fund include revenues designated for that
69 purpose by law, funds appropriated by the Legislature, and
70 grants from public or private entities, pursuant to s. 28.36.

71 (3) Funds collected monthly that exceed one-twelfth of the
72 clerks' total budget must be used for the purpose of providing
73 funds to clerks of the court with projected revenue deficits.

74 (4) From the funds collected in excess of one-twelfth of
75 the clerks' total budget and deposited into the trust fund, the
76 Florida Clerks of Court Operations Corporation shall conduct an
77 end-of-year reconciliation to ensure that clerks receive their
78 approved budget amounts established under s. 28.35.

79 (5) The Department of Revenue shall deposit in the trust
80 fund funds appropriated to the clerks of the court in the
81 General Appropriations Act for the purpose of compensating
82 jurors, paying for meals and lodging provided to jurors, and
83 paying for jury-related personnel and operational costs as
84 provided in that act. Each clerk of the court shall submit a
85 request for reimbursement to the Florida Clerks of Court
86 Operations Corporation within 30 days after each quarter
87 attesting to the clerk's actual costs to compensate jurors, to

Page 3 of 4

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16-00648B-20

2020590__

88 pay for meals and lodging provided to jurors, and to pay for
89 jury-related personnel and operational costs. The Florida Clerks
90 of Court Operations Corporation shall review the request for
91 reimbursement to ensure that the costs are reasonable and
92 directly related to jury management and shall forward to the
93 Department of Revenue the amount necessary to reimburse each
94 clerk of the court. The clerks of the court are responsible for
95 any compensation to jurors, for payments for meals or lodging
96 provided to jurors, and for jury-related personnel and
97 operational costs that exceed the funding provided in the
98 General Appropriations Act for these purposes.

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

Page 4 of 4

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

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

December 3rd, 2019

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

Dear Chair Simmons:

I am writing to request that Senate Bill 590, Clerks of the Court, be placed on the next meeting agenda of the Judiciary Committee.

Should you have any questions regarding this bill, please do not hesitate to reach out to me.
Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a large, stylized circular flourish.

Ed Hooper

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

REPLY TO:

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

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/2019

Meeting Date

SB 590

Bill Number (if applicable)

Topic Clerks of the Court

Amendment Barcode (if applicable)

Name Jason Welty

Job Title Budget & Communications Director

Address 2560 Barrington Court

Phone 850-386-2223

Street

Tallahassee

FL

32308

Email jwelty@ficcoc.org

City

State

Zip

Speaking: For Against Information

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

Representing CCOC

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)

12/10/2019

SB 590

Meeting Date

Bill Number (if applicable)

Topic Clerks of the Court

Amendment Barcode (if applicable)

Name Jason Harrell

Job Title Legislative & Public Affairs Director

Address 215 S. Monroe

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FL

32301

Email jasonharrell@flclerks.com

City

State

Zip

Speaking: For Against Information

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

Representing CCOC

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 660

INTRODUCER: Senator Berman

SUBJECT: Uniform Commercial Real Estate Receivership Act

DATE: December 9, 2019

REVISED: _____

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

I. Summary:

SB 660 adopts the Uniform Commercial Real Estate Receivership Act and authorizes a court to appoint a receiver, who acting as the court’s agent, takes possession of, manages, and, in some cases, transfers or sells property that is in danger of waste, loss, or diminution in value.

The bill covers interests in real property, as well as personal property related to the use or operation of real property. However, the bill does not apply to residential real property of an individual owner or the owner’s family.

The bill in large part codifies the common law of receivership, in some cases clarifying or providing more specific procedures for the rules governing receiverships.

II. Present Situation:

Equitable receiverships are a creation of common law, which the Supreme Court has stated should be reserved for cases involving fraud, self-dealing, or waste.¹ The decision in equity to appoint a receiver lies in the sound discretion of the trial court.² “Generally, a temporary receiver is appointed only to preserve the property and to protect the rights of all parties therein.”³ “Courts should not interfere by such appointment unless absolutely necessary to do complete justice.”⁴

Separately, “a statute can authorize the appointment of a receiver, and statutory receiverships may serve a different role or purpose than an equitable receivership.”⁵ Florida Statutes “authorize

¹ *Granada Lakes Villa Condominium Ass’n, Inc. v. Metro-Dade Investments Co.*, 125 So. 3d 756, 759 (Fla. 2013).

² *Ins. Mgmt, Inc. v. McLeod*, 194 So. 2d 16, 17 (Fla. 3d DCA 1966).

³ *Id.*

⁴ *Recarey v. Rader*, 320 So. 2d 28, 30 (Fla. 3d DCA 1975).

⁵ *Granada Lakes*, 125 So. 2d at 759.

the appointment of a receiver in several situations that do not involve any of the common law grounds of fraud, self-dealing, or waste for the appointment of an equitable receiver.”⁶ Many other statutes allow for a state agency or officer to seek the appointment of a receiver for certain property.⁷ Further, a circuit court may appoint a receiver if, in a proceeding by a shareholder, “it is established that ... [t]he directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered.”⁸ “[T]he appointment of receiver for a going corporation is a last-resort remedy, and should not be employed when another adequate remedy is available.”⁹ “[I]nstead of restricting a court’s power to appoint a receiver, these statutory provisions authorize a court to appoint a receiver under certain enumerated circumstances that do not involve any of the common law grounds for the appointment of an equitable receiver.”¹⁰

“A receiver is typically appointed in foreclosure proceedings to preserve the status quo, preserve the property, and collect and apply rents and profits to the payment of the mortgage.”¹¹ “Appointing a receiver is a rare and extraordinary remedy.”¹² “To authorize the appointment of a receiver, the petitioner must show clear legal right ... to the property in controversy, or that he has some lien upon or property right in it, or that it constitutes a special fund of which he is entitled to satisfaction of his demand.”¹³ “[W]hile the parties’ agreement to the appointment of a receiver is considered in determining whether to grant an ex parte receivership, it alone is not dispositive.”¹⁴

The notice provisions of Florida Rule of Civil Procedure 1.610 apply to an application for receivership.¹⁵ Ordinarily, a hearing is required before appointment of a receiver.¹⁶ Pursuant to rule 1.610, a receiver can be appointed without notice or a hearing if: (1) “it appears from the *specific facts* shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage *will* result to the movant before the adverse party can be heard in opposition”; (2) “the movant’s attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required”; and (3) the trial court’s order “define[s] the injury,

⁶ *Id.*; see, e.g., s.393.0678, F.S. (authorizing the appointment of a receiver for a “residential habilitation center or a group home facility owned and operated by a corporation or partnership” under certain circumstances); s. 607.1432, F.S. (authorizing the appointment of a receiver for the purpose of winding up and liquidating a corporation); s. 605.0704 (winding up and liquidating a limited liability company); s. 658.79, F.S. (authorizing the appointment of a receiver for an insolvent bank for the purpose of taking charge of the assets and affairs of the bank); s. 631.0515, F.S. (authorizing the appointment of a receiver for the purpose of winding up a deadlocked but not insolvent corporation that owns all the stock of a Florida insurer); ss. 719.1124, 720.3053, F.S. (cooperative or homeowners’ association if association fails to fill vacancies on board of administration).

⁷ See, e.g., s. 400.966, F.S. (authorizing the appointment of a receiver for intermediate care facilities for the developmentally disabled); s. 409.994 (authorizing the appointment of a receiver for community-based care agencies); s. 394.903 (crisis stabilization unit or residential treatment facility); s. 429.22, F.S. (authorizing the appointment of a receiver for assisted living facilities); s. 497.160, F.S. (authorizing the appointment of a receiver for funeral, cemetery, and consumer services).

⁸ *Wenzel v. Burman*, 76 So. 3d 1005, 1006 (Fla. 3d DCA 2011) (quoting s. 607.1430(2)(a), F.S. (2011)).

⁹ *Rader*, 320 So. 2d at 30.

¹⁰ *Id.*

¹¹ *DeSilva v. First Cmty. Bank of Am.*, 42 So. 3d 285, 290 (Fla. 2d DCA 2010).

¹² *Plaza v. Plaza*, 78 So. 3d 4, 6 (Fla. 3d DCA 2011).

¹³ *Apalachicola N.R. Co. v. Sommers*, 85 So. 361, 361 (1920).

¹⁴ *DeSilva*, 42 So. 2d at 288.

¹⁵ See Fla. R. Civ. P. 1.620(a).

¹⁶ *Edenfield v. Crisp*, 186 So.2d 545, 548 (Fla. 2d DCA 1966).

state[s] findings by the court why the injury may be irreparable, and give[s] the reasons why the order was granted without notice if notice was not given.”¹⁷ The party requesting the appointment of a receiver without notice “must set forth, in sworn form and with sufficient particularity, specific facts and circumstances reflecting that delay in appointing the receiver *will* result in irreparable injury to the property, or that giving notice itself *will* precipitate such injury to the property.”¹⁸ “Thus, a receivership might be appropriate without notice and a hearing if the property is at immediate risk of being diverted, dissipated, destroyed, allowed to deteriorate, or wasted.”¹⁹

“[A] bond with “good and sufficient surety” should be required on the appointment of a receiver unless exceptional circumstances precluding the need or ability to provide a bond are present in the case.”²⁰ The party seeking appointment of a receiver should pay a receivership bond adequate to indemnify an adverse party any damages it might suffer through the receivership of its property.²¹ Additionally, the receiver should post bond to cover the damages that will be incurred if the receiver fails in his duties.²²

The trial court’s grant or denial of the appointment of a receiver and the court’s termination or refusal to terminate a receivership is an appealable nonfinal order.²³

“The courts are generally vested with considerable discretion in determining who shall pay the cost and expenses of receiverships.”²⁴

The appointment of a receiver in a case filed in federal court based on diversity jurisdiction is governed by federal law.²⁵

III. Effect of Proposed Changes:

The bill authorizes a court to appoint as its agent a receiver, who takes possession of, manages, and, in some cases, transfers or sells property that is in danger of waste, loss, or diminution in value.

The bill does not apply to residential real property occupied by the owner or the owner’s immediate family, to personal property used primarily for personal, family, or household purposes, or to property that is exempt from forced sale, execution, or seizure under Florida law. The bill does not apply to homestead property. The bill applies to property that is commercial in nature, and thus can apply to residential property from which the owner collects rents from tenants. The principles of law and equity supplement the bill unless they are displaced a particular provision of the bill.

¹⁷ *DeSilva*, 42 So. 3d at 288 (citing Fla. R. Civ. P. 1.610(a)(1)-(2) (emphasis added)).

¹⁸ *Id.* (citing Fla. R. Civ. P. 1.610(a)(1)(A)).

¹⁹ *Id.*

²⁰ *Turtle Lake Associates, Ltd. v. Third Financial Servs., Inc.*, 518 So. 2d 959, 961-62 (Fla. 1st DCA 1988).

²¹ *See Id.*

²² *Id.*

²³ Fla. R. App. P. 9.130(3)(D).

²⁴ *Barredo v. Skyfrieght*, 430 So. 2d 513, 514 (Fla. 3d DCA 1983).

²⁵ *Nat’l Partnership Inv. Corp. v. Nat’l Housing Development Corp.*, 153 F.3d 1289, 1291 (11th Cir. 1998).

General Purposes and Procedure for Appointment of Receiver

The bill allows a court to appoint a receiver before a judgment on the property has been entered to protect the interests of a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property (or its revenue-producing potential) (1) is being subjected to or is in danger of waste, loss, substantial diminution in value, dissipation, or impairment, or (2) is or is about to be the subject of a voidable transaction (most commonly due to fraud).²⁶ If a judgement has been entered, the bill authorizes a court to appoint a receiver to enforce the judgment or to protect the real property during the pendency of an appeal of the judgment.

The provision for post-judgment appointment expands the common law, as courts have noted that the appointment of a receiver after entry of a judgment generally serves “no good purpose,” and should happen only “where it appears that to protect the interests of all parties the decree of sale under foreclosure is to be postponed until the termination of other litigation ... and where the terms of the mortgage being foreclosed specifically provide for the appointment of a receiver by the court, the complainant is entitled to the appointment of such receiver pending the execution of the final decree.”²⁷ The bill is consistent with the common law’s allowance of the appointment of a receiver post-judgment to protect the interest of parties, but additionally allows the court to appoint a receiver post-judgment to carry the judgment into effect.

Appointment of Receivers in Connection with Foreclosures

More specifically, the bill allows a court to appoint a receiver in connection with a mortgage foreclosure or enforcement if:

- Appointment is necessary to avoid waste, loss, diminution in value, transfer, dissipation, or impairment of the subject property,
- The mortgagor agreed to the appointment of a receiver upon default,
- The owner agreed to the appointment of a receiver after default,
- The subject property and other collateral held by the mortgagee are not valuable enough to pay the secured obligation,
- In the case of a rental property, the owner fails to turn over collected rents or mortgage proceeds, or
- The holder of a subordinate lien obtains a receiver for the property.

Court Authority to Stay Proceedings over Receivership Property

The bill authorizes a court, after notice and hearing, to stay all proceedings to obtain possession or control over the receivership property or to enforce a lien against the property; the court may enjoin actions against the subject property. The court may condition the stay on the payment of a bond by the party requesting the stay. The court’s order to stay proceedings, however, does not stay a mortgage enforcement or foreclosure, a criminal proceeding, or an action by a governmental unit enacting its regulatory power or tax authority.

²⁶ “A fraudulent transfer of property is voidable at the instance of a creditor.” *Smith v. Effective Teleserives, Inc.*, 133 So. 3d 1048, 1052 (Fla. 4th DCA 2014); *see also* s. 726.109(1), F.S.

²⁷ *U.S. Bank Nat. Ass’n v. Cramer*, 113 So. 3d 1020, 1023 (Fla. 2d DCA 2013).

Obligation to Turn Property over to Receiver

Once a receiver is appointed, the bill requires a person owing debt on receivership property to pay the debt or turn over the subject property to the receiver on the receiver's demand. If the debtor has notice that a receiver has been appointed, the person does not satisfy the debt by paying the owner. If a creditor has possession of the subject property, the creditor, rather than the receiver, may retain possession of the subject property until the court orders adequate protection of the creditor's lien. A court may enter sanctions for civil contempt against a party that fails to turn over property to the receiver.

Qualifications for Receivers

The bill describes the necessary qualifications for a receiver by listing criteria that disqualifies a person from serving as a receiver. As a result, the qualifications under the bill are more stringent than those described in the common law of equitable receiverships. Under the bill, a person may not be a receiver if he or she is an "affiliate" of a party to the receivership action. An affiliate is defined as a companion, family member, a person who lives in the same residence as the party, or regarding a corporation or other non-individual entity, someone who controls the entity or is a fiduciary of the entity. Additionally, a person may not be a receiver if the person has a financial interest adverse to a party or has a financial interest in the outcome of the action, or has an equity interest in a party.

Powers and Duties of Receivers

The bill authorizes a receiver to manage receivership property. If the receivership property is a business, the receiver is authorized to operate the business. A receiver may assert rights of the property owner. With court approval, the receiver may incur debt to benefit the receivership property and make improvements to the property. The receiver may, with court approval, engage with and pay professionals (such as attorneys, appraisers, auctioneers, or brokers) to assist in the administration of the receivership.

Transfer of Receivership Property

Before a judgment on the property is entered, the receiver may, with court approval, sell, lease, exchange, or transfer receivership property "other than in the ordinary course of business," if the property owner expressly consents to the receiver's proposed transfer or fails to object to the proposed transfer after receiving notice. After a judgment is entered, the receiver, with court approval, may transfer property to carry the judgement into effect or to preserve the property during the pendency of an appeal of the judgment.

The court may order that these pre- and post-judgment transfers of property are free and clear of liens on the property at the time of the transfer. If the court enters such an order, the liens that were previously on the property then attach to the proceeds of the transfer of the property. This transfer may occur in an open-market sale other than a public auction, and a creditor holding lien on the property may purchase the property, with the purchase price offset by the amount secured by the lien.

This provision allowing property transfers constitutes an expansion of the common law rule: “Although there may be instances in which the parties to a foreclosure could agree that a sale by receiver would be appropriate, a sale by a receiver is ordinarily improper and, even if authorized, should be carefully watched by the court.”²⁸

Receiver Authority Regarding Executory Contracts

The bill allows a receiver, with court approval, to accept or reject executory contracts of the owner. This essentially codifies the common law rule: “[G]enerally, a receiver is not obligated to carry out the executory contracts of the owner of the estate being administered unless he elects to be bound thereby.”²⁹ Executory contracts are contracts where each party has remaining unperformed obligations, including apartment leases and business real estate or equipment leases.

If the receiver does not request court approval to adopt or reject the owner’s executory contract within a reasonable time after being appointed, the receiver is deemed to have rejected the contract. A receiver’s performance of an executory contract before court approval does not constitute an adoption of the executory contract. If a receiver rejects an executory contract, any right to possesses property pursuant to that contract is terminated.

If the receiver rejects an executory contract for sale of the receivership property that is real property in possession of the purchaser, a receiver’s termination of the executory contract constitutes a termination of the contract and the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid. Alternatively, the purchaser may retain its right to possession of the property and continue to perform all obligations under the executory contract, offsetting any damages caused by the owner’s nonperformance.

If the executory contract in question is an unexpired lease on real property for which the owner is landlord, the receiver may not reject this contract if:

- The property is a tenant’s primary residence,
- The receiver was appointed at the request of someone other than the mortgagee (i.e. the lender), or
- The receiver was appointed at the request of the mortgagee/lender, and
 - The lease is superior to the lien of the mortgage,
 - The tenant has an enforceable agreement with the mortgagee or holder of a senior lien requiring that the tenant’s occupancy will not be disturbed as long as the tenant performs its obligations under the lease,
 - The mortgagee consented to the lease, or
 - The terms of the lease were reasonable and the tenant had no actual or constructive knowledge that the lease violated the mortgage.

²⁸ *MB Plaza, LLC v. Wells Fargo Bank, Nat. Ass’n*, 72 So. 3d 205, 207 n.1 (Fla. 2d DCA 2011).

²⁹ *Real Estate Marketers, Inc. v. Wheeler*, 298 So. 2d 481, 483 (Fla. 1st DCA 1974).

Effect of Enforcement by Mortgagee

If a mortgagee requests appointment of a receiver to enforce a secured obligation, the appointment does not make the mortgagee a possessor of the receivership property, does not make the mortgagee an agent of the owner, make the secured obligation unenforceable, or limit any right available to the mortgagee with respect to the secured obligation.

Receiver Liability and Reporting Requirements

The bill provides that, with approval from the court that appointed the receiver, a receiver may be sued personally for an act or omission in administering receivership property. The court may require the receiver to file reports describing the receiver's activities and including the receipts and disbursements, including payments made to professionals and fees and expenses of the receiver. After the receiver's services are complete, the receiver must file a final report describing the receiver's activities, listing the receivership property and any property received during the receivership, payments to professionals, listing distributions made or proposed to be made to creditors, and requesting the approval of fees. After court approves the receiver's final report and the receiver distributes all receivership property, the receiver is discharged.

Notice of Appointment of Receiver and Claims against and Distribution of Property

Upon appointment, the receiver must give notice to creditors of the owner of receivership property either by mail or by publication as directed by the appointing court. The notice must specify the dates by which creditors holding claims against the owner of the receivership property must submit claims to the receiver; these dates must be at least 90 days after notice of appointment of receivership. Failure to submit claims to the receiver can bar a creditor's entitlement to a distribution from the receivership. The bill describes facial requirements for a claim submitted by the creditor. The receiver may object to a creditor's claim, and the court may allow or disallow the claim based on Florida law governing creditor claims.

The bill allows a court to appoint a receiver without notice to the adverse party if (1) it appears that immediate injury, waste, or diminution in value to the subject real estate will occur and (2) the attorney for the party moving for the appointment of a receiver certifies in writing that all efforts have been made to notify all adverse parties, or the reasons why such notice should not be required. The bill also requires the court's order appointing a receiver to define the injury and state why it may be irreparable. The court must also explain why the order was granted without providing notice to adverse parties. This provision mirrors almost verbatim the notice exception in Florida Rule of Civil Procedure 1.610(a)(1).³⁰

Removal of Receiver and Termination of Receivership

The appointing court may remove a receiver for cause and shall replace a receiver that is removed or that dies or resigns. The appointing court may discharge a receiver if the court finds that the appointment of the receiver was improvident, the circumstances no longer warrant a receiver, or the appointment of the receiver was sought in bad faith. If the appointment was

³⁰ *DeSilva*, 42 So. 3d at 288.

sought in bad faith, the court may assess against the person who sought the appointment, the fees of the receivership and the actual damages caused by the appointment.

Bonding Requirement

The bill requires that the party moving for appointment of a receiver give bond in an amount the court deems proper before an order or injunction is entered. The bond shall be conditioned for the payment of costs and damages sustained by the adverse party if the order is improperly entered. This provision effectively codifies a common law rule.³¹

Distribution of Receivership Property

The distribution of receivership property to a creditor with a perfected lien must be made in accordance with the creditor's priority based on Florida law. The distribution to a creditor with an unsecured claim must be made as directed by the court. Therefore, the common law rule for preference after appointment of a receiver remains: "Once property is placed under the control of the court through appointment of a receiver, no creditor may obtain preference by any lien rendered subsequent thereto even if the suit under which the judgment lien is acquired was commenced prior to the date of the order appointing the receiver."³² A receiver appointed by the court has the status of a "lien creditor" as defined in s. 679.1021, F.S., (the Uniform Commercial Code), and the receiver's interest therefore takes priority over certain other security interests in the receivership property.³³

Miscellaneous Provisions

A party adversely affected by an injunction or order appointing receiver may move to dissolve or modify the order at any time, and the court shall hear the motion within 5 days after the movant applies for hearing on the motion.

