

Tab 1	CS/SB 148 by ED, Garcia ; (Similar to H 00085) Students Remaining on School Grounds During School Hours					
Tab 2	CS/SB 264 by JU, Artiles ; (Similar to CS/CS/H 00357) Self-storage					
811978	A	S	RCS	RC, Artiles	btw L.84 - 85:	03/29 04:53 PM
Tab 3	CS/SB 312 by CJ, Baxley ; (Identical to CS/H 00643) Eyewitness Identification					
Tab 4	CS/SB 334 by JU, Steube ; (Similar to CS/H 00469) Prejudgment Interest					
266818	D	S	RS	RC, Lee	Delete everything after	03/29 04:55 PM
398962	SD	S	RCS	RC, Lee	Delete everything after	03/29 04:55 PM
471646	ASA	S	RCS	RC, Bradley, Galvano	Delete L.8 - 23:	03/29 04:55 PM
Tab 5	SB 372 by Stargel ; (Similar to H 00671) Reemployment Assistance Fraud					
Tab 6	CS/SB 396 by ED, Hukill (CO-INTRODUCERS) Bean ; (Similar to H 00867) Student Loan Debt					
Tab 7	CS/CS/SB 398 by JU, RI, Passidomo (CO-INTRODUCERS) Perry ; (Similar to CS/CS/H 00483) Estoppel Certificates					
724766	D	S	RCS	RC, Passidomo	Delete everything after	03/29 04:58 PM
537800	AA	S	RCS	RC, Passidomo	Delete L.74 - 399:	03/29 04:58 PM
Tab 8	SB 954 by Passidomo (CO-INTRODUCERS) Braynon, Gibson, Powell ; (Compare to CS/H 00105) Canvassing of Vote-by-mail Ballots					
Tab 9	CS/SB 440 by MS, Gibson (CO-INTRODUCERS) Torres ; (Identical to CS/H 00401) Notaries Public					
Tab 10	SR 574 by Rader (CO-INTRODUCERS) Artiles, Mayfield ; (Similar to H 00281) United Nations Security Council Resolution 2334					
Tab 11	SJR 882 by Bean ; (Identical to H 00811) Election of Secretary of State/Membership of Cabinet					
Tab 12	CS/SB 1062 by GO, Powell (CO-INTRODUCERS) Bracy ; (Similar to CS/H 00239) Public Records/Protective Injunction Petitions					
340068	D	S	RCS	RC, Powell	Delete everything after	03/29 05:02 PM
Tab 13	CS/SB 1052 by JU, Simmons ; (Identical to CS/H 00677) Justifiable Use of Force					
270372	A	S	RCS	RC, Simmons	Delete L.19:	03/29 05:02 PM
Tab 14	CS/CS/SB 416 by CJ, JU, Montford (CO-INTRODUCERS) Book ; (Similar to CS/CS/H 00151) Use of Animals in Proceedings Involving Minors					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Benacquisto, Chair
Senator Thurston, Vice Chair

MEETING DATE: Wednesday, March 29, 2017

TIME: 1:00—3:00 p.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Thurston, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Flores, Galvano, Latvala, Lee, Montford, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 148 Education / Garcia (Similar H 85)	Students Remaining on School Grounds During School Hours; Requiring schools in certain districts to obtain written parental consent before permitting students to leave school grounds during the lunch period, etc. ED 02/21/2017 Fav/CS CA 03/22/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 12 Nays 0
2	CS/SB 264 Judiciary / Artilles (Similar CS/CS/H 357)	Self-storage; Providing that a lien sale may be conducted on certain websites; providing that a self-storage facility owner is not required to have a license to post property for online sale; authorizing an owner to impose and collect a late fee from a tenant under certain circumstances; authorizing an owner to charge the tenant certain reasonable expenses incurred in rent collection or lien enforcement, etc. JU 02/07/2017 Fav/CS RI 02/22/2017 Favorable RC 03/29/2017 Fav/CS	Fav/CS Yeas 12 Nays 0
3	CS/SB 312 Criminal Justice / Baxley (Identical CS/H 643)	Eyewitness Identification; Citing this act as the "Eyewitness Identification Reform Act"; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and provide training programs on how to conduct lineups, etc. CJ 02/21/2017 Fav/CS JU 03/14/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 12 Nays 0
4	CS/SB 334 Judiciary / Steube (Similar CS/H 469)	Prejudgment Interest; Requiring a court to include interest in a final judgment in an action from which a plaintiff recovers economic or noneconomic damages; requiring a court to include interest on attorney fees and costs in the final judgment, if recovered, etc. JU 02/21/2017 Fav/CS RC 03/09/2017 Temporarily Postponed RC 03/29/2017 Fav/CS	Fav/CS Yeas 10 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 29, 2017, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 372 Stargel (Similar H 671)	Reemployment Assistance Fraud; Authorizing reproductions from certain files or digital records maintained by the Department of Highway Safety and Motor Vehicles to be made and issued to the Department of Economic Opportunity pursuant to an interagency agreement for specified purposes, etc. CM 02/21/2017 Favorable TR 03/14/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