The bill does not apply to actions in which a state agency or officer is expressly authorized by statute to seek or obtain the appointment of a receiver. The bill therefore does not affect the receivership proceedings outlined in, e.g. s. 400.966, F.S. (intermediate care facilities for the developmentally disabled); s. 409.994, F.S. (Community-based care agencies); s. 394.903 (crisis stabilization unit or residential treatment facility); s. 429.22, F.S. (assisted living facilities).

The bill confers to the court appointing the receiver the exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property. This effectively codifies the common law rule.³⁴

The bill allows the court to require the party seeking appointment of a receiver to give security to cover any damages, reasonable attorneys' fees, and costs incurred if the court later determines that the appointment of a receiver was not justified. The court will remit the security to the party

³¹ See *Turtle Lake Associates, Ltd. v. Third Financial Servs., Inc.*, 518 So. 2d 959, 961-62 (Fla. 1st DCA 1988).

³² *Sunland Mortg. Corp. v. Lewis*, 515 So. 2d 1337, 1339 (Fla. 5th DCA 1987).

³³ See ss. 679.334(4), 679.703, 679.704, and 679.705, F.S.

³⁴ See, e.g., *Knickerbocker Trust Co. v. Green Bay Phosphate Co.*, 62 Fla. 519, 524 (Fla. 1911) ("A receiver is the agent of the court").

who paid it if the court determines that the appointment of receiver was justified. This generally codifies the common law rule, while defining a more specific procedure.³⁵

The bill allows the appointing court to award the receiver reasonable and necessary fees, paid from the receivership property. Alternatively, the court may order the fees be paid by a person that requested the appointment of the receiver or a person whose conduct justified the appointment of a receiver.

The bill allows a court to appoint a receiver that was appointed in another state as an ancillary receiver to property located in Florida. This provision is consistent with the common law rule: “Applying principles of comity, Florida courts generally recognize a foreign receiver’s standing to bring an action in this state.”³⁶ Under certain circumstances, a foreign receiver may be listed as an ancillary receiver for property located in Florida.³⁷

The bill takes effect on July 1, 2020 and applies only to receiverships for which the receiver is appointed on or after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁵ See *Turtle Lake*, 518 So. 2d at 961-62 (Fla. 1st DCA 1988).

³⁶ *Farley v. Farley*, 790 So. 2d 574, 575 (Fla. 4th DCA 2001).

³⁷ See *Id.* at 574.

B. Private Sector Impact:

The bill may minimize the risk of the waste or dissipation of property that is the subject of foreclosure proceedings, which will provide protection to creditors.

C. Government Sector Impact:

The bill adds procedures for the appointment of a receiver and may increase judicial labor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 714.01, 714.02, 714.03, 714.04, 714.05, 714.06, 714.07, 714.08, 714.09, 714.10, 714.11, 714.12, 714.13, 714.14, 714.15, 714.16, 714.17, 714.18, 714.19, 714.20, 714.21, 714.22, 714.23, 714.24, 714.25, 714.26, 714.27, 714.28.

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 Berman

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1 A bill to be entitled
 2 An act relating to the Uniform Commercial Real Estate
 3 Receivership Act; creating chapter 714, F.S., relating
 4 to the Uniform Commercial Real Estate Receivership
 5 Act; providing a short title; defining terms;
 6 prohibiting a court from issuing certain orders unless
 7 certain requirements are met; providing requirements
 8 for certain court orders; authorizing certain parties
 9 to move to dissolve or modify certain orders;
 10 requiring that such motions be heard within a
 11 specified timeframe; providing construction and
 12 applicability; specifying that a court has exclusive
 13 jurisdiction to direct receivers and determine
 14 controversies under certain circumstances; providing
 15 requirements and authorizations relating to the
 16 appointment of a receiver; specifying when a person is
 17 or is not disqualified from appointment as a receiver;
 18 authorizing certain persons to nominate someone to
 19 serve as a receiver; specifying the court is not bound
 20 by such nomination; requiring a receiver to post a
 21 bond with the court which meets certain requirements;
 22 providing an exception; prohibiting a claim against a
 23 receiver's bond or alternative security from being
 24 made after a certain time; providing that an appointed
 25 receiver has certain statuses of a lien creditor;
 26 providing that certain property is subject to
 27 specified security agreements; providing requirements
 28 relating to the collection and turnover of
 29 receivership property; providing for powers and duties

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30 of a receiver; authorizing the court to expand,
 31 modify, or limit such powers and duties; providing for
 32 duties of an owner; authorizing a court to take
 33 certain actions if a person knowingly fails to perform
 34 a duty; authorizing a court to take certain actions
 35 relating to stays and injunctions; authorizing certain
 36 persons to apply for relief from a stay or injunction;
 37 specifying when an order does not operate as a stay or
 38 injunction; authorizing receivers to engage and
 39 compensate certain professionals under certain
 40 circumstances; requiring certain persons to file an
 41 itemized statement with the court; requiring a
 42 receiver to pay an amount approved by the court;
 43 defining the term "good faith"; authorizing a receiver
 44 to use or transfer receivership property other than in
 45 the ordinary course of business under certain
 46 circumstances; providing for the service of notice to
 47 lien holders who are not parties to the action;
 48 defining the term "timeshare interest"; authorizing a
 49 receiver to adopt or reject an executory contract of
 50 the owner relating to receivership property under
 51 certain circumstances; requiring that a claim of
 52 damages for rejection of a contract be submitted
 53 within a specified timeframe; authorizing a purchaser
 54 to take certain actions if a receiver rejects an
 55 executory contract under certain circumstances;
 56 prohibiting a receiver from rejecting unexpired leases
 57 of certain property under certain circumstances;
 58 providing for defenses and immunities of a receiver;

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59 providing requirements for interim reports filed by a
 60 receiver; providing requirements relating to notices
 61 of appointment; authorizing the court to enter certain
 62 orders if the court concludes that receivership
 63 property is likely to be insufficient to satisfy
 64 certain claims; providing requirements for certain
 65 distributions of receivership property; authorizing a
 66 court to award fees and expenses; authorizing a court
 67 to order certain persons to pay fees and expenses;
 68 providing for the removal and replacement of a
 69 receiver and the termination of a court's
 70 administration of the receivership property under
 71 certain circumstances; requiring a receiver to file a
 72 final report containing certain information upon
 73 completion of the receiver's duties; specifying that a
 74 receiver is discharged if certain requirements are
 75 met; authorizing a court to appoint ancillary
 76 receivers under certain circumstances; providing for
 77 rights, powers, and duties of an ancillary receiver;
 78 specifying that certain requests, appointments, and
 79 applications by a mortgagee do not have certain
 80 effects; providing construction and applicability;
 81 providing an effective date.

82
 83 Be It Enacted by the Legislature of the State of Florida:

84
 85 Section 1. Chapter 714, Florida Statutes, consisting of
 86 sections 714.01-714.28, is created to read:

87 CHAPTER 714

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88 UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT
 89 714.01 Short title.—This chapter may be cited as the
 90 Uniform Commercial Real Estate Receivership Act.
 91 714.02 Definitions.—For the purposes of this chapter, the
 92 term:
 93 (1) "Affiliate" means:
 94 (a) With respect to an individual:
 95 1. A companion of the individual;
 96 2. A lineal ancestor or descendent, whether by blood or
 97 adoption, of:
 98 a. The individual; or
 99 b. A companion of the individual;
 100 3. A companion of an ancestor or descendent as described in
 101 subparagraph 2.;
 102 4. A sibling, aunt, uncle, great aunt, great uncle, first
 103 cousin, niece, nephew, grandniece, or grandnephew of the
 104 individual, whether related by the whole or the half blood or
 105 adoption, or a companion of any of them; or
 106 5. Any other person occupying the residence of the
 107 individual; and
 108 (b) With respect to a person other than an individual:
 109 1. Another person who directly or indirectly controls, is
 110 controlled by, or is under common control with the person;
 111 2. An officer, director, manager, member, partner,
 112 employee, or trustee or other fiduciary of the person; or
 113 3. A companion of an individual or an individual occupying
 114 the residence of an individual.
 115 (2) "Companion" means:
 116 (a) The spouse of an individual;

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- 117 (b) The registered domestic partner of an individual; or
 118 (c) Another individual in a civil union with an individual.
 119 (3) "Court" means the court of general equity jurisdiction
 120 in this state.
 121 (4) "Executory contract" means a contract, including a
 122 lease, under which each party has an unperformed obligation and
 123 the failure of a party to complete performance would constitute
 124 a material breach.
 125 (5) "Governmental unit" means an office, department,
 126 division, bureau, board, commission, or other agency of this
 127 state or a subdivision of this state.
 128 (6) "Lien" means an interest in property which secures
 129 payment or performance of an obligation.
 130 (7) "Mortgage" means a record, however denominated, that
 131 creates or provides for a consensual lien on real property or
 132 rents, even if the record also creates or provides for a lien on
 133 personal property.
 134 (8) "Mortgagee" means a person entitled to enforce an
 135 obligation secured by a mortgage.
 136 (9) "Mortgagor" means a person who grants a mortgage or a
 137 successor in ownership of the real property described in the
 138 mortgage.
 139 (10) "Owner" means the person for whose property a receiver
 140 is appointed.
 141 (11) "Person" means an individual, estate, business or
 142 nonprofit entity, public corporation, government or governmental
 143 subdivision, agency, or instrumentality or other legal entity.
 144 (12) "Proceeds" means any of the following property:
 145 (a) Whatever is acquired on the sale, lease, license,

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- 146 exchange, or other disposition of receivership property.
 147 (b) Whatever is collected on, or distributed on account of,
 148 receivership property.
 149 (c) Rights arising out of receivership property.
 150 (d) To the extent of the value of receivership property,
 151 claims arising out of the loss, nonconformity, or interference
 152 with the use of, defects or infringement of rights in, or damage
 153 to the property.
 154 (e) To the extent of the value of receivership property and
 155 to the extent payable to the owner or mortgagee, insurance
 156 payable by reason of the loss or nonconformity of, defects or
 157 infringement of rights in, or damage to the property.
 158 (13) "Property" means all of a person's right, title, and
 159 interest, both legal and equitable, in real and personal
 160 property, tangible and intangible, wherever located and however
 161 acquired. The term includes proceeds, products, offspring,
 162 rents, or profits of or from the property.
 163 (14) "Receiver" means a person appointed by the court as
 164 the court's agent, and subject to the court's direction, to take
 165 possession of, manage, and, if authorized by this chapter or
 166 court order, transfer, sell, lease, license, exchange, collect,
 167 or otherwise dispose of receivership property.
 168 (15) "Receivership" means a proceeding in which a receiver
 169 is appointed.
 170 (16) "Receivership property" means the property of an owner
 171 which is described in the order appointing a receiver or a
 172 subsequent order. The term includes any proceeds, products,
 173 offspring, rents, or profits of or from the property.
 174 (17) "Record," if used as a noun, means information that is

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175 inscribed on a tangible medium or that is stored on an
 176 electronic or other medium and is retrievable in perceivable
 177 form.

178 (18) "Rents" means:
 179 (a) Sums payable for the right to possess or occupy, or for
 180 the actual possession or occupation of, real property of another
 181 person;
 182 (b) Sums payable to a mortgagor under a policy of rental-
 183 interruption insurance covering real property;
 184 (c) Claims arising out of a default in the payment of sums
 185 payable for the right to possess or occupy real property of
 186 another person;
 187 (d) Sums payable to terminate an agreement to possess or
 188 occupy real property of another person;
 189 (e) Sums payable to a mortgagor for payment or
 190 reimbursement of expenses incurred in owning, operating, and
 191 maintaining real property or constructing or installing
 192 improvements on real property; or
 193 (f) Other sums payable under an agreement relating to the
 194 real property of another person which constitute rents under the
 195 laws of this state other than this act.

196 (19) "Secured obligation" means an obligation the payment
 197 or performance of which is secured by a security agreement.
 198 (20) "Security agreement" means an agreement that creates
 199 or provides for a lien.
 200 (21) "Sign" means, with present intent to authenticate or
 201 adopt a record:
 202 (a) To execute or adopt a tangible symbol; or
 203 (b) To attach to or logically associate with the record an

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204 electronic sound, symbol, or process.
 205 (22) "State" means a state of the United States, the
 206 District of Columbia, Puerto Rico, the United States Virgin
 207 Islands, or any territory or insular possession subject to the
 208 jurisdiction of the United States.
 209 714.03 Notice and opportunity for hearing.-
 210 (1) Except as otherwise provided in subsection (2), the
 211 court may issue an order under this chapter only after notice
 212 and opportunity for a hearing appropriate under the
 213 circumstances.
 214 (2) The court may issue an order under this chapter without
 215 written or oral notice to the adverse party only if:
 216 (a) It appears from the specific facts shown by affidavit
 217 or verified pleading or motion that immediate and irreparable
 218 injury, loss, or damage will result to the movant or that waste,
 219 dissipation, impairment, or substantial diminution in value will
 220 result to the subject real estate before any adverse party can
 221 be heard in opposition; and
 222 (b) The movant's attorney certifies in writing all efforts
 223 that have been made to give notice to all known adverse parties,
 224 or the reasons why such notice should not be required.
 225 (3) Only an affidavit, a declaration or a verified
 226 pleading, or a motion may be used to support the application for
 227 the appointment of a receiver, unless the adverse party appears
 228 at the hearing or has received reasonable prior notice of the
 229 hearing. Every order appointing a receiver without notice must
 230 be endorsed with the date and hour of entry, must be filed
 231 forthwith in the clerk's office, must define the injury, must
 232 state findings by the court as to why the injury may be

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233 irreparable, and must give the reasons why the order was granted
 234 without notice if notice was not given. The order appointing a
 235 receiver shall remain in effect until the further order of the
 236 court.

237 (4) An order appointing a receiver or providing for
 238 injunctive relief may not be entered unless a bond is given by
 239 the movant in an amount the court deems proper, conditioned for
 240 the payment of costs and damages sustained by the adverse party
 241 if the order is improperly entered. When any order appointing a
 242 receiver or providing for injunctive relief is issued on the
 243 pleading of a municipality or the state, or any officer, agency,
 244 or political subdivision thereof, the court may require or
 245 dispense with a bond, with or without surety, and conditioned in
 246 the same manner, having due regard for the public interest.

247 (5) If the court grants injunctive relief, the injunction
 248 must specify the reasons for entry, must describe in reasonable
 249 detail the act or acts restrained without reference to a
 250 pleading or another document, and must be binding on the parties
 251 to the action; on the parties' officers, agents, servants,
 252 employees, and attorneys; and on any person in active concert or
 253 participation with the parties who receives actual notice of the
 254 injunction.

255 (6) A party adversely affected by an order appointing
 256 receiver or for injunctive relief may move to dissolve or modify
 257 the order at any time. If a party moves to dissolve or modify,
 258 the motion shall be heard within 5 days after the movant applies
 259 for a hearing on the motion.

260 (7) This chapter does not displace any existing rule of
 261 procedural or judicial administration of this state governing

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262 service or notice, including, without limitation, Rule 1.070,
 263 Florida Rules of Civil Procedure and Rule 2.525, Florida Rules
 264 of Judicial Administration, which shall remain in full force and
 265 effect.

266 714.04 Scope; exclusions.-

267 (1) This chapter applies to a receivership initiated in a
 268 court of this state for an interest in real property and any
 269 personal property related to or used in operating the real
 270 property.

271 (2) This chapter does not apply to:

272 (a) Actions in which a state agency or officer is expressly
 273 authorized by statute to seek or obtain the appointment of a
 274 receiver;

275 (b) Actions authorized by or commenced under federal law;

276 (c) Residential real property of an individual owner which
 277 is occupied by the owner, the spouse of the owner, or a child or
 278 other dependent of the owner;

279 (d) Property of an individual exempt from forced sale,
 280 execution, or seizure under the laws of this state; or

281 (e) Personal property of an individual which is used
 282 primarily for personal, family, or household purposes.

283 (3) This chapter does not limit the authority of a court to
 284 appoint a receiver under the laws of this state other than this
 285 chapter.

286 (4) This chapter does not limit an individual's homestead
 287 and exemption rights under the laws of this state or federal
 288 law.

289 (5) Unless displaced by a particular provision of this
 290 chapter, the principles of law and equity, including the law

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 291 relative to capacity to contract, principal and agent, estoppel,
 292 laches, fraud, misrepresentation, duress, coercion, mistake,
 293 bankruptcy, or other validating or invalidating cause,
 294 supplement this chapter.

295 714.05 Power of the court.—The court that appoints a
 296 receiver under this chapter has exclusive jurisdiction to direct
 297 the receiver and determine any controversy related to the
 298 receivership or receivership property.

299 714.06 Appointment of receiver.—

300 (1) The court may appoint a receiver:

301 (a) Before judgment, to protect a party that demonstrates
 302 an apparent right, title, or interest in real property that is
 303 the subject of the action, if the property or its revenue-
 304 producing potential:

305 1. Is being subjected to or is in danger of waste, loss,
 306 substantial diminution in value, dissipation, or impairment; or

307 2. Has been or is about to be the subject of a voidable
 308 transaction;

309 (b) After judgment:

310 1. To carry the judgment into effect; or

311 2. To preserve nonexempt real property pending appeal or
 312 when an execution has been returned unsatisfied and the owner
 313 refuses to apply the property in satisfaction of the judgment;

314 (c) In an action in which a receiver for real property may
 315 be appointed on equitable grounds, subject to the requirements
 316 of paragraphs (a) and (b); or

317 (d) During the time allowed for redemption, to preserve
 318 real property sold in an execution or foreclosure sale and
 319 secure its rents to the person entitled to the rents.

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 320 (2) In connection with the foreclosure or other enforcement
 321 of a mortgage, the court shall consider the following facts and
 322 circumstances, together with any other relevant facts, in
 323 deciding whether to appoint a receiver for the mortgaged
 324 property:

325 (a) Appointment is necessary to protect the property from
 326 waste, loss, substantial diminution in value, transfer,
 327 dissipation, or impairment;

328 (b) The mortgagor agreed in a signed record to the
 329 appointment of a receiver on default;

330 (c) The owner agreed, after default and in a signed record,
 331 to appointment of a receiver;

332 (d) The property and any other collateral held by the
 333 mortgagee are not sufficient to satisfy the secured obligation;

334 (e) The owner fails to turn over to the mortgagee proceeds
 335 or rents the mortgagee was entitled to collect; or

336 (f) The holder of a subordinate lien obtains appointment of
 337 a receiver for the property.

338 (3) The court may condition the appointment of a receiver
 339 without prior notice or hearing under s. 714.03 on the giving of
 340 security by the person seeking the appointment for the payment
 341 of damages, reasonable attorney fees, and costs incurred or
 342 suffered by any person if the court later concludes that the
 343 appointment was not justified. If the court later concludes that
 344 the appointment was justified and the order of appointment of
 345 the receiver becomes final and no longer subject to appeal, the
 346 court shall release the security.

347 714.07 Disqualification from appointment as receiver;
 348 disclosure of interest.—

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349 (1) The court may not appoint a person as receiver unless
 350 the person submits to the court a statement under penalty of
 351 perjury that the person is not disqualified.
 352 (2) Except as otherwise provided in subsection (3), a
 353 person is disqualified from appointment as receiver if the
 354 person:
 355 (a) Is an affiliate of a party;
 356 (b) Has an interest materially adverse to an interest of a
 357 party;
 358 (c) Has a material financial interest in the outcome of the
 359 action, other than compensation the court may allow the
 360 receiver;
 361 (d) Has a debtor-creditor relationship with a party; or
 362 (e) Holds an equity interest in a party, other than a
 363 noncontrolling interest in a publicly traded company.
 364 (3) A person is not disqualified from appointment as
 365 receiver solely because the person:
 366 (a) Was appointed receiver or is owed compensation in an
 367 unrelated matter involving a party or was engaged by a party in
 368 a matter unrelated to the receivership;
 369 (b) Is an individual obligated to a party on a debt that is
 370 not in default and was incurred primarily for personal, family,
 371 or household purposes; or
 372 (c) Maintains with a party a deposit account, as defined in
 373 s. 679.1021.
 374 (4) A person seeking appointment of a receiver may nominate
 375 a person to serve as receiver, but the court is not bound by the
 376 nomination.
 377 714.08 Receiver's bond; alternative security.-

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378 (1) Except as otherwise provided in subsection (2), a
 379 receiver shall post with the court a bond that:
 380 (a) Is conditioned on the faithful discharge of the
 381 receiver's duties;
 382 (b) Has one or more sureties approved by the court;
 383 (c) Is in an amount the court specifies; and
 384 (d) Is effective as of the date of the receiver's
 385 appointment.
 386 (2) The court may approve the receiver posting an
 387 alternative security with the court, such as a letter of credit
 388 or deposit of funds. The receiver may not use receivership
 389 property as alternative security. Interest that accrues on
 390 deposited funds must be paid to the receiver upon the receiver's
 391 discharge.
 392 (3) The court may authorize a receiver to act before the
 393 receiver posts the bond or alternative security required by this
 394 section if the action is necessary to prevent or mitigate
 395 immediate injury, loss, or damage to the party who sought the
 396 appointment of the receiver, or immediate waste, dissipation,
 397 impairment, or substantial diminution in value to the
 398 receivership property.
 399 (4) A claim against a receiver's bond or alternative
 400 security must be made not later than 1 year after the date the
 401 receiver is discharged.
 402 714.09 Status of receiver as lien creditor.-Upon
 403 appointment of a receiver, the receiver has the status of a lien
 404 creditor under:
 405 (1) Chapter 679 as to receivership property or fixtures;
 406 and

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407 (2) Chapter 695 as to receivership property that is real
 408 property.
 409 714.10 Security agreement covering after-acquired
 410 property.—Except as otherwise provided by law other than this
 411 chapter, property that a receiver or an owner acquires after
 412 appointment of the receiver is subject to a security agreement
 413 entered into before the appointment to the same extent as if the
 414 court had not appointed the receiver.
 415 714.11 Collection and turnover of receivership property.—
 416 (1) Unless the court orders otherwise, on demand by a
 417 receiver:
 418 (a) A person that owes a debt that is receivership property
 419 and is matured or payable on demand or on order shall pay the
 420 debt to or on the order of the receiver, except to the extent
 421 the debt is subject to setoff or recoupment; and
 422 (b) Subject to subsection (3), a person that has
 423 possession, custody, or control of receivership property shall
 424 turn the property over to the receiver.
 425 (2) A person that has notice of the appointment of a
 426 receiver and owes a debt that is receivership property may not
 427 satisfy the debt by payment to the owner.
 428 (3) If a creditor has possession, custody, or control of
 429 receivership property and the validity, perfection, or priority
 430 of the creditor's lien on the property depends on the creditor's
 431 possession, custody, or control, the creditor may retain
 432 possession, custody, or control until the court orders adequate
 433 protection of the creditor's lien.
 434 (4) Unless a bona fide dispute exists about a receiver's
 435 right to possession, custody, or control of receivership

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436 property, the court may sanction as civil contempt a person's
 437 failure to turn the property over when required by this section.
 438 714.12 Powers and duties of receiver.—
 439 (1) Except as limited by court order or the laws of this
 440 state other than this chapter, a receiver may:
 441 (a) Collect, control, manage, conserve, and protect
 442 receivership property;
 443 (b) Operate a business constituting receivership property,
 444 including preservation, use, sale, lease, license, exchange,
 445 collection, or disposition of the property in the ordinary
 446 course of business;
 447 (c) In the ordinary course of business, incur unsecured
 448 debt and pay expenses incidental to the receiver's preservation,
 449 use, sale, lease, license, exchange, collection, or disposition
 450 of receivership property;
 451 (d) Assert a right, claim, cause of action, or defense of
 452 the owner which relates to receivership property;
 453 (e) Seek and obtain instruction from the court concerning
 454 receivership property, exercise of the receiver's powers, and
 455 performance of the receiver's duties;
 456 (f) Upon subpoena, compel a person to submit to examination
 457 under oath, or to produce and permit inspection and copying of
 458 designated records or tangible things, with respect to
 459 receivership property or any other matter that may affect
 460 administration of the receivership;
 461 (g) Engage a professional pursuant to s. 714.15;
 462 (h) Apply to a court of another state for appointment as
 463 ancillary receiver with respect to receivership property located
 464 in that state; and

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- 465 (i) Exercise any power conferred by court order, this
 466 chapter, or the laws of this state other than this chapter.
 467 (2) With court approval, a receiver may:
 468 (a) Incur debt for the use or benefit of receivership
 469 property other than in the ordinary course of business;
 470 (b) Make improvements to receivership property;
 471 (c) Use or transfer receivership property other than in the
 472 ordinary course of business pursuant to s. 714.16;
 473 (d) Adopt or reject an executory contract of the owner
 474 pursuant to s. 714.17;
 475 (e) Pay compensation to the receiver pursuant to s. 714.21,
 476 and to each professional engaged by the receiver under s.
 477 714.15;
 478 (f) Recommend allowance or disallowance of a claim of a
 479 creditor pursuant to s. 714.20; and
 480 (g) Make a distribution of receivership property pursuant
 481 to s. 714.20.
 482 (3) A receiver shall:
 483 (a) Prepare and retain appropriate business records,
 484 including a record of each receipt, disbursement, and
 485 disposition of receivership property;
 486 (b) Account for receivership property, including the
 487 proceeds of a sale, lease, license, exchange, collection, or
 488 other disposition of the property;
 489 (c) File with the recording office of the county in which
 490 the real property is located a copy of the order appointing the
 491 receiver and, if a legal description of the real property is not
 492 included in the order, the legal description;
 493 (d) Disclose to the court any fact arising during the

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- 494 receivership which would disqualify the receiver under s.
 495 714.07; and
 496 (e) Perform any duty imposed by court order, this chapter,
 497 or the laws of this state other than this chapter.
 498 (4) The powers and duties of a receiver may be expanded,
 499 modified, or limited by court order.
 500 714.13 Duties of owner.—
 501 (1) An owner shall:
 502 (a) Assist and cooperate with the receiver in the
 503 administration of the receivership and the discharge of the
 504 receiver's duties;
 505 (b) Preserve and turn over to the receiver all receivership
 506 property in the owner's possession, custody, or control;
 507 (c) Identify all records and other information relating to
 508 the receivership property, including a password, authorization,
 509 or other information needed to obtain or maintain access to or
 510 control of the receivership property, and make available to the
 511 receiver the records and information in the owner's possession,
 512 custody, or control;
 513 (d) Upon subpoena, submit to examination under oath by the
 514 receiver concerning the acts, conduct, property, liabilities,
 515 and financial condition of the owner or any matter relating to
 516 the receivership property or the receivership; and
 517 (e) Perform any duty imposed by court order, this chapter,
 518 or the laws of this state other than this chapter.
 519 (2) If an owner is a person other than an individual, this
 520 section applies to each officer, director, manager, member,
 521 partner, trustee, or other person exercising or having the power
 522 to exercise control over the affairs of the owner.

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523 (3) If a person knowingly fails to perform a duty imposed
 524 by this section, the court may:
 525 (a) Award the receiver actual damages caused by the
 526 person's failure, reasonable attorney fees, and costs; and
 527 (b) Sanction the failure as civil contempt.
 528 714.14 Stay; injunction.-
 529 (1) Except as otherwise provided in subsection (4), after
 530 notice and a hearing, the court may enter an order providing for
 531 a stay, applicable to all persons, of any act, action, or
 532 proceeding:
 533 (a) To obtain possession of, exercise control over, or
 534 enforce a judgment against all or a portion of the receivership
 535 property as defined in the order creating the stay; and
 536 (b) To enforce a lien against all or a portion of the
 537 receivership property to the extent the lien secures a claim
 538 against the owner which arose before entry of the order. The
 539 court shall include in its order a specific description of the
 540 receivership property subject to the stay, and shall include the
 541 following language in the title of the order: "Order Staying
 542 Certain Actions to Enforce Claims against Receivership
 543 Property."
 544 (2) Except as otherwise provided in subsection (4), the
 545 court may enjoin an act, action, or proceeding against or
 546 relating to receivership property if the injunction is necessary
 547 to protect against misappropriation of, or waste relating
 548 directly to, the receivership property.
 549 (3) A person whose act, action, or proceeding is stayed or
 550 enjoined under this section may apply to the court for relief
 551 from the stay or injunction. The court, after a hearing on

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552 notice, may grant relief for cause shown.
 553 (4) An order under subsection (1) or subsection (2) does
 554 not operate as a stay or injunction of:
 555 (a) Any act, action, or proceeding to foreclose or
 556 otherwise enforce a mortgage by the person seeking appointment
 557 of the receiver;
 558 (b) Any act, action, or proceeding to perfect, or maintain
 559 or continue the perfection of, an interest in receivership
 560 property;
 561 (c) Commencement or continuation of a criminal proceeding;
 562 (d) Commencement or continuation of an action or
 563 proceeding, or enforcement of a judgment other than a money
 564 judgment, in an action or proceeding by a governmental unit to
 565 enforce its police or regulatory power; or
 566 (e) Establishment by a governmental unit of a tax liability
 567 against the receivership property or the owner of such
 568 receivership property, or an appeal of any such liability.
 569 (5) The court may void an act that violates a stay or
 570 injunction under this section.
 571 (6) The scope of the receivership property subject to the
 572 stay under subsection (1) may be modified upon request of the
 573 receiver or other person, after a hearing on notice.
 574 (7) In connection with the entry of an order under
 575 subsection (1) or subsection (2), the court shall determine
 576 whether an additional bond or alternative security will be
 577 required as a condition to entry of the stay or injunction and,
 578 if required, direct the party requesting the stay or injunction
 579 to post a bond or alternative security as a condition for the
 580 stay or injunction to become effective.

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581 714.15 Engagement and compensation of professional.-
 582 (1) With court approval, a receiver may engage an attorney,
 583 an accountant, an appraiser, an auctioneer, a broker, or another
 584 professional to assist the receiver in performing a duty or
 585 exercising a power of the receiver. The receiver shall disclose
 586 to the court:
 587 (a) The identity and qualifications of the professional;
 588 (b) The scope and nature of the proposed engagement;
 589 (c) Any potential conflict of interest; and
 590 (d) The proposed compensation.
 591 (2) A person is not disqualified from engagement under this
 592 section solely because of the person's engagement by,
 593 representation of, or other relationship with the receiver, a
 594 creditor, or a party. This chapter does not prevent the receiver
 595 from serving in the receivership as an attorney, an accountant,
 596 an auctioneer, or a broker when authorized by law.
 597 (3) A receiver or professional engaged under subsection (1)
 598 shall file with the court an itemized statement of the time
 599 spent, work performed, and billing rate of each person that
 600 performed the work and an itemized list of expenses. The
 601 receiver shall pay the amount approved by the court.
 602 714.16 Use or transfer of receivership property not in
 603 ordinary course of business.-
 604 (1) For the purposes of this section, the term "good faith"
 605 means honesty in fact and the observance of reasonable
 606 commercial standards of fair dealing.
 607 (2) Before judgment is entered with respect to the
 608 receivership property, with court approval after notice to all
 609 parties with an interest in the property, including all lien

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610 holders, and a hearing, a receiver may use or transfer by sale,
 611 lease, license, exchange, or other disposition receivership
 612 property other than in the ordinary course of business only if
 613 the owner of the property:
 614 (a) After the commencement of the action in which the
 615 receiver is appointed, expressly consents to the receiver's
 616 proposed use or transfer of the receivership property, and the
 617 receiver notes the property owner's express consent in the
 618 motion to approve the proposed use or transfer; or
 619 (b) Before or at the hearing on the receiver's motion to
 620 approve the use or transfer of the receivership property, fails
 621 to object thereto after the receiver in good faith has provided
 622 reasonable advance written notice to the property owner of the
 623 proposed use or transfer, and the receiver demonstrates in the
 624 motion that the proposed use or transfer is necessary to prevent
 625 waste, loss, substantial diminution in value, dissipation, or
 626 impairment of the property or its revenue-producing potential or
 627 to prevent a voidable transaction involving the property.
 628 Service of notice to lien holders who are not parties to the
 629 action must be made as provided in chapter 48 for service of
 630 original process. If service cannot be carried out in such
 631 manner, upon authorization by court order, the receiver may
 632 effect service of notice on the nonparty lien holder pursuant to
 633 chapter 49 or as otherwise ordered by the court.
 634 (3) After judgment is entered against the property owner
 635 and with court approval, a receiver may use or transfer
 636 receivership property other than in the ordinary course of
 637 business to carry the judgment into effect or to preserve
 638

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639 nonexempt real property pending appeal or when an execution has
 640 been returned unsatisfied and the owner refuses to apply the
 641 property in satisfaction of the judgment.

642 (4) The court may order that a transfer of receivership
 643 property under this section is free and clear of any liens on
 644 the property at the time of the transfer. In such case, any
 645 liens on the property, which were valid at the time of the
 646 transfer but extinguished by the transfer, attach to the
 647 proceeds of the transfer with the same validity, perfection, and
 648 priority the liens had on the property immediately before the
 649 transfer, even if the proceeds are not sufficient to satisfy all
 650 obligations secured by the liens.

651 (5) A transfer under subsection (3) may occur by means
 652 other than a public auction sale. A creditor holding a valid
 653 lien on the property to be transferred may purchase the property
 654 and offset against the purchase price part or all of the allowed
 655 amount secured by the lien if the creditor tenders funds
 656 sufficient to satisfy in full the reasonable expenses of
 657 transfer and the obligation secured by any senior lien
 658 extinguished by the transfer.

659 (6) A reversal or modification of an order approving a
 660 transfer under subsection (3) does not affect the validity of
 661 the transfer to a person that acquired the property in good
 662 faith or revive against the person any lien extinguished by the
 663 transfer, whether the person knew before the transfer of the
 664 request for reversal or modification, unless the court stayed
 665 the order before the transfer.

666 714.17 Executory contract.-

667 (1) For the purposes of this section, the term "timeshare

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668 interest" has the same meaning as in s. 721.05(36).

669 (2) Except as otherwise provided in subsection (8), with
 670 court approval, a receiver may adopt or reject an executory
 671 contract of the owner relating to receivership property. The
 672 court may condition the receiver's adoption and continued
 673 performance of the contract on terms appropriate under the
 674 circumstances. If the receiver does not request court approval
 675 to adopt or reject the contract within a reasonable time after
 676 the receiver's appointment, the receiver is deemed to have
 677 rejected the contract.

678 (3) A receiver's performance of an executory contract
 679 before court approval under subsection (2) of its adoption or
 680 rejection is not an adoption of the contract and does not
 681 preclude the receiver from seeking approval to reject the
 682 contract.

683 (4) A provision in an executory contract which requires or
 684 permits a forfeiture, modification, or termination of the
 685 contract because of the appointment of a receiver or the
 686 financial condition of the owner does not affect a receiver's
 687 power under subsection (2) to adopt the contract.

688 (5) A receiver's right to possess or use receivership
 689 property pursuant to an executory contract terminates on
 690 rejection of the contract under subsection (2). Rejection is a
 691 breach of the contract effective immediately before appointment
 692 of the receiver. A claim for damages for rejection of the
 693 contract must be submitted by the later of:

694 (a) The time set for submitting a claim in the
 695 receivership; or

696 (b) Thirty days after the court approves the rejection.

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697 (6) If at the time a receiver is appointed, the owner has
 698 the right to assign an executory contract relating to
 699 receivership property under the laws of this state other than
 700 this chapter, the receiver may assign the contract with court
 701 approval.

702 (7) If a receiver rejects an executory contract for the
 703 sale of receivership property that is real property in
 704 possession of the purchaser or a real-property timeshare
 705 interest pursuant to subsection (2), the purchaser may:

706 (a) Treat the rejection as a termination of the contract,
 707 and in that case the purchaser has a lien on the property for
 708 the recovery of any part of the purchase price the purchaser
 709 paid; or

710 (b) Retain the purchaser's right to possession under the
 711 contract. If the purchaser retains his or her right to
 712 possession pursuant to this paragraph, the purchaser must
 713 continue to perform all obligations arising under the contract
 714 and may offset any damages caused by nonperformance of an
 715 obligation of the owner after the date of the rejection, but the
 716 purchaser does not have a right or claim against other
 717 receivership property or the receiver on account of the damages.

718 (8) A receiver may not reject an unexpired lease of real
 719 property under which the owner is the landlord if:

720 (a) The tenant occupies the leased premises as the tenant's
 721 primary residence;

722 (b) The receiver was appointed at the request of a person
 723 other than a mortgagee; or

724 (c) The receiver was appointed at the request of a
 725 mortgagee and;

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726 1. The lease is superior to the lien of the mortgage;

727 2. The tenant has an enforceable agreement with the
 728 mortgagee or the holder of a senior lien under which the
 729 tenant's occupancy will not be disturbed as long as the tenant
 730 performs its obligations under the lease;

731 3. The mortgagee has consented to the lease, either in a
 732 signed record or by its failure to timely object that the lease
 733 violated the mortgage; or

734 4. The terms of the lease were commercially reasonable at
 735 the time the lease was agreed to and the tenant did not know or
 736 have reason to know that the lease violated the mortgage.

737 714.18 Defenses and immunities of receiver.-

738 (1) A receiver is entitled to all defenses and immunities
 739 provided by the laws of this state other than this chapter for
 740 an act or omission within the scope of the receiver's
 741 appointment.

742 (2) A receiver may be sued personally for an act or
 743 omission in administering receivership property only with
 744 approval of the court that appointed the receiver.

745 714.19 Interim report of receiver.-A receiver may file or,
 746 if ordered by the court, shall file an interim report that
 747 includes:

748 (1) The activities of the receiver since appointment or a
 749 previous report;

750 (2) Receipts and disbursements, including a payment made or
 751 proposed to be made to a professional engaged by the receiver;

752 (3) Receipts and dispositions of receivership property;

753 (4) Fees and expenses of the receiver and, if not filed
 754 separately, a request for approval of payment of the fees and

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755 expenses; and756 (5) Any other information required by the court.757 714.20 Notice of appointment; claim against receivership;
758 distribution to creditors.-759 (1) Except as otherwise provided in subsection (6), a
760 receiver shall give notice of appointment of the receiver to
761 creditors of the owner by:762 (a) Deposit for delivery through first-class mail or other
763 commercially reasonable delivery method to the last known
764 address of each creditor; and765 (b) Publication as directed by the court.766 (2) Except as otherwise provided in subsection (6), the
767 notice required under subsection (1) must specify the date by
768 which each creditor holding a claim against the owner which
769 arose before appointment of the receiver must submit the claim
770 to the receiver. The date specified must be at least 90 days
771 after the later of notice under paragraph (1)(a) or last
772 publication under paragraph (1)(b). The court may extend the
773 period for submitting the claim. Unless the court orders
774 otherwise, a claim that is not timely submitted is not entitled
775 to a distribution from the receivership.776 (3) A claim submitted by a creditor under this section
777 must:778 (a) State the name and address of the creditor;779 (b) State the amount and basis of the claim;780 (c) Identify any property securing the claim;781 (d) Be signed by the creditor under penalty of perjury; and782 (e) Include a copy of any record on which the claim is
783 based.

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784 (4) An assignment by a creditor of a claim against the
785 owner is effective against the receiver only if the assignee
786 gives timely notice of the assignment to the receiver in a
787 signed record.788 (5) At any time before entry of an order approving a
789 receiver's final report, the receiver may file with the court an
790 objection to a claim of a creditor, stating the basis for the
791 objection. The court shall allow or disallow the claim according
792 to the laws of this state other than this chapter.793 (6) If the court concludes that receivership property is
794 likely to be insufficient to satisfy claims of each creditor
795 holding a perfected lien on the property, the court may order
796 that:797 (a) The receiver need not give notice under subsection (1)
798 of the appointment to all creditors of the owner, but only such
799 creditors as the court directs; and800 (b) Unsecured creditors need not submit claims under this
801 section.802 (7) Subject to s. 714.21:803 (a) A distribution of receivership property to a creditor
804 holding a perfected lien on the property must be made in
805 accordance with the creditor's priority under the laws of this
806 state other than this chapter; and807 (b) A distribution of receivership property to a creditor
808 with an allowed unsecured claim must be made as the court
809 directs according to the laws of this state other than this
810 chapter.811 714.21 Fees and expenses.-812 (1) The court may award a receiver from receivership

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813 property the reasonable and necessary fees and expenses of
 814 performing the duties of the receiver and exercising the powers
 815 of the receiver.

816 (2) The court may order one or more of the following to pay
 817 the reasonable and necessary fees and expenses of the
 818 receivership, including reasonable attorney fees and costs:

819 (a) A person that requested the appointment of the
 820 receiver, if the receivership does not produce sufficient funds
 821 to pay the fees and expenses; or

822 (b) A person whose conduct justified or would have
 823 justified the appointment of the receiver under s. 714.06(1) (a).

824 714.22 Removal of receiver; replacement; termination of
 825 receivership.-

826 (1) The court may remove a receiver for cause.

827 (2) The court shall replace a receiver that dies, resigns,
 828 or is removed.

829 (3) If the court finds that a receiver that resigns or is
 830 removed, or the representative of a receiver that is deceased,
 831 has accounted fully for and turned over to the successor
 832 receiver all receivership property and has filed a report of all
 833 receipts and disbursements during the service of the replaced
 834 receiver, the replaced receiver is discharged.

835 (4) The court may discharge a receiver and terminate the
 836 court's administration of the receivership property if the court
 837 finds that appointment of the receiver was improvident or that
 838 the circumstances no longer warrant continuation of the
 839 receivership. If the court finds that the appointment was sought
 840 wrongfully or in bad faith, the court may assess against the
 841 person that sought the appointment:

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

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842 (a) The fees and expenses of the receivership, including
 843 reasonable attorney fees and costs; and

844 (b) Actual damages caused by the appointment, including
 845 reasonable attorney fees and costs.

846 714.23 Final report of receiver; discharge.-

847 (1) Upon completion of a receiver's duties, the receiver
 848 shall file a final report including:

849 (a) A description of the activities of the receiver in the
 850 conduct of the receivership;

851 (b) A list of receivership property at the commencement of
 852 the receivership and any receivership property received during
 853 the receivership;

854 (c) A list of disbursements, including payments to
 855 professionals engaged by the receiver;

856 (d) A list of dispositions of receivership property;

857 (e) A list of distributions made or proposed to be made
 858 from the receivership for creditor claims;

859 (f) If not filed separately, a request for approval of the
 860 payment of fees and expenses of the receiver; and

861 (g) Any other information required by the court.

862 (2) If the court approves a final report filed under
 863 subsection (1) and the receiver distributes all receivership
 864 property, the receiver is discharged.

865 714.24 Receivership in another state; ancillary
 866 proceeding.-

867 (1) The court may appoint a receiver appointed in another
 868 state, or that person's nominee, as an ancillary receiver with
 869 respect to property located in this state or subject to the
 870 jurisdiction of the court for which a receiver could be

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

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871 appointed under this chapter, if:

872 (a) The person or nominee would be eligible to serve as
873 receiver under s. 714.07; and

874 (b) The appointment furthers the person's possession,
875 custody, control, or disposition of property subject to the
876 receivership in the other state.

877 (2) The court may issue an order that gives effect to an
878 order entered in another state appointing or directing a
879 receiver.

880 (3) Unless the court orders otherwise, an ancillary
881 receiver appointed under subsection (1) has the rights, powers,
882 and duties of a receiver appointed under this chapter.

883 714.25 Effect of enforcement by mortgagee.—A request by a
884 mortgagee for the appointment of a receiver, the appointment of
885 a receiver, or the application by a mortgagee of receivership
886 property or proceeds to the secured obligation does not:

887 (1) Make the mortgagee a mortgagee in possession of the
888 real property;

889 (2) Make the mortgagee an agent of the owner;

890 (3) Constitute an election of remedies which precludes a
891 later action to enforce the secured obligation;

892 (4) Make the secured obligation unenforceable;

893 (5) Limit any right available to the mortgagee with respect
894 to the secured obligation; or

895 (6) Constitute an action under chapter 702.

896 714.26 Uniformity of application and construction.—In
897 applying and construing this chapter, consideration must be
898 given to the need to promote uniformity of the law with respect
899 to its subject matter among states that have enacted a similar

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900 law.

901 714.27 Relation to electronic signatures in global and
902 national commerce act.—This act modifies, limits, or supersedes
903 the Electronic Signatures in Global and National Commerce Act,
904 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
905 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
906 authorize electronic delivery of any of the notices described in
907 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

908 714.28 Transition.—This chapter does not apply to a
909 receivership for which the receiver was appointed before July 1,
910 2020.

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



The Florida Senate

Committee Agenda Request

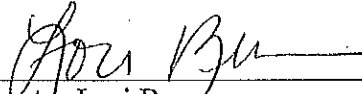
To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 6, 2019

I respectfully request that **Senate Bill #660**, relating to Uniform Commercial Real Estate Receivership Act, be placed on the:

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



Senator Lori Bernan
Florida Senate, District 31

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

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19
Meeting Date

SB 660
Bill Number (if applicable)

Topic Uniform Commercial Real Estate Receivership Act Amendment Barcode (if applicable)

Name Adina Pollan

Job Title _____

Address 25 N. Market Street
Street
Jacksonville, FL 32202
City State Zip

Phone _____

Email apollan@pollanlegal.com

Speaking: For Against Information

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

Representing The Business Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 738

INTRODUCER: Senator Harrell

SUBJECT: Jury Service

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	Favorable
2.			ED	
3.			RC	

I. Summary:

The bill allows students who are 18 to 21 years of age to be excused from jury service upon request if they are enrolled as a full-time student at a high school, state university, private post-secondary educational institution, Florida College Institution, or career center.

The bill does not affect jury service for those students older than 21 years of age.

The bill takes effect July 1, 2020.

II. Present Situation:

Background on Jury Selection

Potential jurors are selected randomly from a list of names provided quarterly to the clerk of the circuit court by the Florida Department of Highway Safety and Motor Vehicles.¹ Jurors must be 18 years of age or older, citizens of the United States, and legal residents of Florida and their respective counties, and have a driver license or identification card record on file with the DHSMV.²

There are two ways in which a juror venire or pool may be selected. In the first, a clerk of court may use the names provided by the DHSMV to generate juror candidate lists as necessary to ensure a valid and consistent juror selection process.³ In the second, the chief judge of a circuit court or the clerk of the court may request that the Florida Supreme Court approve the use of an automated electronic system as the exclusive manner in which the names of prospective jurors

¹ Section 40.011, F.S.

² Section 40.01, F.S.

³ Section 40.011, F.S.

are randomly selected.⁴ A person who is selected for jury service who does not attend court when summoned may be fined up to \$100, and his or her absence may be considered a contempt of the court.⁵

The Legislature has adopted a “one day” or “one trial” rule for jury service, where a prospective juror must either participate in one trial or one day of initial reporting for jury service.⁶ Generally, the average trial lasts about 3 days.⁷

Disqualification or Excusal from Jury Service

Certain individuals may be disqualified from jury service based on Florida law. Others must be excused from service upon request, and still others may be excused at the discretion of a judge.⁸

Persons disqualified from jury selection include:

- A person who is under prosecution for a crime or has committed a felony, unless that person’s civil rights have been restored;⁹
- The Governor, Lieutenant Governor, Cabinet officer, clerk of court, or judge;¹⁰
- Any person interested in any issue to be tried;¹¹
- Any person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is permanently incapable of caring for himself or herself;¹²
- Any person who is responsible for the care of a person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is incapable of caring for himself or herself;¹³ and
- Any person who does not possess sufficient knowledge of reading, writing, or arithmetic to understand a civil case, if the civil case requires such knowledge.¹⁴

Individuals who must be excused upon request include:

- Any full-time federal, state, local law enforcement officer, or investigative personnel, unless such persons choose to serve;¹⁵
- A person who was summoned and who reported as a prospective juror in any court in that person’s county of residence within 1 year before the first day for which the person is being considered for jury service;¹⁶

⁴ Section 40.225, F.S.

⁵ Section 40.23, F.S.

⁶ Section 40.41, F.S.

⁷ The Florida Bar, *Consumer Pamphlet: Handbook for Jurors*, <https://www.floridabar.org/public/consumer/pamphlet016/> (last visited Nov 25, 2019).

⁸ [Fla. R. Crim. P. 3.300](#)

⁹ Section 40.013(1), F.S.

¹⁰ Section 40.013(2)(a), F.S.

¹¹ Section 40.013(3), F.S.

¹² Section 40.013(9), F.

¹³ Section 40.013(10), F.S.

¹⁴ Fla. R. Civ. P. 1.431(c)(3).

¹⁵ Section 40.013(2)(b), F.S.

¹⁶ Section 40.013(7), F.S. Similarly, rule 1.431(c)(3), provides that a party may challenge a prospective juror for cause if that person has served as a juror in the court in which the person was called within the prior year.

- Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age;¹⁷ and
- A person 70 years of age or older.¹⁸

Persons who may be excused include:

- A practicing attorney, a practicing physician, or a person who is physically infirm from jury service;¹⁹ and
- A person showing of hardship, extreme inconvenience, or public necessity.²⁰

Demographics of Students

Nationally, about 39 percent of College and University students are enrolled part time, and 37 percent of students are 25 years of age or older.²¹ In the fall of 2015, 35 percent of Florida's public college students were enrolled full-time and the average age of the students was 25 years of age.²²

Each state university in Florida publishes its own student body statistics.²³ Florida State University students, for example, have an average age of 22.6, and 18 percent were enrolled part time in 2018. For that same year, the average graduate student at Florida State was 29.3 years of age.²⁴ At the University of Central Florida, 22 percent of students are older than 25 years of age, and the average age is 22.²⁵

Students Selected for Jury Service

Selection for jury service is based upon the person's county of residence as it is listed on his or her driver's license.²⁶ Many students attend college or a university outside of their county of residence and may request to postpone their jury summons due to their academic requirements. Florida law allows a person to request excusal on the basis of being a student; although, it is at the discretion of the Judge. A person may postpone his or her jury summons, but for no longer than 6 months after the original summoning date.²⁷

¹⁷ Section 40.013(4), F.S.

¹⁸ Section 40.013(8), F.S. A person 70 years of age or older may also be permanently excused from jury service upon written request; however, a person who is permanently excused from jury service may subsequently request, in writing, to be included in future jury lists.

¹⁹ *Id.*

²⁰ Section 40.013(6), F.S.

²¹ National Center for Education Statistics, *Back to school statistics*, <https://nces.ed.gov/fastfacts/display.asp?id=372> (last visited Nov 25, 2019).

²² Florida Department of Education, *Facts at a Glance*, <http://www.fldoe.org/schools/higher-ed/fl-college-system/facts-at-a-glance.shtml> (last visited Nov 26, 2019).

²³ State University System of Florida, *University Fact Books*, <https://www.flbog.edu/universities/key-university-info/university-fact-books/> (last visited Nov 26, 2019).

²⁴ Office of Institutional Research - Florida State University, *2018-2019 Fact Book*, <https://www.ir.fsu.edu/factbook.aspx> (last visited Nov 26, 2019).

²⁵ University of Central Florida, *UCF Facts 2019-2020*, <https://www.ucf.edu/about-ucf/facts/> (last visited Nov 25, 2019).

²⁶ Section 40.01, F.S.

²⁷ Section 40.23, F.S.

Some states, such as, Georgia²⁸ North Carolina,²⁹ Michigan,³⁰ and South Carolina³¹ currently excuse students from jury selection during the period of time that the student is enrolled and taking classes or exams. Georgia, however, only excuses students who are enrolled out of the state. Texas allows students of public or private post-secondary institutions to be excused, without any age or full-time status requirement.³²

III. Effect of Proposed Changes:

The bill allows students who are 18 to 21 years of age to be excused from jury service upon request if they are enrolled as a full-time student at a high school, state university, private post-secondary educational institution, Florida College Institution, or career center.

The bill does not affect jury service for those students older than 21 years of age.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁸ Ga. Code § 15-12-1.1 (2014)

²⁹ N.C. Gen. Stat. § 9-6 (b)(1)

³⁰ MSA § 600.1335

³¹ SC Code Ann. §14-7-845

³² Tex. Gov. Code § 62.106

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 40.013 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.

By Senator Harrell

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A bill to be entitled

An act relating to jury service; amending s. 40.013, F.S.; requiring certain students actively enrolled in specified schools to be excused from jury service upon request; providing an effective date.

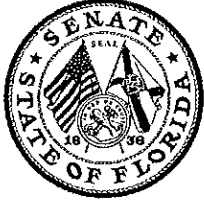
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) is added to section 40.013, Florida Statutes, to read:

40.013 Persons disqualified or excused from jury service.—

(11) A person between 18 and 21 years of age, inclusive, who is actively enrolled as a full-time student in high school or at any state university, private postsecondary educational institution, Florida College System institution, or career center shall be excused from jury service upon request.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

November 22, 2019

Senator David Simmons
Senate Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Simmons,

I respectfully request that SB 738 relating to Student Jury Service be placed on the next available agenda for the Senate Committee on Judiciary.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

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

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/19
Meeting Date

SB738
Bill Number (if applicable)

Topic Jury Service

Amendment Barcode (if applicable)

Name Stacy Butterfield

Job Title Clerk & Comptroller Polk County, FL

Address 330 W. Church Street
Street

Phone 863-534-4525

Bartow, FL 33830
City State Zip

Email Stacybutterfield@polk-county.net

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 802

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Marketable Record Title Act

DATE: December 11, 2019 **REVISED:** _____

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

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 802 expands the reach of the Marketable Record Title Act’s main provision, seeks to clarify an exception to the Act’s main provision, and bolsters current law’s prohibition on discriminatory deed provisions.

The main provision of the Marketable Record Title Act (MRTA) extinguishes most interests, claims, and other real property “rights” that were not created in or after a given property’s “root of title”—the most recent title transaction (such as a deed) that is more than 30 years old. The bill, in contrast to a recent court opinion, provides that the rights extinguished by MRTA include restrictive covenants that were recorded in connection with a zoning regulation.

MRTA also includes a list of exceptions—rights that it does not eliminate even though they were created before the root of title. One category of exceptions includes rights that are “disclosed” in the root of title. The bill seeks to increase how specifically a right must be disclosed in the root of title if the right is to qualify as an exception.

The bill, consistent with prohibitions currently set forth in the Fair Housing Act, “extinguishes” “discriminatory restrictions” from title transactions, such as deeds, and expressly states that the restrictions are unlawful, unenforceable, and null and void. The bill provides for summary removal of discriminatory restrictions from the governing documents of a property owners’ association.

Finally, the bill provides a grace period of one year for persons whose interests would otherwise be extinguished by the bill to file a notice and save their interests from extinguishment.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 “to simplify conveyances of real property, stabilize titles, and give certainty to land ownership.”^{1, 2} To accomplish these goals, MRTA extinguishes most “rights” in real property that were not created in or after the “root of title.” The root of title is essentially the most recent title transaction (such as a deed) that is more than 30 years old.³

Rights Extinguished Under the MRTA

MRTA extinguishes the following “rights,” subject to exceptions:

[A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.⁴

Moreover, MRTA notes that it extinguishes these rights regardless of how they are “denominated” in a deed or other instrument creating the right. Accordingly, the issue of whether MRTA applies to extinguish a given right has often come before the courts, as it did in 2016 when the Third District Court of Appeal considered whether a certain restrictive covenant was an “interest” subject to extinguishment under MRTA.⁵

A Recent District Court of Appeal Opinion Regarding the Applicability of the MRTA

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of “whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA.”⁶ The court held that the restrictive covenant was not a title “interest” under MRTA, and thus was not subject to extinguishment by MRTA.

The court reasoned that the restrictive covenant was an inseparable part of a governmental action to rezone the property at issue. The issue thus became whether MRTA extinguishes zoning

¹ *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910, 914 (Fla. 3d DCA 2016).

² The Marketable Record Title Act is set forth in ch. 712, F.S.

³ Section 712.06, F.S., defines root of title as any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

⁴ Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.

⁵ *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016).

⁶ *Id.* at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.

regulations.⁷ The court concluded that, based on MRTA’s language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.⁸

Exceptions to Extinguishment under the MRTA

MRTA includes a long list of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument.

One exception is any right “disclosed” in a deed or other “muniment of title” recorded in the chain of title from the root forward (including a right that arose pre-root). This exception is described more precisely in MRTA:

Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title [such as a deed] on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests⁹

The Real Property, Probate and Trust Law Section of The Florida Bar believes that this provision should be clearer, particularly as to how specific a disclosure of a pre-root right needs to be for it to fall within the exception.¹⁰ This concern was sparked, at least in part, by a 2015 opinion of the Third District Court of Appeal.¹¹ The court held that a reference to a pre-root restrictive covenant in several deeds was more than a “general reference” and was otherwise specific enough to meet the statutory definition; thus, the restrictive covenant was not extinguished by MRTA.¹² The references at issue did not include a book and page number.

The court’s stated reasoning as to why the references were nonetheless specific enough was brief. The court stated that it agreed with the trial court and a certain expert witness’s assessment. Beyond that, the court noted that the references were specific enough so that the covenants were not “hidden” such that the transferees/owners would have been surprised by them. Thus, the court noted, its decision was consistent with “the core concern” of MRTA that “no hidden interest in real property [would be able to be] asserted without limitation against a record property owner.”¹³

⁷ *Id.* at 915.

⁸ *Id.* at 915-16.

⁹ Section 712.03(1), F.S.

¹⁰ Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Revisions to Chapter 712 (Commonly known as Florida’s Marketable Record Title Act)* (2019) (on file with the Senate Committee on Judiciary).

¹¹ Conversation with French Brown, IV., Esq., lobbyist for the Real Property, Probate and Trust Law Section of The Florida Bar (Dec. 5, 2019). *See generally*, *Barney v. Silver Lakes Acres Property*, 159 So. 3d 181 (Fla. 3d DCA 2015).

¹² *Id.* at 183.

¹³ *Id.* at 183 (quoting *H & F Land, Inc. v. Panama City–Bay Cnty. Airport and Indus. Dist.*, 736 So.2d 1167, 1171 (Fla.1999)).

Discriminatory Real Estate Restrictions

Overview

Federal and state law prohibit discrimination on the basis of race and several other characteristics in the sale, lease, or use of real property. Nonetheless, discriminatory restrictive covenants and other instruments—relics of an era when real estate discrimination was legal—remain in the records of many, perhaps all, counties, and can still be found in a title search. Though these documents are not legally enforceable, their existence has troubled many people who have discovered that a property that they own or rent, or would like to own or rent, was once encumbered by a (enforceable) discriminatory restriction.¹⁴ But current law does not appear to provide a way to strike or otherwise disavow these provisions in the public records.

Fair Housing Act

This state's Fair Housing Act, which was closely modeled from the federal Act,¹⁵ broadly prohibits discrimination in the sale or rental of real property, including by way of racist restrictive covenants.

The Fair Housing Act's main operative provisions relating to the sale, rental, and use of real estate are set forth in s. 760.23(1), (2), F.S.:

- (1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.
- (2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

Moreover, s. 760.23(3), F.S., specifically prohibits discriminatory “notices” and “statements”:

- (3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

However, these provisions are subject to exceptions and exemptions, as set forth in s. 760.29, F.S. For instance, the prohibitions do not apply to the sale or rental of a single-family house by its owner, or to the rental of a small multi-unit building, such as a duplex, if the owner lives in one of the units. The Fair Housing Act also does not apply to prevent a religious organization

¹⁴ See, e.g., *Attorney wants outdated, racist covenant language in Betton Hills stripped*, TALLAHASSEE DEMOCRAT (July 1, 2019), <https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/>.

¹⁵ See 42 U.S.C. §§ 3601-19.

from restricting the occupancy, sale, or rental of its facilities to members of its religion. Moreover, the Act's prohibitions on discrimination on the basis of familial status "do not apply with respect to housing for older persons."

As for enforcement, the Act authorizes a person who alleges that he or she has been injured by a discriminatory housing provision to pursue administrative and civil remedies. However, the Act does not mention the opportunity for a homeowner to obtain a written determination that a discriminatory restriction on his or her own property is extinguished by the Act or any other law. Similarly, the Act does not allow a homeowners association, or a condominium or cooperative association, to forego its normal procedures for removing these provisions from a document affecting a parcel within the association.

Other States' Efforts to Erase or Otherwise Address Unenforceable Discriminatory Provisions in Public Records

At least a few states—California, Washington, and Ohio—have enacted statutes to address discriminatory real estate restrictions that, though they have long been unenforceable, nonetheless linger in the public records as hurtful and shameful reminders of the past.

California's statutes address these discriminatory provisions in several ways. For instance, California requires a real estate agent, title insurance company, or county recorder, among others, to place a notice on each deed, declaration, or governing document provided to a person. The notice advises the recipient that any discriminatory provision in the document "violates state and federal housing laws and is void," and that the recipient may file a "modification document" with the "county recorder," along with a copy of the document containing the restriction, with the restriction stricken.¹⁶ If the county counsel agrees that the stricken provision is illegal and void, the modification document must be filed in the county records, and shall include a book and page reference to the original document.¹⁷

Washington's statutes contain a similar procedure, but also give a property owner, as well as an occupant or tenant, the option to file a declaratory action to have the provision "stricken."¹⁸ Additionally, Washington's statutes contain a provision declaring a long list of discriminatory real estate provisions to be "void."¹⁹

California also authorizes the expedited removal of any unlawful and void discriminatory provision from the governing documents of a condominium association or other "common interest development."²⁰ Under this statute, the association must amend out the provision notwithstanding "any other provision of law or provision of the governing documents."²¹

¹⁶ CAL. GOV'T CODE § 12956.1.

¹⁷ CAL. GOV'T CODE § 12956.2.

¹⁸ WASH. REV. CODE § 49.60.227.

¹⁹ WASH. REV. CODE § 49.60.224.

²⁰ CAL. CIVIL CODE § 6606.

²¹ *Id.*

Ohio's approach appears to be more limited. There, when a county recorder processes a transfer of "registered land," he or she is required to "delete" from the sectional indexes "all references" to any discriminatory restrictive covenant affecting the land.²²

III. Effect of Proposed Changes:

The bill expands the reach of the Marketable Record Title Act's main provision, seeks to clarify an exception to MRTA's main provision, and bolsters current law's prohibition on discriminatory deed provisions.

The main provision of the Marketable Record Title Act extinguishes most interests, claims, and other real property "rights" that were not created in or after a given property's "root of title"—the most recent title transaction (such as a deed) that is more than 30 years old. The bill, in contrast to a recent court opinion, provides that the rights extinguished by MRTA include restrictive covenants that were recorded in connection with a zoning regulation.

MRTA also includes a list of exceptions—rights that it does not eliminate even though they were created before the root of title. One category of exceptions includes rights that are "disclosed" in a deed or other muniment, beginning at the root of title. The bill seeks to increase how specifically a right must be disclosed if the right is to qualify as an exception. Whether the bill accomplishes this is unclear, due to the length and complexity of the 135-word sentence comprising the revised provision, and to the nuanced differences in the existing and revised requirements.

Under current law, disclosure by "general reference" is sufficient if it makes "specific identification" to the book and page or recorded plat of the document creating the right. It is unclear how this "general reference" that includes a "specific identification" is operatively different than what is sufficient under the bill. Under the bill, a "specific reference" is sufficient, as is "an affirmative statement in a muniment of title to preserve" the rights created pre-root "as identified by the official book and page or instrument number."

Assuming the language of the bill has its intended effect, older restrictions on the use of property that are contained in deeds will no longer be in force. This change appears likely to facilitate the redevelopment of some properties, including properties having recorded use restrictions that require the consent of surrounding property owners for a change in use.

The bill "extinguishes" "discriminatory restrictions" from title transactions, such as deeds, and expressly states that the restrictions are unlawful, unenforceable, and null and void. The bill, unlike the Fair Housing Act, provides no exceptions or exemptions from this provision. And though the bill "extinguishes" discriminatory restrictions as a matter of law, it does not require their redaction or removal from the official records of a county. Thus, documents containing these restrictions could be uncovered in a title search.

The bill provides for summary removal of discriminatory restrictions from the governing documents of a property owners' association.

²² OHIO REV. CODE § 317.20(E)(2).

Finally, the bill provides a grace period of 1 year for persons whose interests would otherwise be extinguished by the bill to file a notice and save their interests from extinguishment.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill includes three sections that are expressly intended to apply retroactively. The bill states that these sections are “remedial in nature” and are “intended to clarify existing law.” The Florida Supreme Court has developed a two-prong analysis for determining whether a statute may be applied retroactively.²³ First, there must be “clear evidence of legislative intent to apply the statute retrospectively.”²⁴ If so, then the court moves to the second prong, “which is whether retroactive application is constitutionally permissible.”²⁵ Retroactive application is unconstitutional if it deprives a person of due process by impairing vested rights or imposing new obligations to previous conduct:

A retrospective provision of a legislative act is not necessarily invalid. It is so only in those cases wherein vested rights are adversely affected or destroyed or when a new obligation or duty is created or imposed, or an additional disability is established, on connection with transactions or considerations previously had or expiated.²⁶

²³ See, e.g., *Florida Ins. Guar. Ass’n., Inc. v. Devon Neighborhood Ass’n, Inc.*, 67 So. 3d 187, 194 (Fla. 2011).

²⁴ *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 3d 494 (Fla. 1999) (quoting *McCord v. Smith*, 43 So.2d 704, 708–09 (Fla.1949); cf. *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995).

²⁵ *Id.*

²⁶ *Id.* at 503 (citing *McCord v. Smith*, 43 So. 2d 704, 708-09 (Fla. 1949)).

Accordingly, a “remedial” or “procedural” statute may be applied retroactively, because these statutes do not create or destroy rights or obligations.²⁷ Instead, a remedial statute “operates to further a remedy or confirm rights that already exist” and a procedural statute provides the “means and methods for the application and enforcement of existing duties and rights.”²⁸ Finally, the Legislature’s labeling of a law as remedial or procedural does not make it so.²⁹

Courts might determine that the bill’s retroactive provisions impair vested rights. By their nature and their terms, the provisions in question pertain to rights in real property. In fact, the bill acknowledges this in Section 6. However, Section 6 also provides a grace period for people whose rights would be affected by the bill to take steps to protect rights that would otherwise be extinguished by the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The operative difference between s. 712.03(1), F.S., in current law and s. 712.03(1), F.S., in the bill is unclear. Moreover, the bill language is itself unclear. Accordingly, the Legislature may wish to amend the bill to clarify this provision.

Also, unlike the Fair Housing Act, the bill does not contain any exemptions from its main provision. If this was unintentional, the Legislature might wish to amend the bill accordingly. The Fair Housing Act prohibits discrimination on a number of bases, including religion. However, as an example of one of its exemptions, the FHA expressly states that it does not prohibit a religious organization from restricting the sale of its property to members of that religion.

VII. Related Issues:

None.

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

²⁸ *Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass’n., Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961)).

²⁹ See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.03, 712.04, and 712.12.

This bill creates section 712.065 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary Committee on December 10, 2019:

The committee substitute removes the bill's grant of an option for a property owner to request a written "determination" that a discriminatory provision in a previous title transaction is extinguished as a matter of law. Under the bill, a property owner could request this determination from the Department of Economic Opportunity.

- B. **Amendments:**

None.



555850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/12/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 116 - 123.

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

And the title is amended as follows:

Delete lines 17 - 22

and insert:

or restriction;

By Senator Perry

8-00266B-20

2020802__

1 A bill to be entitled
 2 An act relating to the Marketable Record Title Act;
 3 amending s. 712.03, F.S.; revising rights that are not
 4 affected or extinguished by marketable record titles;
 5 amending s. 712.04, F.S.; revising what types of
 6 interests are extinguished by a marketable record
 7 title; providing construction; creating s. 712.065,
 8 F.S.; defining the term "discriminatory restriction";
 9 providing that discriminatory restrictions are
 10 unlawful, unenforceable, and declared null and void;
 11 providing that certain discriminatory restrictions are
 12 extinguished and severed from recorded title
 13 transactions; specifying that the recording of certain
 14 notices does not reimpose or preserve a discriminatory
 15 restriction; providing requirements for a parcel owner
 16 to remove a discriminatory restriction from a covenant
 17 or restriction; authorizing a property owner to apply
 18 to the Department of Economic Opportunity for a
 19 written determination relating to certain
 20 discriminatory restrictions; specifying that recording
 21 such determination does not constitute a title
 22 transaction occurring after the root of title;
 23 amending s. 712.12, F.S.; revising the definition of
 24 the term "covenant or restriction"; providing
 25 applicability; requiring persons with certain
 26 interests in land which may be extinguished by this
 27 act to file a specified notice to preserve such
 28 interests; providing a directive to the Division of
 29 Law Revision; providing an effective date.

Page 1 of 6

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

8-00266B-20

2020802__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsection (1) of section 712.03, Florida
 34 Statutes, is amended to read:
 35 712.03 Exceptions to marketability.—Such marketable record
 36 title shall not affect or extinguish the following rights:
 37 (1) Estates or interests, easements and use restrictions
 38 disclosed by and defects inherent in the muniments of title on
 39 which said estate is based beginning with the root of title,~~;~~
 40 provided, however, that in the muniments of title those estates,
 41 interests, easements, or use restrictions created before the
 42 root of title are preserved by identification in the legal
 43 description of the property by specific reference to the
 44 official records book and page number, instrument number, or
 45 plat name or there is otherwise an affirmative statement in a
 46 muniment of title to preserve such estates, interests,
 47 easements, or use restrictions created before the root of title
 48 as identified by the official records book and page or
 49 instrument number a general reference in any of such muniments
 50 to easements, use restrictions or other interests created prior
 51 to the root of title shall not be sufficient to preserve them
 52 unless specific identification by reference to book and page of
 53 record or by name of recorded plat be made therein to a recorded
 54 title transaction which imposed, transferred or continued such
 55 easement, use restrictions or other interests; subject, however,
 56 to the provisions of subsection (5).
 57 Section 2. Section 712.04, Florida Statutes, is amended to
 58 read:

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59 712.04 Interests extinguished by marketable record title.-
 60 Subject to s. 712.03, a marketable record title is free and
 61 clear of all estates, interests, claims, covenants,
 62 restrictions, or charges, the existence of which depends upon
 63 any act, title transaction, event, zoning requirement, building
 64 or development permit, or omission that occurred before the
 65 effective date of the root of title. Except as provided in s.
 66 712.03, all such estates, interests, claims, covenants,
 67 restrictions, or charges, however denominated, whether they are
 68 or appear to be held or asserted by a person sui juris or under
 69 a disability, whether such person is within or without the
 70 state, natural or corporate, or private or governmental, are
 71 declared to be null and void. However, this chapter does not
 72 affect any right, title, or interest of the United States,
 73 Florida, or any of its officers, boards, commissions, or other
 74 agencies reserved in the patent or deed by which the United
 75 States, Florida, or any of its agencies parted with title. This
 76 section may not be construed to alter or invalidate a zoning
 77 ordinance, land development regulation, building code, or other
 78 law or regulation to the extent it operates independently of
 79 matters recorded in the official records.

80 Section 3. Section 712.065, Florida Statutes, is created to
 81 read:

82 712.065 Extinguishment of discriminatory restrictions.-
 83 (1) As used in this section, the term "discriminatory
 84 restriction" means a provision in a title transaction recorded
 85 in this state which restricts the ownership, occupancy, or use
 86 of any real property in this state by any natural person on the
 87 basis of a characteristic that has been held, or is held after

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8-00266B-20

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88 the effective date of this act, by the United States Supreme
 89 Court or the Florida Supreme Court to be protected against
 90 discrimination under the Fourteenth Amendment to the United
 91 States Constitution or under s. 2, Art. I of the State
 92 Constitution, including race, color, national origin, religion,
 93 gender, or physical disability.

94 (2) A discriminatory restriction is not enforceable in this
 95 state, and all discriminatory restrictions contained in any
 96 title transaction recorded in this state are unlawful, are
 97 unenforceable, and are declared null and void. Any
 98 discriminatory restriction contained in a previously recorded
 99 title transaction is extinguished and severed from the recorded
 100 title transaction and the remainder of the title transaction
 101 remains enforceable and effective. The recording of any notice
 102 preserving or protecting interests or rights pursuant to s.
 103 712.06 does not reimpose or preserve any discriminatory
 104 restriction that is extinguished under this section.

105 (3) Upon request of a parcel owner, a discriminatory
 106 restriction appearing in a covenant or restriction affecting the
 107 parcel may be removed from the covenant or restriction by an
 108 amendment approved by a majority vote of the board of directors
 109 of the respective property owners' association, notwithstanding
 110 any other requirements for approval of an amendment of the
 111 covenant or restriction. Unless the amendment also changes other
 112 provisions of the covenant or restriction, the recording of an
 113 amendment removing a discriminatory restriction does not
 114 constitute a title transaction occurring after the root of title
 115 for purposes of s. 712.03(4).

116 (4) Any property owner may apply to the Department of

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117 Economic Opportunity for a written determination that a
 118 particular discriminatory restriction appearing in a previous
 119 title transaction for the property is within the scope of this
 120 section and is extinguished by this section. The recording of
 121 any such written determination does not constitute a title
 122 transaction occurring after the root of title for purposes of s.
 123 712.03(4).

124 Section 4. Paragraph (b) of subsection (1) of section
 125 712.12, Florida Statutes, is amended to read:

126 712.12 Covenant or restriction revitalization by parcel
 127 owners not subject to a homeowners' association.—

128 (1) As used in this section, the term:

129 (b) "Covenant or restriction" means any agreement or
 130 limitation ~~imposed by a private party and not required by a~~
 131 ~~governmental agency as a condition of a development permit, as~~
 132 ~~defined in s. 163.3164, which is contained in a document~~
 133 recorded in the public records of the county in which a parcel
 134 is located and which subjects the parcel to any use restriction
 135 that may be enforced by a parcel owner.

136 Section 5. The amendments to ss. 712.03, 712.04, and
 137 712.12, Florida Statutes, in this act are intended to clarify
 138 existing law, are remedial in nature, and apply to all estates,
 139 interests, claims, covenants, restrictions, and charges, whether
 140 imposed or accepted before, on, or after the effective date of
 141 this act.

142 Section 6. A person with an interest in land which may
 143 potentially be extinguished by this act, and whose interest has
 144 not been extinguished before July 1, 2020, must file a notice
 145 pursuant to s. 712.06, Florida Statutes, by July 1, 2021, to

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8-00266B-20

2020802__

146 preserve such interest.

147 Section 7. The Division of Law Revision is directed to
 148 replace the phrase "the effective date of this act" wherever it
 149 occurs in this act with the date the act becomes a law.

150 Section 8. This act shall take effect upon becoming a law.

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The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: November 26, 2019

I respectfully request that **Senate Bill #802**, relating to Marketable Record Title Act, be placed on the:

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



Senator Keith Perry
Florida Senate, District 8

WHITE PAPER
REVISIONS TO CHAPTER 712
(Commonly known as Florida's Marketable Record Title Act)

I. SUMMARY

This legislation is designed to clarify the operation of the statute in light of (i) a common real estate practice to make specific reference to pre-root of title restrictions in deeds that are recorded post-root of title and that, arguably, may inadvertently extend the life of restrictions that the act would have otherwise extinguished and (ii) the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals.

The bill does not have a fiscal impact on state funds.

II. SECTION-BY-SECTION ANALYSIS

A. Section 712.03

Current Situation: A common practice among real estate practitioners in Florida is to except from the seller's warranties of title in a deed the matters identified as outstanding encumbrances or restrictions. This is frequently done by making the deed "subject to," not just all matters of record, but to instruments specifically identified by official record book and page. In these situations, it is rarely the intent of the parties to restart the act's 30 year marketability period on the encumbrance or restriction against the title by these "subject to" conveyances. Nevertheless, it could be argued that, by reciting by official records book and page a prior, existing restriction in a muniment of title such as a deed, the restriction is brought within the scope of one of the act's limited exceptions under s. 712.03(1). It is the intention of the statute to help clear title of ancient defects and not to inadvertently preserve them. This revision is thus designed to clarify the existing statute so that these "subject to" conveyances do not inadvertently restart the act's 30 year marketability period on encumbrances or restrictions against title.

Effect of Proposed Changes: The proposed revision is designed to clarify the existing statute so that conveyances "subject to" matters specifically identified by official records book and page do not restart the act's 30 year marketability period on encumbrances or restrictions against title unless the parties to the instrument also include an affirmative statement of the intent to do so.

B. Section 712.04 and 712.12

Current Situation: In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court found that a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is not a title interest subject to extinguishment by section 712.04.

The problem with this judicial exception to the operation of the statute is that, in many cases, there is no way to discern from the restrictive covenant recorded in the official records that it was “recorded in compliance with a government-imposed condition of a land use approval,” or not. The result is there is no way to discern from the face of the official records whether a restrictive covenant has been cut off by the operation of the statute or preserved from operation of the statute by this judicially created exception. This is contrary to the intent of the statute which is to clear of ancient defects, and threatens to undermine operation of the statute on such restrictions.

Effect of Proposed Changes: The proposed revision is designed to make clear that the intent of the statute is to cut off all “estates, interests, claims, covenants, restrictions, or charges,” even if they depend on any “zoning, building, or development approval,” but not to alter or invalidate any local government regulation operating independently of matters recorded in the official records. Additional revision to s. 712.12(1) providing a definition of “covenant or restriction” was required in order to remove the language that excluded limitations “required by a governmental agency as a condition of a development permit.”

III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct negative economic impact on the private sector, but will more readily allow for the free and less expensive alienation of title to real property.

V. CONSTITUTIONAL ISSUES

Because the proposed revisions to s. 712.03(1), 712.04, and 712.12(1) are intended to clarify existing law and thus to be retroactive in effect, the proposed revision would give any person having an interest in land potentially extinguished by the act, and whose interest has not been extinguished prior to July 1, 2019, until July 1, 2020, to file a notice in accordance with s. 712.06 to preserve that interest.

VI. OTHER INTERESTED PARTIES

None.

July 28, 2018

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

SB 802

Meeting Date

Bill Number (if applicable)

Topic Marketable Record Title Act

Amendment Barcode (if applicable)

Name FRENCH BROWN

Job Title Lobbyist

Address 215 S. MONROE ST., Suite 815

Phone 850-459-0992

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email fbrown@gmail.com

Speaking: [] For [] Against [] Information

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

Representing The Real Property, Probate, and Trust Law Section of the FL BAR

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

Lobbyist registered with Legislature: [X] 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)

12-10-2019

Meeting Date

802

Bill Number (if applicable)

Topic Racially Restrictive Covenant

Amendment Barcode (if applicable)

Name Jami Coleman

Job Title Attorney

Address 701 East Tennessee

Phone 850-222-2013

Street

Tallahassee FL

32308

City

State

Zip

Email jcoleman@williamscoleman-law.com

Speaking: For Against Information

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

Representing Task Force

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 868

INTRODUCER: Senator Albritton

SUBJECT: Construction Contracting

DATE: December 9, 2019

REVISED: _____

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

I. Summary:

SB 868 revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S. The most significant of these changes are summarized below.

The Construction Lien Law provides several statutory forms for parties to a construction contract to use to waive or release their rights to record a lien or make a claim against a payment bond in exchange for payment for their work. The bill provides that provisions included in a waiver or release that are not related to the provisions of the statutory forms are unenforceable.

The bill also defines the date of “final furnishing” of specially fabricated materials that are not installed or delivered to a jobsite due to no fault of the fabricator or installer. The applicable date of final furnishing will then set a clear deadline for recording a lien or for initiating a claim against a payment bond due to nonpayment.

The Construction Lien Law generally provides that a construction lien is superior to liens recorded after the recording of a notice of commencement for a construction project. The bill minimizes potential for exceptions to this general rule, which also establishes the priority for payment from the proceeds of a foreclosure sale. Specifically, the bill makes inapplicable any common law doctrines or remedies that might cause a later-filed lien or mortgage to relate back to a date before the recording of the notice of commencement.

II. Present Situation:

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors, sub-subcontractors, laborers, and materialmen have an interest in receiving payment for their work. Those individuals have a lien or prospective lien on the property improved, and are known as lienors. Mechanisms that address

these interests of property owners and lienors are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S., for private construction contracts and in s. 255.05, F.S., for public construction contracts.

These mechanisms to ensure payment are especially important where many lienors who are not in privity with the owner perform work on a construction project. A lienor not in privity with the owner has a contract with the contractor or a subcontractor, but no direct contractual relationship with the owner. As a result, a lienor's identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the construction lien laws. Additionally, compliance with the notice requirements by the various deadlines is a prerequisite to enforcing a lien or pursuing a claim against a payment bond.

Notice of Commencement: The Beginning of a Construction Project

A construction project generally begins with the posting of a "notice of commencement" on the job site and the recording of the notice in the court clerk's office.¹ This notice identifies who owns the property to be improved or who is responsible for the construction project. Accordingly, the notice of commencement will list the name and address of the owner of the property, the fee simple titleholder if different than the owner, the contractor, any lessees, the lender, and the surety.²

Notice to Owner/Notice to Contractor

After a notice of commencement is posted and recorded, lienors must serve the property owner and the contractor with a notice to owner or notice to contractor.³ Serving these documents within the statutory timeframes is a prerequisite to enforcing a lien on the improved property or a claim against a payment bond.⁴

A notice to owner informs the owner of a lienor's identity and work performed.⁵ Upon receipt of a notice to owner, the owner becomes responsible for ensuring that the lienor is paid for its work even if the contractor is paid in full. To protect against a lien by the lienor or having to pay twice for the same work, the notice warns:

**TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.⁶**

A notice to contractor is similar to a notice to owner, but it is required when the contractor furnishes a payment bond that exempts the owner's property from liens or when the contract is for a public improvement.⁷ A notice to contractor advises the contractor of the identity of the

¹ Section 713.13(1)(a), F.S.

² Section 713.13(1)(a) and (d), F.S.

³ Sections 255.05(2)(a)2., 713.06(2), and 713.23(1)(c), F.S.

⁴ *Id.*

⁵ Section 713.06(2)(c), F.S.

⁶ *Id.*

⁷ Sections 713.23(1)(a) and 255.05(2)(a)2., F.S.

lienor and the lienor's work, and informs the contractor that the lienor intends to look to the contractor's bond if the lienor is not paid.

Final Furnishing of Labor, Services, and Materials and Lien Law Deadlines

The last date that a lienor furnishes labor, services, or materials is known as the "final furnishing."⁸ This date is used to establish the deadline by which a lienor must record a claim of lien or the deadline for the service of a notice to contractor. "[A] claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor."⁹

"[A] lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment to the contractor and the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor."¹⁰

Materials are furnished when they are incorporated into an improvement or delivered to the site of the improvement.¹¹ Additionally, specially fabricated materials¹² may be fabricated off site, and the materials may be installed by a person other than the fabricator.¹³ But the specially fabricated materials might not be installed or delivered to the job site for reasons other than the fault of the fabricator or installer. In these cases where there is no final furnishing or delivery, the statutes do not appear to establish a clear timeframe for a lienor to record a lien or serve a notice to contractor.

Waiver and Release of Lien/Waiver of Claim Against Payment Bond

The Construction Lien Law requires lienors to use forms that "substantially" follow a statutory form when executing a waiver or release of lien or a waiver of a right to make a claim against a payment bond in exchange for payments.¹⁴ The forms to waive or release a lien are shown below, but forms for payment bonds are essentially identical:

⁸ Section 713.01(12), F.S.

⁹ Section 713.08(5), F.S.

¹⁰ Section 713.23(1)(d), F.S. With respect to notices of nonpayment for public construction projects, s. 255.05(2)(a)2., F.S., provides the same deadline.

¹¹ Section 713.01(13), F.S.

¹² Specially fabricated materials are materials that are "designed for a particular project" and "have no other useful purpose other than for that project." *Oolite Industries, Inc., v. Millman Const. Co., Inc.*, 501 So. 2d 655, 56 (Fla. 3d DCA 1987).

¹³ The definition of materialman in s. 713.01(20), F.S., includes a person who furnishes specially fabricated materials off the site of the improvement for installation in the improvement by another person.

¹⁴ Sections 713.20(4) and (5) and 713.235(1) and (2), F.S.

WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on ____, (year). (Lienor)

By: _____

WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$_____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on ____, (year). (Lienor)

By: _____

Although the Construction Lien Law requires waivers and releases of liens to be executed on forms that substantially follow the statutory forms, the law also provides that noncompliant forms are enforceable. Specifically, the law states that “[a] lien waiver or lien release that is not substantially similar to the forms [above] is enforceable in accordance with the terms of the lien waiver or lien release.”¹⁵

¹⁵ Section 713.20(8), F.S. Section 713.235(5), F.S., relating to waivers of claims against payment bonds, is effectively identical: “A waiver that is not substantially similar to the forms in this section is enforceable in accordance with its terms.”

Priority of Liens

Once a lienor satisfies all the statutory prerequisites and remains unpaid, the lienor may record a lien on the improved property, which is a prerequisite to foreclosing on the property. Normally, the priority of liens, which establishes the order in which claims are paid from the proceeds of a foreclosure sale, is determined by the order in which the liens are recorded.¹⁶ Under the Construction Lien Law, however, all construction liens are treated as if they were recorded on the date that the notice of commencement was recorded.¹⁷

Once recorded, the priority of a construction lien in relation to other types of liens or mortgages is set forth in s. 713.07(3), F.S., which states:

All [construction] liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.¹⁸

As a result, a construction lien will generally take priority over other liens or mortgages recorded after the recording of the notice of commencement, and a construction lien is inferior to other liens or mortgages recorded before the recording of the notice of commencement.

An exception to the general rule on the priority of liens might result from the doctrine of equitable subrogation. If the doctrine of equitable subrogation applies, it allows a subsequently recorded lien to take priority over an earlier recorded lien.¹⁹ The doctrine of equitable subrogation can be generally defined as:

Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right. Subrogation arises by operation of law, where one having a liability or a right or a fiduciary relation in the premises pays a debt due by another under such circumstances that he is, in equity, entitled to the security or obligation held by the creditor whom he has paid.

Unfortunately, there is little information, including appellate court opinions, showing whether or the extent to which the doctrine of equitable subrogation can be successfully used to displace the priority of a recorded construction lien. However, materials provided by the proponents of the bill show that the doctrine has been an issue in trial court proceedings.

¹⁶ The rule “governing priority of lien interests is ‘first in time is first in right.’” *Holly Lake Ass’n v. Fed. Nat’l Mortg. Ass’n*, 660 So. 2d 266, 268 (Fla.1995) (citing *Walter E. Heller & Co. Southeast, Inc. v. Williams*, 450 So. 2d 521, 532 (Fla. 3d DCA 1984), *review denied*, 462 So. 2d 1108 (Fla.1985)).

¹⁷ Section 713.07(2), F.S.

¹⁸ Section 713.07(3), F.S.

¹⁹ *Velazquez v. Serrano*, 43 So. 3d 82 (Fla. 3d DCA 2010).

Serving Notices

The proper functioning of the Construction Lien Law is substantially based on the delivery and receipt of notices among property owners, lienors, contractors, and sureties. With respect to public construction contracts, the law provides that a lienor, as a prerequisite to making a claim against a payment bond, must “serve a written notice of nonpayment on the contractor and on the surety.”²⁰ Thus, the law appears to require a claimant to serve two original documents when providing a notice of nonpayment.

When instruments including notices are served, the Construction Lien Law allows service to be accomplished through by “actual delivery to the person to be served” and by “common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery.”²¹ The law further provides that service of an instrument is generally effective on the “date of mailing.”²² Because the law allows an instrument to be shipped or mailed, the law may imply that a different effective date applies if an instrument is delivered by a delivery service other than U.S. mail.

III. Effect of Proposed Changes:

This bill revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S., as detailed below.

Form Waivers and Releases (Sections 1, 6, & 8)

Existing law provides forms for a lienor to use to waive and release a lien or to waive a claim against a payment bond. However, the law also provides that waivers and releases remain enforceable even if they are not substantially similar to the statutory forms.

The bill provides that provisions of waivers and releases are unenforceable to the extent they are not related to the provisions of the statutory forms. The statutory forms include an acknowledgment of payment for labor, services, or materials and a waiver or release of a lien or the waiver of the right to make a claim against the contractor’s payment bond. Accordingly, provisions included in a waiver or release that release a party from other liabilities or waive other rights are unenforceable under the bill.

Date of Final Furnishing of Specialty Materials (Section 2)

The timeframes established in the Construction Lien Law for a lienor to record a claim of lien or make a claim against a payment bond are based on the date of the final furnishing of materials. Materials are furnished when they are incorporated into an improvement or delivered to the site of an improvement. However, the law does not appear to establish a clear timeframe to record a claim of lien with respect to specially fabricated materials that are fabricated off site and not incorporated in the improvement or delivered to the site of the improvement.

²⁰ Sections 255.05(2)(a)2., F.S. Section 713.23(1)(d), F.S., with respect to private construction projects, contains almost identical language.

²¹ Section 713.18(2)(a)(b), F.S.

²² Section 713.13(3)(a), F.S.

The bill provides that for specially fabricated materials that are not delivered to the site of the improvement through no fault of the lienor, the date of final furnishing is 1 year from the later of the following:

- Completion of fabrication by the lienor.
- The date that the lienor receives the remainder of the specially fabricated materials to complete its order.
- The expiration of the notice of commencement.

As a result of the bill, there will be an opportunity and a clear deadline by which a lienor who furnishes specially fabricated materials may record a lien or make a claim against the contractor's payment bond.

Priority of Liens (Section 3)

Existing law essentially states that a construction lien will have higher priority for payment from the proceeds of a foreclosure sale than other liens or mortgages recorded after the notice of commencement. The bill appears to state this payment priority more imperatively by stating that a construction lien is superior to other liens recorded after the notice of commencement including:

subordinate conveyances, encumbrances, or demands that would otherwise relate back to any conveyance, encumbrance, or demand recorded before the time such lien attached pursuant to the operation of any common law doctrine or remedy.

What other types of claims against a property will be affected by the above language is not clear due to its complexity and breadth of the terms used.²³

Notice of Commencement Form (Section 4)

The notice of commencement form for a construction project provides the name and address of the owner of the property to be improved and the names and addresses of others who may be responsible for the project, including the fee simple title holder, lessee, contractor, surety, and lender.

The bill makes changes to the form to replace references to "fee simple titleholder" with "owner of record" and to replace "lessee" with "Tenant (Lessee)." The bill also requires the inclusion of the phone numbers for the individuals listed in the notice of commencement.

Serving Notices (Sections 1, 5, & 7)

Provisions of existing law can be read to require a lienor to serve two original notices to contractor, one on the contractor and one on the surety, as a prerequisite to making a claim against the contractor's payment bond. The bill provides that a lienor must only serve an original

²³ However, trial court materials supplied by the proponents indicate that the new language is at least intended to preclude claims based on the doctrine of equitable subrogation.

notice to contractor on the contractor, and the lienor must serve a copy of the notice on the surety.

A provision of the Construction Lien Law provides that service of an instrument is generally effective on the “date of mailing.” As a result, the law may imply that a different effective date applies if a notice is delivered by an authorized shipping service other than U.S. mail. The bill resolves this issue by providing that an instrument shipped by an authorized shipping service is effective on the date of “shipment.”

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to be a mandate because it does not appear to require counties or municipalities to spend funds or limit their revenues.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide a clear deadline to record liens or serve a notice to contractor for lienors who have not been paid for certain specially fabricated materials. The existence of clear deadlines may help those who furnish the materials to collect funds owed to them.

Additionally, the bill, by making unenforceable waivers and releases unrelated to a payment for construction work, may minimize the ability of those with superior

bargaining power to exact waivers or releases at the moment of payment which were not contemplated by the prior agreement of the parties.

The bill also minimizes the risk that a common law doctrine can be used by a party to assert rights for payment from the proceeds of a foreclosure sale that are superior to those of a construction lien.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 255.05, 713.01, 713.07, 713.13, 713.18, 713.20, 713.23, and 713.235.

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 Albritton

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1 A bill to be entitled
 2 An act relating to construction contracting; amending
 3 s. 255.05, F.S.; revising the manner by which certain
 4 claimants provide a notice of nonpayment to a surety;
 5 providing that certain provisions in a waiver or
 6 release of a claim against a payment bond are
 7 unenforceable; amending s. 713.01, F.S.; revising the
 8 definition of the term "final furnishing"; amending s.
 9 713.07, F.S.; specifying the priority of certain liens
 10 in relation to subordinate conveyances, encumbrances,
 11 and demands; amending s. 713.13, F.S.; revising
 12 information required to be included in a notice of
 13 commencement; amending s. 713.18, F.S.; modifying
 14 conditions under which service of certain instruments
 15 is deemed effective; amending s. 713.20, F.S.;
 16 providing that certain provisions in a lien waiver or
 17 release are unenforceable; amending s. 713.23, F.S.;
 18 revising the manner by which certain lienors provide a
 19 notice of nonpayment to a surety; amending s. 713.235,
 20 F.S.; providing that certain provisions in a waiver or
 21 release of a right to make a claim against a payment
 22 bond are unenforceable; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraphs (a) and (f) of subsection (2) of
 27 section 255.05, Florida Statutes, are amended to read:
 28 255.05 Bond of contractor constructing public buildings;
 29 form; action by claimants.-

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30 (2)(a)1. If a claimant is no longer furnishing labor,
 31 services, or materials on a project, a contractor or the
 32 contractor's agent or attorney may elect to shorten the time
 33 within which an action to enforce any claim against a payment
 34 bond must be commenced by recording in the clerk's office a
 35 notice in substantially the following form:

36
37 NOTICE OF CONTEST OF CLAIM
 38 AGAINST PAYMENT BOND

39
40 To: ...(Name and address of claimant)...

41
42 You are notified that the undersigned contests your notice
 43 of nonpayment, dated,, and served on the
 44 undersigned on,, and that the time within
 45 which you may file suit to enforce your claim is limited to 60
 46 days after the date of service of this notice.

47
48 DATED on,

49
50 Signed: ...(Contractor or Attorney)...

51
52 The claim of a claimant upon whom such notice is served and who
 53 fails to institute a suit to enforce his or her claim against
 54 the payment bond within 60 days after service of such notice is
 55 extinguished automatically. The contractor or the contractor's
 56 attorney shall serve a copy of the notice of contest to the
 57 claimant at the address shown in the notice of nonpayment or
 58 most recent amendment thereto and shall certify to such service

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59 on the face of the notice and record the notice.
 60 2. A claimant, except a laborer, who is not in privity with
 61 the contractor shall, before commencing or not later than 45
 62 days after commencing to furnish labor, services, or materials
 63 for the prosecution of the work, serve the contractor with a
 64 written notice that he or she intends to look to the bond for
 65 protection. A claimant who is not in privity with the contractor
 66 and who has not received payment for furnishing his or her
 67 labor, services, or materials shall serve a written notice of
 68 nonpayment on the contractor, and a copy of the notice on the
 69 surety. The notice of nonpayment shall be under oath and served
 70 during the progress of the work or thereafter but may not be
 71 served earlier than 45 days after the first furnishing of labor,
 72 services, or materials by the claimant or later than 90 days
 73 after the final furnishing of the labor, services, or materials
 74 by the claimant or, with respect to rental equipment, later than
 75 90 days after the date that the rental equipment was last on the
 76 job site available for use. Any notice of nonpayment served by a
 77 claimant who is not in privity with the contractor which
 78 includes sums for retainage must specify the portion of the
 79 amount claimed for retainage. An action for the labor, services,
 80 or materials may not be instituted against the contractor or the
 81 surety unless the notice to the contractor and notice of
 82 nonpayment have been served, if required by this section.
 83 Notices required or permitted under this section must be served
 84 in accordance with s. 713.18. A claimant may not waive in
 85 advance his or her right to bring an action under the bond
 86 against the surety. In any action brought to enforce a claim
 87 against a payment bond under this section, the prevailing party

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88 is entitled to recover a reasonable fee for the services of his
 89 or her attorney for trial and appeal or for arbitration, in an
 90 amount to be determined by the court, which fee must be taxed as
 91 part of the prevailing party's costs, as allowed in equitable
 92 actions. The time periods for service of a notice of nonpayment
 93 or for bringing an action against a contractor or a surety shall
 94 be measured from the last day of furnishing labor, services, or
 95 materials by the claimant and may not be measured by other
 96 standards, such as the issuance of a certificate of occupancy or
 97 the issuance of a certificate of substantial completion. The
 98 negligent inclusion or omission of any information in the notice
 99 of nonpayment that has not prejudiced the contractor or surety
 100 does not constitute a default that operates to defeat an
 101 otherwise valid bond claim. A claimant who serves a fraudulent
 102 notice of nonpayment forfeits his or her rights under the bond.
 103 A notice of nonpayment is fraudulent if the claimant has
 104 willfully exaggerated the amount unpaid, willfully included a
 105 claim for work not performed or materials not furnished for the
 106 subject improvement, or prepared the notice with such willful
 107 and gross negligence as to amount to a willful exaggeration.
 108 However, a minor mistake or error in a notice of nonpayment, or
 109 a good faith dispute as to the amount unpaid, does not
 110 constitute a willful exaggeration that operates to defeat an
 111 otherwise valid claim against the bond. The service of a
 112 fraudulent notice of nonpayment is a complete defense to the
 113 claimant's claim against the bond. The notice of nonpayment
 114 under this subparagraph must include the following information,
 115 current as of the date of the notice, and must be in
 116 substantially the following form:

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NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. Claimant has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on,

...(signature and address of claimant)...

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STATE OF FLORIDA
COUNTY OF

The foregoing instrument was sworn to (or affirmed) and subscribed before me this...day of, ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

(f) A provision in a waiver or a release executed on or after July 1, 2020, which ~~that~~ is not related to the waiver or release of a claim against the payment bond as contemplated in this subsection is unenforceable ~~substantially similar to the forms in this subsection is enforceable in accordance with its terms.~~

Section 2. Subsection (12) of section 713.01, Florida Statutes, is amended to read:

713.01 Definitions.—As used in this part, the term:

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the lienor's previously performed work or

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175 materials supplied.

176 (a) With respect to rental equipment, the term means the
 177 date that the rental equipment was last on the job site and
 178 available for use.

179 (b) With respect to specially fabricated materials, the
 180 term means the date that the last portion of the specially
 181 fabricated materials is delivered to the site of the
 182 improvement. However, if any portion of the specially fabricated
 183 materials is not delivered to the site of the improvement
 184 through no fault of the lienor, the term means either 1 year
 185 from completion of fabrication by the lienor, 1 year from the
 186 date that the lienor receives the remainder of the specially
 187 fabricated materials to complete its order, or the expiration of
 188 the notice of commencement, whichever occurs later.

189 Section 3. Subsection (3) of section 713.07, Florida
 190 Statutes, is amended to read:

191 713.07 Priority of liens.—

192 (3) All such liens shall have priority over any conveyance,
 193 encumbrance, or demand not recorded against the real property
 194 before prior to the time such lien attached as provided herein,
 195 including subordinate conveyances, encumbrances, or demands that
 196 would otherwise relate back to any conveyance, encumbrance, or
 197 demand recorded before the time such lien attached pursuant to
 198 the operation of any common law doctrine or remedy. However, but
 199 any conveyance, encumbrance, or demand recorded before prior to
 200 the time such lien attaches and any proceeds thereof, regardless
 201 of when disbursed, has shall have priority over such liens.

202 Section 4. Subsection (1) of section 713.13, Florida
 203 Statutes, is amended to read:

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204 713.13 Notice of commencement.—

205 (1) (a) Except for an improvement that is exempt pursuant to
 206 s. 713.02(5), an owner or the owner's authorized agent before
 207 actually commencing to improve any real property, or
 208 recommending completion of any improvement after default or
 209 abandonment, whether or not a project has a payment bond
 210 complying with s. 713.23, shall record a notice of commencement
 211 in the clerk's office and forthwith post either a certified copy
 212 thereof or a notarized statement that the notice of commencement
 213 has been filed for recording along with a copy thereof. The
 214 notice of commencement ~~must~~ shall contain the following
 215 information:

216 1. A description sufficient for identification of the real
 217 property to be improved. The description should include the
 218 legal description of the property and also should include the
 219 street address and tax folio number of the property if available
 220 or, if there is no street address available, such additional
 221 information as will describe the physical location of the real
 222 property to be improved.

223 2. A general description of the improvement.

224 3. The name and address of the owner of record, ~~the owner's~~
 225 ~~interest in the site of the improvement, and the name and~~
 226 ~~address of the fee simple titleholder, if other than such owner.~~

227 4. The name and address of the tenant, or lessee, if the
 228 tenant ~~A lessee who~~ contracts for the improvements as is an
 229 owner as defined under s. 713.01(23) ~~and must be listed as the~~
 230 ~~owner together with a statement that the ownership interest is a~~
 231 ~~leasehold interest.~~

232 ~~5.4.~~ The name and address of the contractor.

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233 ~~6.5-~~ The name and address of the surety on the payment bond
 234 under s. 713.23, if any, and the amount of such bond.

235 ~~7.6-~~ The name and address of any person making a loan for
 236 the construction of the improvements.

237 ~~8.7-~~ The name and address within the state of a person
 238 other than himself or herself who may be designated by the owner
 239 as the person upon whom notices or other documents may be served
 240 under this part; and service upon the person so designated
 241 constitutes service upon the owner.

242 (b) The owner, at his or her option, may designate a person
 243 in addition to himself or herself to receive a copy of the
 244 lienor's notice as provided in s. 713.06(2)(b), and if he or she
 245 does so, the name and address of such person must be included in
 246 the notice of commencement.

247 (c) If the contract between the owner and a contractor
 248 named in the notice of commencement expresses a period of time
 249 for completion for the construction of the improvement greater
 250 than 1 year, the notice of commencement must state that it is
 251 effective for a period of 1 year plus any additional period of
 252 time. Any payments made by the owner after the expiration of the
 253 notice of commencement are considered improper payments.

254 (d) A notice of commencement must be in substantially the
 255 following form:

256 Permit No..... Tax Folio No.....
 257
 258 NOTICE OF COMMENCEMENT
 259 State of....
 260 County of....
 261

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262 The undersigned hereby gives notice that improvement will be
 263 made to certain real property, and in accordance with Chapter
 264 713, Florida Statutes, the following information is provided in
 265 this Notice of Commencement.

266 1. Description of property: ...(legal description of the
 267 property, and street address if available)....

268 2. General description of improvement:.....

269 3. Owner of record information or Lessee information if the
 270 ~~Lessee contracted for the improvement:~~

271 a. Name and address:.....

272 b. Phone number:....Interest in property:....

273 ~~c. Name and address of fee simple titleholder (if different~~
 274 ~~from Owner listed above):.....~~

275 4. Tenant (lessee) if tenant contracted for the
 276 improvement:

277 a. Name and address:.....

278 b. Phone number:.....

279 5. Contractor:

280 a. Name and address:.... (name and address)....

281 b. ~~Contractor's~~ Phone number:.....

282 ~~6.5-~~ Surety (if applicable, a copy of the payment bond is
 283 attached):

284 a. Name and address:.....

285 b. Phone number:.....

286 c. Amount of bond: \$.....

287 ~~7.6.a. Lender:....(name and address)....~~

288 a. Name and address:.....

289 b. ~~Lender's~~ Phone number:.....

290 ~~8.7-~~ Persons within the State of Florida designated by

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291 Owner upon whom notices or other documents may be served as
 292 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
 293 Statutes:
 294 a. Name and address:.....
 295 b. Phone numbers of designated persons:.....
 296 ~~9.a.8.a.~~ In addition to himself or herself, Owner
 297 designates of to receive a copy of the
 298 Lienor's Notice as provided in Section 713.13(1)(b), Florida
 299 Statutes.
 300 b. Phone number of person or entity designated by
 301 owner:.....
 302 ~~10.9.~~ Expiration date of notice of commencement (the
 303 expiration date will be 1 year from the date of recording unless
 304 a different date is specified).....
 305
 306 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 307 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 308 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 309 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 310 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 311 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 312 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 313 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 314 COMMENCEMENT.
 315
 316 ... (Signature of Owner or Tenant (Lessee) ~~Lessee~~, or Owner's or
 317 Tenant's (Lessee's) ~~Lessee's~~ Authorized
 318 Officer/Director/Partner/Manager)...

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320 ... (Signatory's Title/Office) ...
 321
 322 The foregoing instrument was acknowledged before me this ...
 323 day of ..., ...(year)..., by ...(name of person)... as ...(type
 324 of authority, . . . e.g. officer, trustee, attorney in fact)...
 325 for ...(name of party on behalf of whom instrument was
 326 executed)....
 327
 328 ... (Signature of Notary Public - State of Florida) ...
 329
 330 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 331
 332 Personally Known ... OR Produced Identification ...
 333
 334 Type of Identification Produced.....
 335
 336 (e) A copy of any payment bond must be attached at the time
 337 of recordation of the notice of commencement. The failure to
 338 attach a copy of the bond to the notice of commencement when the
 339 notice is recorded negates the exemption provided in s.
 340 713.02(6). However, if a payment bond under s. 713.23 exists but
 341 was not attached at the time of recordation of the notice of
 342 commencement, the bond may be used to transfer any recorded lien
 343 of a lienor except that of the contractor by the recordation and
 344 service of a notice of bond pursuant to s. 713.23(2). The notice
 345 requirements of s. 713.23 apply to any claim against the bond;
 346 however, the time limits for serving any required notices shall,
 347 at the option of the lienor, be calculated from the dates
 348 specified in s. 713.23 or the date the notice of bond is served

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349 on the lienor.

350 (f) The giving of a notice of commencement is effective
351 upon the filing of the notice in the clerk's office.

352 (g) The owner must sign the notice of commencement and no
353 one else may be permitted to sign in his or her stead.

354 Section 5. Paragraph (a) of subsection (3) of section
355 713.18, Florida Statutes, is amended to read:

356 713.18 Manner of serving notices and other instruments.-

357 (3) (a) Service of an instrument pursuant to this section is
358 effective on the date of mailing or shipment of the instrument
359 if it:

360 1. Is sent to the last address shown in the notice of
361 commencement or any amendment thereto or, in the absence of a
362 notice of commencement, to the last address shown in the
363 building permit application, or to the last known address of the
364 person to be served; and

365 2. Is returned as being "refused," "moved, not
366 forwardable," or "unclaimed," or is otherwise not delivered or
367 deliverable through no fault of the person serving the item.

368 Section 6. Subsection (8) of section 713.20, Florida
369 Statutes, is amended to read:

370 713.20 Waiver or release of liens.-

371 (8) A provision in a lien waiver or lien release executed
372 on or after July 1, 2020, which that is not related to the
373 waiver or release of lien rights as contemplated by this section
374 is unenforceable substantially similar to the forms in
375 subsections (4) and (5) is enforceable in accordance with the
376 terms of the lien waiver or lien release.

377 Section 7. Paragraph (d) of subsection (1) of section

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378 713.23, Florida Statutes, is amended to read:

379 713.23 Payment bond.-

380 (1)

381 (d) In addition, a lienor who has not received payment for
382 furnishing his or her labor, services, or materials must, as a
383 condition precedent to recovery under the bond, serve a written
384 notice of nonpayment to the contractor, and a copy of the notice
385 to the surety. The notice must be under oath and served during
386 the progress of the work or thereafter, but may not be served
387 later than 90 days after the final furnishing of labor,
388 services, or materials by the lienor, or, with respect to rental
389 equipment, later than 90 days after the date the rental
390 equipment was on the job site and available for use. A notice of
391 nonpayment that includes sums for retainage must specify the
392 portion of the amount claimed for retainage. The required notice
393 satisfies this condition precedent with respect to the payment
394 described in the notice of nonpayment, including unpaid finance
395 charges due under the lienor's contract, and with respect to any
396 other payments which become due to the lienor after the date of
397 the notice of nonpayment. The time period for serving a notice
398 of nonpayment shall be measured from the last day of furnishing
399 labor, services, or materials by the lienor and may not be
400 measured by other standards, such as the issuance of a
401 certificate of occupancy or the issuance of a certificate of
402 substantial completion. The failure of a lienor to receive
403 retainage sums not in excess of 10 percent of the value of
404 labor, services, or materials furnished by the lienor is not
405 considered a nonpayment requiring the service of the notice
406 provided under this paragraph. If the payment bond is not

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407 recorded before commencement of construction, the time period
 408 for the lienor to serve a notice of nonpayment may at the option
 409 of the lienor be calculated from the date specified in this
 410 section or the date the lienor is served a copy of the bond.
 411 However, the limitation period for commencement of an action on
 412 the payment bond as established in paragraph (e) may not be
 413 expanded. The negligent inclusion or omission of any information
 414 in the notice of nonpayment that has not prejudiced the
 415 contractor or surety does not constitute a default that operates
 416 to defeat an otherwise valid bond claim. A lienor who serves a
 417 fraudulent notice of nonpayment forfeits his or her rights under
 418 the bond. A notice of nonpayment is fraudulent if the lienor has
 419 willfully exaggerated the amount unpaid, willfully included a
 420 claim for work not performed or materials not furnished for the
 421 subject improvement, or prepared the notice with such willful
 422 and gross negligence as to amount to a willful exaggeration.
 423 However, a minor mistake or error in a notice of nonpayment, or
 424 a good faith dispute as to the amount unpaid, does not
 425 constitute a willful exaggeration that operates to defeat an
 426 otherwise valid claim against the bond. The service of a
 427 fraudulent notice of nonpayment is a complete defense to the
 428 lienor's claim against the bond. The notice under this paragraph
 429 must include the following information, current as of the date
 430 of the notice, and must be in substantially the following form:

431 NOTICE OF NONPAYMENT

432 To ...(name of contractor and address)...

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436 ...(name of surety and address)...

437

438 The undersigned lienor notifies you that:

439 1. The lienor has furnished ...(describe labor, services,
 440 or materials)... for the improvement of the real property
 441 identified as ...(property description).... The corresponding
 442 amount unpaid to date is \$...., of which \$.... is unpaid
 443 retainage.

444 2. The lienor has been paid to date the amount of \$.... for
 445 previously furnishing ...(describe labor, services, or
 446 materials)... for this improvement.

447 3. The lienor expects to furnish ...(describe labor,
 448 services, or materials)... for this improvement in the future
 449 (if known), and the corresponding amount expected to become due
 450 is \$.... (if known).

451

452 I declare that I have read the foregoing Notice of Nonpayment
 453 and that the facts stated in it are true to the best of my
 454 knowledge and belief.

455

456 DATED on,

457

458 ...(signature and address of lienor)...

459

460 STATE OF FLORIDA

461 COUNTY OF.....

462

463 The foregoing instrument was sworn to (or affirmed) and
 464 subscribed before me this day of, ...(year)...., by

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465 ... (name of signatory)....

466 ... (Signature of Notary Public - State of Florida)...

467 ... (Print, Type, or Stamp Commissioned Name of Notary

468 Public)...

469

470 Personally Known OR Produced Identification

471

472 Type of Identification Produced.....

473 Section 8. Subsection (5) of section 713.235, Florida

474 Statutes, is amended to read:

475 713.235 Waivers of right to claim against payment bond;

476 forms.-

477 (5) A provision in a waiver or a release executed on or

478 after July 1, 2020, which ~~that~~ is not related to the waiver or

479 release of a claim against the payment bond as contemplated by

480 this section is unenforceable substantially similar to the forms

481 in this section is enforceable in accordance with its terms.

482 Section 9. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 3, 2019

I respectfully request that **Senate Bill #868**, relating to Construction Contracting, be placed on the:

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

Senator Ben Albritton
Florida Senate, District 26

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 886

INTRODUCER: Senator Powell

SUBJECT: Errors in Deeds

DATE: December 9, 2019

REVISED: _____

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

I. Summary:

SB 886 provides that, in certain instances, a deed containing a scrivener’s error in the legal description of property (and subsequent deeds containing the same error) may be corrected by the filing of a curative notice.

The bill defines the errors or omissions that constitute “scrivener’s errors” and describes the circumstances under which such errors may be corrected by a curative notice. A curative notice corrects all deeds for the same property containing the same scrivener’s error, and releases any cloud or encumbrance that an erroneous deed may have created as to other properties.

II. Present Situation:

Generally, deeds containing scrivener’s errors should be reformed to reflect the true intentions of the parties.¹

The Florida Statutes do not expressly mention “corrective deeds,” but courts have established a general rule of law allowing for corrective instruments conveying real property: “A deed containing an incorrect description or a misspelling of names may be corrected by a subsequent instrument clearly identified as a correction deed.”² Corrective deeds needn’t “restate all material portions of the deed being corrected if such portions contain no errors.”³ Corrective deeds and non-erroneous portions of original deeds are “construed together.”⁴

¹ See *Burke v. Piccone*, 523 So. 2d 664, 665 (Fla. 2d DCA 1988); see also *Brown v. Brown*, 501 So. 2d 24, 26-27 (Fla. 5th DCA 1986); *Gennaro v. Leeper*, 313 So. 2d 70, 72 (Fla. 2d DCA 1975); *Jacobs v. Parodi*, 39 So. 833 (1905).

² *Golden v. Hayes*, 277 So. 2d 816, 817 (Fla. 1st DCA 1973).

³ *Id.*

⁴ *Id.*

“A reformation relates back to the time the instrument was originally executed and simply corrects the document’s language to read as it should have read all along.”⁵ “The theory of reformation on grounds of mistake is to reform the agreement to reflect what the parties would have agreed to had there been no mistake.”⁶ Claims for reformation of a deed are subject to a 20-year limitations period.⁷ A party seeking reformation of a deed may seek, in the same pleading, to quiet title to the party to reflect the correct ownership.⁸

Courts have contemplated remedying alleged defects in deeds through “curative deeds,”⁹ although the term is not mentioned in the Florida Statutes.

“[E]rrors in the legal description of property, contained in a deed or mortgage existing prior to entry of the final judgment, cannot be remedied by simply amending or correcting the final judgment,” but errors in the legal description of the property that occur “upon entry of the final judgment itself, and did not exist in a deed or mortgage (or other document conveying or encumbering the property) prior to entry of the final judgment” can be corrected through an amended or corrected judgment.¹⁰

The Florida Statutes describe instances where certain entities may amend errors in the legal description of condominium property. Section 718.110(5), F.S., allows a condominium’s board of administration to file an amendment to a condominium declaration if it appears that, due to a scrivener’s error, the “common elements” of the condominium have not been distributed equally in the declaration. Similarly, a “termination trustee” charged with terminating a condominium declaration may record an amended plan of termination if the trustee discovers a scrivener’s error in the plan, and the amended plan must be executed in the same manner as required for the execution of a deed.¹¹

⁵ *Kartzmark v. Kartzmark*, 709 So. 2d 583, 585 (Fla.4th DCA 1998).

⁶ *Id.*; “A mistake is mutual when the parties agree to one thing and then, due to either a scrivener’s error or inadvertence, express something different in the written instrument.” *Circle Mortgage Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994).

⁷ Section 95.231, F.S.; *Inglis v. First Union Nat. Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001).

⁸ *See, e.g., Rigby v. Liles*, 505 So. 2d 598, 599 (Fla. 1st DCA 1987); *see also* s. 65.021, F.S.

⁹ *See Heartwood 2, LLC v. Dori*, 208 So. 3d 817, 822-23 (Fla. 3d DCA 2017) (“Any alleged defect in the deed into the mortgagor ... should remain for a separate action ... or a *curative deed* to be obtained from the grantor by consent” (Salter, J., concurring in part and dissenting in part) (emphasis added)).

¹⁰ *Baker v. Courts at Bayshore I Condominium Ass’n, Inc.*, 279 So. 3d 799, 801-02 (Fla. 2d DCA 2019) (emphasis removed); *see also Fed. Nat. Mortg. Ass’n v. Sanchez*, 187 So. 3d 341, 343 (Fla. 4th DCA 2016) (holding in such case that the trial court must first vacate the judgment, the sale and any certificates of title or sale); *Caddy v. Wells Fargo Bank, N.A.*, 198 So. 3d 1149, 1150 (Fla. 4th DCA 2016); *Wells Fargo Bank, N.A. v. Giesel*, 155 So. 3d 411, 414 (Fla. 1st DCA 2014); *Lucas v. Barnett Bank of Lee Cty.*, 705 So. 2d 115, 116 (Fla. 2d DCA 1998); *Fisher v. Villamil*, 56 So. 559, 561-62 (Fla. 1911) (“[W]hen a mortgage misdescribes the property intended to be mortgaged the mistake may be corrected by a proper proceeding before judicial foreclosure; but, if the mistake has been carried into a bill, filed for the purpose of foreclosing such mortgage, into the decree ordering foreclosure, into the advertisement, and into the deed, the purchaser at such foreclosure sale cannot maintain a bill in equity to correct the description of the land as contained in the mortgage, in the decree, and in the deed”).

¹¹ Section 718.117(2)(d), F.S.

III. Effect of Proposed Changes:

The bill states that a deed containing a “scrivener’s error” conveys title to the “intended real property” as if there had been no error, and states that each subsequent erroneous deed containing the identical scrivener’s error also conveys title as if there had been no error.

The bill defines a “scrivener’s error” as a single error or omission in the legal description of the “intended real property,” i.e. the property which the grantor intended to be conveyed by the deed, that is one of the following:

- an error or omission of one lot or block identification of a recorded platted lot (for the purposes of the bill, transposition of lot and block identifications are considered one error),
- an error or omission of one unit, building, or phase identifications of a condominium or cooperative unit, or
- an error or omission in one directional designation or numerical fraction of a tract of land that is described as a fractional portion of a section, township, or range (for the purposes of the bill, an error or omission in the directional description and numerical fraction of the same call is considered one error).

The bill states that deeds containing scrivener’s errors convey title to the intended property as if there had been no error if:

- the grantor held record title to the intended property at the time the deed containing the scrivener’s error was executed,
- the grantor or the erroneous deed did not hold title to any other real property in the same subdivision, condominium, or cooperative development or in the same section, township, and or range described in the deed containing the scrivener’s error within 5 years before the record date of that deed,
- the record property is not described exclusively as a metes and bounds legal description, and
- a curative notice evidencing the intended real property to be conveyed by the grantor is recorded in the official records of the county where the intended real property is located.

The bill provides the form for a curative notice, which requires a description of the original erroneous deed and any subsequent deeds containing the same error, a statement that the person filing the notice has confirmed, through an examination of the official county records, that the above-mentioned requirements for conveyance of title were met, and a statement that the real property described in the notice was the property intended to be conveyed by the erroneous deeds.

The bill states that circuit court clerks may accept a curative notice as evidence of a grantor’s intent to convey the intended property, and states that the corrections made by the curative notice relate back to the record date of the original erroneous deed and release any clouds or encumbrances created by the erroneous deeds as to any property other than the intended real property.

The bill states that its remedies are not exclusive and do not abrogate any other remedy under Florida law.

The bill allows for the correction of errors meeting its definition without having to file a claim for reformation of deed or quiet title action in a court. The bill alters the rule established in case law by more clearly defining the form of a curative deed and narrowing the types of errors that constitute “scrivener’s errors” that may be corrected with a subsequent curative deed. However, because the bill states that its remedies are not exclusive, it appears that deeds containing erroneous legal descriptions of property that do not meet the bill’s definition of “scrivener’s errors” may be remedied through the current method of filing actions for reformation of deed or quiet title. The bill does not specify whether it is subject to the 20-year limitations period that pertains to traditional claims for reformation of deed.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By filing a curative notice, a property owner may be able to sufficiently clear title to property without the expenses associated with a claim for reformation of deed or a quiet title action.

C. Government Sector Impact:

The bill provides a method for correcting scrivener's errors in deeds other than by a claim of reformation of deed or quiet title, and therefore may reduce judicial labor. However, the bill will likely result in an increase in the workloads of court clerks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 138-140 of the bill state that the court clerks "may" accept and record curative notices "as evidence of the intent of the grantor in the erroneous deed . . ." The Legislature may wish revise the sentence to state that the clerks "shall" accept and record the curative notices and that the notices are evidence of the intent of the grantor. As currently drafted, the language appears to give clerks discretion in deciding whether to accept a notice and a duty or authority to evaluate whether the curative notice is evidence of a grantor's intent.

VIII. Statutes Affected:

This bill creates section 689.041 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.

By Senator Powell

30-01022-20

2020886__

1 A bill to be entitled
 2 An act relating to errors in deeds; creating s.
 3 689.041, F.S.; defining terms; providing that a deed
 4 containing a scrivener's error conveys title as if
 5 there had been no such error if certain requirements
 6 are met; providing a form for a curative notice;
 7 authorizing the clerks of the circuit court to accept
 8 and record curative notices; providing for the
 9 operation of a curative notice; providing
 10 construction; providing an effective date.

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

13
 14 Section 1. Section 689.041, Florida Statutes, is created to
 15 read:

16 689.041 Curative procedure for scrivener's errors in
 17 deeds.-

18 (1) As used in this section, the term:

19 (a) "Erroneous deed" means any deed, other than a quitclaim
 20 deed, which contains a scrivener's error.

21 (b) "Intended real property" means the real property vested
 22 in the grantor and intended to be conveyed by the grantor in the
 23 erroneous deed.

24 (c) "Scrivener's error" means a single error or omission in
 25 the legal description of the intended real property in no more
 26 than one of the following categories:

27 1. An error or omission in no more than one of the lot or
 28 block identifications of a recorded platted lot; however, the
 29 transposition of the lot and block identifications is considered

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

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30 one error for the purposes of this subparagraph;

31 2. An error or omission in no more than one of the unit,
 32 building, or phase identifications of a condominium or
 33 cooperative unit; or

34 3. An error or omission in no more than one directional
 35 designation or numerical fraction of a tract of land that is
 36 described as a fractional portion of a section, township, or
 37 range; however, an error or omission in the directional
 38 description and numerical fraction of the same call is
 39 considered one error for the purposes of this subparagraph.

40
 41 The term "scrivener's error" does not include any error in a
 42 document that contains multiple errors.

43 (2) A deed that contains a scrivener's error conveys title
 44 to the intended real property as if there had been no
 45 scrivener's error, and, likewise, each subsequent erroneous deed
 46 containing the identical scrivener's error conveys title to the
 47 intended real property as if there had been no such error if all
 48 of the following apply:

49 (a) Record title to the intended real property was held by
 50 the grantor of the first erroneous deed at the time the first
 51 erroneous deed was executed.

52 (b) Within the 5 years before the record date of the
 53 erroneous deed, the grantor of any erroneous deed did not hold
 54 title to any other real property in the same subdivision,
 55 condominium, or cooperative development or in the same section,
 56 township, and range, described in the erroneous deed.

57 (c) The intended real property is not described exclusively
 58 by a metes and bounds legal description.

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59 (d) A curative notice is recorded in the official records
 60 of the county in which the intended real property is located
 61 which evidences the intended real property to be conveyed by the
 62 grantor.

63 (3) A curative notice must be in substantially the
 64 following form:

65 Curative Notice, Per Sec. 95.2311, F.S.
 66 Scrivener's Error in Legal Description

67 The undersigned does hereby swear and affirm:

70
 71 1. The deed which transferred title from ...(Insert
 72 Name)... to ...(Insert Name)... on ...(Date)... and recorded on
 73 ...(Record Date)... in O.R. Book, Page, and/or
 74 Instrument No., of the official records of ...(Name of
 75 County)..., Florida, (hereinafter referred to as "first
 76 erroneous deed") contained the following erroneous legal
 77 description:

78 ...(Insert Erroneous Legal Description)...

81 2. The deed transferring title from ...(Insert Name)... to
 82 ...(Insert Name)... and recorded on ...(Record Date)... in O.R.
 83 Book, Page, and/or Instrument No., of the
 84 official records of ...(Name of County)..., Florida, contains
 85 the same erroneous legal description described in the first
 86 erroneous deed.

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88 ...(Insert and repeat paragraph 2. as necessary to include
 89 each subsequent erroneous deed in the chain of title containing
 90 the same erroneous legal description)...
 91

92 3. I have examined the official records of the county in
 93 which the intended real property is located and have determined
 94 that the deed dated ...(Date)..., and recorded on ...(Record
 95 Date)... in O.R. Book, Page and/or Instrument No.
 96 ..., official records of ...(Name of County)..., Florida,
 97 establishes that record title to the intended real property was
 98 held by the grantor of the first erroneous deed at the time the
 99 first erroneous deed was executed.

100
 101 4. I have examined or have had someone else examine the
 102 official records of ...(Name of County)..., Florida, and certify
 103 that:

104 a. Record title to the intended real property was held by
 105 the grantor of the first erroneous deed, ...(Insert Name)..., at
 106 the time that deed was executed.

107 b. The grantor of the first erroneous deed and the grantors
 108 of any subsequent erroneous deeds listed above did not hold
 109 record title to any property other than the intended real
 110 property in either the same subdivision, condominium or
 111 cooperative or the same section, township and range, if
 112 described in this manner, at any time within the 5 years before
 113 the date that the erroneous deed was executed.

114 c. The intended real property is not described by a metes
 115 and bounds legal description.

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117 5. This notice is made to establish that the real property
118 described as ...(insert legal description of the intended real
119 property)... (hereinafter referred to as the "intended real
120 property") was the real property that was intended to be
121 conveyed in the first erroneous deed and all subsequent
122 erroneous deeds.

123
124 ...(Signature)...
125 ...(Printed Name)...
126
127

128 Sworn to (or affirmed) and subscribed before me this
129 day of, ...(year)..., by ...(name of person making
130 statement)....

131 ...(Signature of Notary Public - State of Florida)...
132 ...(Print, Type, or Stamp Commissioned Name of Notary
133 Public)...
134

135 Personally Known OR Produced Identification
136 Type of Identification Produced.....
137

138 (4) The clerks of the circuit court for the circuit in
139 which any intended real property is located may accept and
140 record curative notices in the form described in subsection (3)
141 as evidence of the intent of the grantor in the erroneous deed
142 to convey the intended real property to the grantee in the
143 erroneous deed.

144 (5) A curative notice recorded pursuant to this section
145 operates as a correction of the first erroneous deed and all

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146 subsequent erroneous deeds containing the same scrivener's error
147 described in the curative notice and releases any cloud or
148 encumbrance that any of the erroneous deeds may have created as
149 to any property other than the intended real property. The
150 correction relates back to the record date of the first
151 erroneous deed.

152 (6) The remedies under this section are not exclusive and
153 do not abrogate any right or remedy under the laws of this state
154 other than this section.

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 2, 2019

I respectfully request that **Senate Bill #886**, relating to Errors in Deeds, be placed on the:

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

A handwritten signature in black ink, appearing to read "Bobby Powell".

Senator Bobby Powell
Florida Senate, District 30

THE FLORIDA SENATE
APPEARANCE RECORD

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

12-10-19

Meeting Date

886

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Pete Dunbar

Job Title _____

Address 215 S. Monroe

Phone 999-4100

Street

Tallahassee

City

State

Zip

Email pdunbar@deanward.com

Speaking: For Against Information

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

Representing RPPTL

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 400

INTRODUCER: Senator Gibson

SUBJECT: Elder Abuse Fatality Review Teams

DATE: December 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herndon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 400 authorizes, but does not require, a state attorney in each judicial circuit to initiate the establishment of an elder abuse fatality review team, composed of volunteer members. The teams would review closed cases of fatal incidents of elder abuse or neglect and make policy and other recommendations to help prevent future incidents of elder abuse-related fatalities. The review teams are housed within the Department of Elder Affairs (DOEA) for administrative purposes only. The DOEA must submit a report, annually by November 1, that summarizes the findings and recommendations of the review teams to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill is likely to have an insignificant fiscal impact.

The bill takes effect July 1, 2020.

II. Present Situation:

The Adult Protective Services Act, chapter 415, F.S., charges the Department of Children and Families (DCF), to investigate reports of abuse or exploitation of a vulnerable adult or elderly person. The mandatory reporting requirement of persons who are required to investigate reports of abuse, neglect, or exploitation also extends to deaths due to alleged abuse or neglect.¹

Florida Abuse Hotline and Investigations

The Florida Abuse Hotline, administered by the DCF, screens allegations of adult abuse and neglect to determine if the allegations meet the criteria for an abuse report. If the allegations meet the criteria, a protective investigation is initiated to confirm whether the evidence

¹ Section 415.1034, F.S.

substantiates that abuse has occurred, whether the situation presents an immediate or long-term risk to the victim, and whether the victim needs additional services for protection.²

Section 415.1034, F.S., requires any person who knows or has reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited to report to the central abuse hotline. Additionally, if DCF investigates elder abuse, neglect, or exploitation and has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation, they must immediately report the suspicion to the appropriate medical examiner, the appropriate criminal justice agency, and to DCF.³

The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to begin within 24 hours a protective investigation of the matter.⁴ For each report it receives, the DCF must perform an onsite investigation to determine, among other things, if the person meets the definition of a vulnerable adult and, if so, if the person is in need of services; whether there is an indication that the vulnerable adult was abused, neglected, or exploited; and if protective, treatment, and ameliorative services are necessary to safeguard and ensure the vulnerable adult's well-being.⁵

Adult Protection Teams

Section 415.1102, F.S., authorizes the DCF to develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of its regions. A "multidisciplinary adult protection team" is defined as a team of two or more persons trained in the prevention, identification, and treatment of abuse of elderly persons.⁶ The multidisciplinary teams may be composed of, but are not limited to, psychiatrists, psychologists, or other trained counseling personnel; law enforcement officers; medical personal with experience or training to provide health services; social workers who have experience or training in the prevention of abuse of the elderly or dependent persons; and public and professional guardians.⁷ The multidisciplinary team is convened to supplement the protective services activities of the Adult Protective Services program of the DCF.⁸

Records Access

Section 415.107(3), F.S., enumerates persons and entities that may have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S. The identity of any person reporting abuse, neglect, or exploitation of a vulnerable person shall not be released to these persons and entities.

² See s. 415.103, F.S. and Florida Department of Children and Families; Protecting Vulnerable Adults, <https://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults.shtml>.

³ Section 415.1034(2), F.S.

⁴ Section 415.104(1), F.S.

⁵ Section 415.104(3), F.S.

⁶ Section 415.1102(1), F.S.

⁷ Section 415.1102(2), F.S.

⁸ Section 415.1102(3), F.S.

III. Effect of Proposed Changes:

Elder Abuse Fatality Review Teams

Creation

The bill creates s. 415.1103, F.S., to authorize the establishment of an elder abuse fatality review team, made up of volunteers, in each of the 20 judicial circuits. The teams are authorized to review fatal incidents of abuse or neglect against the elderly. The establishment of the review teams may be initiated by the local state attorney, or his or her designee, and the teams are housed within the Department of Elder Affairs for administrative purposes only. At the initial meeting the members must choose two co-chairs and must establish a schedule for future meetings. The review team must meet at least once during each fiscal year.

Composition

Each review team is composed of volunteers from numerous state and local agencies as well as community partners.⁹ Each volunteer serves without compensation for a two-year term, and the co-chairs will determine the team's staggered terms. Members may not be reimbursed for per diem or travel expenses. Any extraneous administrative costs incurred by the review team must be borne by the team members themselves or the entities that they represent.

Operations

Each team will determine how it operates and the process to select cases. The cases, however, must be limited to closed cases in which an elderly person's death is found to have been caused by or related to abuse or neglect in order to avoid interference with an ongoing criminal investigation or prosecution. All information that would identify the person must be redacted in the documents that the team reviews.

Responsibilities

The elder abuse fatality team must:

- Review deaths of elderly people in its judicial circuit that were found to have been caused by, or related to, abuse or neglect;
- Consider events leading up to the fatal incident, available resources, current law and policies, and the actions taken by systems and individuals related to the fatal incident;
- Identify potential gaps and deficiencies in the delivery of services by agencies which may be related to the deaths;
- Develop communitywide approaches to address causes and contributing factors related to deaths reviewed by the team; and

⁹ The bill provides that membership may include, but is not be limited to, the following or their representatives: law enforcement agencies; the state attorney; the medical examiner; a county court judge; adult protective services; area agency on aging; the State Long-Term Care Ombudsman Program; the Agency for Health Care Administration; the Office of the Attorney General; the Office of State Courts Administrator; the clerk of the court; a victim services program; an elder law attorney; emergency services personnel; a certified domestic violence center; an advocacy organization for victims of sexual violence; a funeral home director; a forensic pathologist; a geriatrician; a geriatric nurse; a geriatric psychiatrist or other individual licensed to offer behavioral health services; a hospital discharge planner; a public guardian; and other persons with relevant expertise who are recommended by the review team.

- Develop recommendations and possible changes in law and policies to support the care of the elderly and prevent elder abuse deaths.

Prohibited Contact

Team members are prohibited from directly contacting someone in the deceased person's family as part of the review unless the team member is authorized to do so in the course of his or her employment duties. However, nothing in the bill prohibits a family member from voluntarily providing information or records to the review team. If a family member provides information to the review team, he or she must be informed that the information is subject to public disclosure unless a public records exemption applies to the information.

Reporting Requirements

Each team is required to submit its findings and recommendations to the DOEA annually by September 1. The report may include descriptive statistics, current policies that contribute to the incidence of elder abuse and deaths with recommendation for improvements, and any other recommendations to prevent deaths from elder abuse or neglect.

Additionally, by November 1 of each year, the DOEA must prepare a summary report of the information provided by the review teams, and submit the report to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

Protection from Liability for Team Members

Unless a team member acts in bad faith with wanton and willful disregard of human rights, safety, or property, he or she is not liable financially or subject to a cause of action for damages due to the performance of duties as a review team member with regard to any discussions, deliberations, or recommendations of the team or the member.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

The information received by the elder abuse fatality review teams would be from closed cases and therefore previously redacted; all information received by the teams is public record subject to copying and inspection.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill appears to be insignificant. The elder abuse fatality review teams are volunteers who serve without compensation or reimbursement. However, the Department of Elder Affairs may incur additional costs associated with providing administrative support to the review teams and with submitting the annual report.

VI. Technical Deficiencies:

While the bill does allow each state attorney or his or her designee to initiate the establishment of a review team, the bill does not specify who the appointing authority will be.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 415.1103 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.

By Senator Gibson

6-00142-20

2020400__

1 A bill to be entitled
 2 An act relating to elder abuse fatality review teams;
 3 creating s. 415.1103, F.S.; authorizing the
 4 establishment of elder abuse fatality review teams in
 5 each judicial circuit, to be housed, for
 6 administrative purposes only, in the Department of
 7 Elderly Affairs; providing conditions for review team
 8 membership, establishment, and organization;
 9 specifying requirements for a review team's operations
 10 and meeting schedules; requiring that the
 11 administrative costs of operating a review team be
 12 paid by team members or the entities they represent;
 13 authorizing elder abuse fatality review teams in
 14 existence on a certain date to continue to exist;
 15 requiring such existing teams to comply with specified
 16 requirements; specifying review team duties; requiring
 17 each review team to annually submit to the department
 18 by a certain date a summary report containing
 19 specified information; requiring the department to
 20 annually prepare a summary report based on the review
 21 teams' information and submit such report to the
 22 Governor, the Legislature, and the Department of
 23 Children and Families; providing immunity from
 24 monetary liability for review team members under
 25 certain conditions; providing an effective date.
 26
 27 Be It Enacted by the Legislature of the State of Florida:
 28
 29 Section 1. Section 415.1103, Florida Statutes, is created

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

6-00142-20

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30 to read:
 31 415.1103 Elder abuse fatality review teams.—
 32 (1) (a) An elder abuse fatality review team may be
 33 established in each judicial circuit to review deaths of elderly
 34 persons found to have been caused by, or related to, abuse or
 35 neglect. The review teams shall be housed, for administrative
 36 purposes only, in the Department of Elderly Affairs.
 37 (b) An elder abuse fatality review team may include, but is
 38 not limited to, representatives from any of the following
 39 entities in the review team's judicial circuit:
 40 1. Law enforcement agencies.
 41 2. The state attorney.
 42 3. The medical examiner.
 43 4. A county court judge.
 44 5. Adult protective services.
 45 6. The area agency on aging.
 46 7. The State Long-Term Care Ombudsman Program.
 47 8. The Agency for Health Care Administration.
 48 9. The Office of the Attorney General.
 49 10. The Office of the State Courts Administrator.
 50 11. The clerk of the court.
 51 12. A victim services program.
 52 13. An elder law attorney.
 53 14. Emergency services personnel.
 54 15. A certified domestic violence center.
 55 16. An advocacy organization for victims of sexual
 56 violence.
 57 17. A funeral home director.
 58 18. A forensic pathologist.

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59 19. A geriatrician.
 60 20. A geriatric nurse.
 61 21. A geriatric psychiatrist or other individual licensed
 62 to offer behavioral health services.
 63 22. A hospital discharge planner.
 64 23. A public guardian.
 65 24. Any other persons who have knowledge regarding fatal
 66 incidents of elder abuse, domestic violence, or sexual violence,
 67 including knowledge of research, policy, law, and other matters
 68 connected with such incidents involving elders, or who are
 69 recommended for inclusion by the review team.
 70 (c) A state attorney, or his or her designee, may initiate
 71 the establishment of a review team in his or her judicial
 72 circuit and may call the first organizational meeting of the
 73 team. At the initial meeting, members of a review team shall
 74 choose two members to serve as co-chairs and shall establish a
 75 schedule for future meetings.
 76 (d) Participation in a review team is voluntary. Members of
 77 a review team shall serve without compensation and may not be
 78 reimbursed for per diem or travel expenses.
 79 (e) Members shall serve for terms of 2 years, to be
 80 staggered as determined by the co-chairs. Chairs may be
 81 reelected by a majority vote of a review team for not more than
 82 two consecutive terms.
 83 (f) Each review team shall determine its local operations,
 84 including, but not limited to, the process for case selection.
 85 Reviews must be limited to closed cases in which an elderly
 86 person's death is found to have been caused by, or related to,
 87 abuse or neglect. All identifying information concerning the

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88 person must be redacted in documents received for review. Each
 89 review team shall meet at least once each fiscal year.
 90 (g) Administrative costs of operating the review team must
 91 be borne by the team members or entities that they represent.
 92 (2) An elder abuse fatality review team in existence on
 93 July 1, 2019, may continue to exist and must comply with the
 94 requirements of this section.
 95 (3) An elder abuse fatality review team shall do all of the
 96 following:
 97 (a) Review deaths of elderly persons in its judicial
 98 circuit which are found to have been caused by, or related to,
 99 abuse or neglect.
 100 (b) Take into consideration the events leading up to a
 101 fatal incident, available community resources, current law and
 102 policies, and the actions taken by systems or individuals
 103 related to the fatal incident.
 104 (c) Identify potential gaps, deficiencies, or problems in
 105 the delivery of services to elderly persons by public and
 106 private agencies which may be related to deaths reviewed by the
 107 team.
 108 (d) Whenever possible, develop communitywide approaches to
 109 address the causes of, and contributing factors to, deaths
 110 reviewed by the team.
 111 (e) Develop recommendations and potential changes in law,
 112 rules, and policies to support the care of elderly persons and
 113 to prevent elder abuse deaths.
 114 (4) (a) A review team may share with other review teams in
 115 this state any relevant information that pertains to the review
 116 of the death of an elderly person.

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117 (b) A review team member may not contact, interview, or
 118 obtain information by request directly from a member of the
 119 deceased elder's family as part of the review unless a team
 120 member is authorized to do so in the course of his or her
 121 employment duties. A member of the deceased elder's family may
 122 voluntarily provide information or any record to a review team
 123 but must be informed that such information or any record is
 124 subject to public disclosure unless a public records exemption
 125 applies.

126 (5) (a) Annually by September 1, each elder abuse fatality
 127 review team shall submit a summary report to the Department of
 128 Elderly Affairs which includes, but is not limited to:

129 1. Descriptive statistics regarding cases reviewed by the
 130 team, including demographic information on victims and the
 131 causes and nature of their deaths;

132 2. Current policies, procedures, rules, or statutes the
 133 review team has identified as contributing to the incidence of
 134 elder abuse and elder deaths, and recommendations for system
 135 improvements and needed resources, training, or information
 136 dissemination to address such identified issues; and

137 3. Any other recommendations to prevent deaths from elder
 138 abuse or neglect, based on an analysis of the data and
 139 information presented in the report.

140 (b) Annually by November 1, the Department of Elderly
 141 Affairs shall prepare a summary report of the review team
 142 information submitted under paragraph (a). The department shall
 143 submit its summary report to the Governor, the President of the
 144 Senate, the Speaker of the House of Representatives, and the
 145 Department of Children and Families.

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6-00142-20

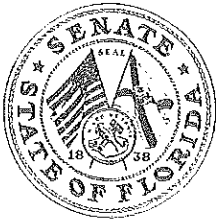
2020400__

146 (6) There is no monetary liability on the part of, and a
 147 cause of action for damages may not arise against, any member of
 148 an elder abuse fatality review team due to the performance of
 149 his or her duties as a review team member in regard to any
 150 discussions by, or deliberations or recommendations of, the team
 151 or the member unless such member acted in bad faith, with wanton
 152 and willful disregard of human rights, safety, or property.

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, Vice Chair
Appropriations
Innovation, Industry, and Technology
Judiciary

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON

Minority Leader
6th District

November 5, 2019

Senator David Simmons, Chair
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Simmons

*This bill passed
the committee last year
& passed the Senate.
Got stuck in
House last.*

I respectfully request that SB 400, be placed on the next committee agenda.

SB 400, creates an elder abuse fatality review team in each judicial circuit to review closed files from the State Attorney's office in which an elderly person's death is verified to have been caused by abuse or neglect. The teams will prepare a summary report with recommendations related to any gaps in services, abuse and neglect to be presented to the President of Senate, Speaker of the House and the Governor. This bill passed unanimously in the first committee.

Thank you for your kind and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/19

Meeting Date

SB 400

Bill Number (if applicable)

Topic Elder Abuse Fatality Review

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 215 South Monroe St.
Street

Phone 850-228-6387

Tallahassee FL 32301
City State Zip

Email dobarker@aarpp.org

Speaking: For Against Information

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

Representing AARP FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee Judge:

Started: 12/10/2019 2:05:27 PM

Ends: 12/10/2019 3:18:32 PM Length: 01:13:06

2:05:26 PM Meeting called to order by Chair Simmons
2:05:30 PM Roll call by Administrative Assistant Joyce Butler
2:05:45 PM Quorum present
2:05:56 PM Comments from Chair Simmons regarding Tab 10 being TP'd
2:07:03 PM Introduction of Tab 1 by Chair Simmons
2:07:13 PM Explanation of CS/SB 124, Custody of Minor Children by Extended Family by Senator Bean
2:09:24 PM Introduction of Amendment Barcode No. 633738 by Chair Simmons
2:09:45 PM Explanation of Amendment by Senator Bean
2:09:59 PM Comments from Chair Simmons
2:10:06 PM Closure waived on Amendment
2:10:13 PM Amendment Barcode No. 633738 adopted
2:10:33 PM Speaker Gabriella Hernandez, Student in opposition
2:14:29 PM Speaker Beth Luna, General Magistrate, Family Law Section of Florida Bar
2:16:10 PM Question from Senator Gibson
2:16:14 PM Response from Ms. Luna
2:17:48 PM Speaker Alan Abramowitz, Executive Director, Guardian Ad Litem Program in support
2:20:49 PM Comments from Chair Simmons
2:20:59 PM Senator Baxley in debate
2:23:34 PM Senator Gibson in debate
2:25:08 PM Closure by Senator Bean
2:26:12 PM Roll call by CAA
2:26:24 PM CS/SB 124 reported favorably
2:26:39 PM Introduction of Tab 2 by Chair Simmons
2:26:53 PM Explanation of SB 150, Sanitary Sewer Laterals by Senator Brandes
2:27:36 PM Paul Owens, 1000 Friends of Florida waives in support
2:28:05 PM Closure waived
2:28:10 PM Roll call by CAA
2:28:16 PM SB 150 reported favorably
2:28:26 PM Introduction of Tab 3 by Chair Simmons
2:28:49 PM Explanation of SB 790, Clerks of the Circuit Court by Senator Brandes
2:29:38 PM Jason Welty, Budget & Communications Director, CCOC waives in support
2:29:54 PM Jason Harrell, Legislative & Public Affairs Director, CCOC waives in support
2:30:22 PM Closure waived
2:30:31 PM Roll call by CAA
2:30:53 PM SB 790 reported favorably
2:31:05 PM Introduction of Tab 4 by Chair Simmons
2:31:26 PM Explanation of SB 510, Bail Pending Appellate Review by Senator Wright
2:32:57 PM Question from Senator Gibson
2:33:04 PM Response from Senator Wright
2:33:38 PM Question from Senator Hutson
2:33:44 PM Response from Senator Wright

2:34:22 PM Senator Wright in Closure
2:34:36 PM Roll call by CAA
2:34:43 PM SB 510 reported favorably
2:34:48 PM Introduction of Tab 5 by Chair Simmons
2:35:02 PM Explanation of SB 580, Uniform Partition of Heirs Property Act by Senator Bracy
2:37:29 PM Introduction of Amendment Barcode No. 520502
2:37:44 PM Explanation of Amendment by Senator Bracy
2:38:26 PM French Brown waives in support
2:39:25 PM Closure waived on Amendment
2:39:30 PM Amendment Barcode No. 520502 adopted
2:39:57 PM Speaker Professor Thomas W. Mitchell, Professor of Law, Uniform Law Commission in support
2:46:12 PM Comments from Chair Simmons
2:46:50 PM Karen Woodall waives in support
2:47:05 PM Scott McCoy, Southern Poverty Law Action Fund waives in support
2:47:18 PM Speaker Travis Moore, Defenders of Wildlife in support
2:47:50 PM David Cullen, Sierra Club waives in support
2:48:06 PM Jami Coleman waives in support
2:48:29 PM Pete Dunbar waives in support
2:48:43 PM Senator Baxley in debate
2:49:47 PM Senator Gibson in debate
2:50:39 PM Senate Bracy in closure
2:50:47 PM Roll call by CAA
2:51:41 PM CS/SB 580 reported favorably
2:52:07 PM Introduction of Tab 6 by Chair Simmons
2:52:18 PM Explanation of SB 590, Clerks of the Court by Senator Hooper
2:53:43 PM Jason Welty, Budget & Communications Director, CCOC waives in support
2:53:53 PM Jason Harrell, Legislative & Public Affairs Director, CCOC waives in support
2:54:20 PM Closure waived
2:54:26 PM Roll call by CAA
2:54:32 PM SB 590 reported favorably
2:54:48 PM Introduction of Tab 7 by Chair Simmons
2:54:57 PM Explanation of SB 660, Uniform Commercial Real Estate Receivership Act by Senator Rodriguez on behalf of Senator Berman
2:56:30 PM Adina Pollan, The Business Law Section waives in support
2:57:06 PM Closure waived
2:57:08 PM Roll call by CAA
2:57:13 PM SB 660 reported favorably
2:57:28 PM Comments from Chair Simmons
2:57:42 PM Introduction of Tab 8 by Chair Simmons
2:57:59 PM Temporarily postponed
2:58:16 PM Introduction of Tab 9 by Chair Simmons
2:58:28 PM Temporarily postponed
2:58:46 PM Introduction of Tab 11 by Chair Simmons
2:59:03 PM Explanation of SB 886, Errors in Deeds by Senator Powell
3:00:23 PM Pete Dunbar waives in support
3:00:42 PM Closure waived
3:00:52 PM Roll call by CAA
3:00:57 PM SB 886 reported favorably
3:01:35 PM Introduction of Tab 12 by Chair Simmons
3:01:47 PM Explanation of SB 400, Elder Abuse Fatality Review Teams by Senator Gibson
3:03:56 PM Dorene Barker, Associate State Director, AARP FL waives in support

3:04:22 PM Closure waived
3:04:30 PM Roll call by CAA
3:04:36 PM SB 400 reported favorably
3:04:55 PM Introduction of Tab 9 by Chair Simmons
3:05:15 PM Explanation of SB 802, Marketable Record Title Act by Senator Perry
3:05:52 PM Introduction of Amendment Barcode No. 555850 by Chair Simmons
3:06:08 PM Explanation of Amendment by Senator Perry
3:06:45 PM Closure waived on Amendment
3:06:51 PM Amendment Barcode No. 555850 adopted
3:07:18 PM French Brown waives in support
3:07:31 PM Speaker Jami Coleman, Attorney in support
3:10:35 PM Senator Baxley in debate
3:11:46 PM Closure waived
3:11:58 PM Roll call by CAA
3:12:03 PM CS/SB 802 reported favorably
3:12:17 PM Introduction of Tab 8 by Chair Simmons
3:12:28 PM Explanation of SB 738, Jury Service by Senator Harrell
3:15:10 PM Comments from Chair Simmons
3:15:24 PM Speaker Stacy Butterfield, Clerk & Comptroller, Polk County, FL
3:17:01 PM Closure waived
3:17:07 PM Roll call by CAA
3:17:17 PM SB 738 reported favorably
3:17:27 PM Comments from Chair Simmons
3:17:50 PM Senator Stargel moves to adjourn, wishes Merry Christmas and Happy New Year to all;
meeting adjourned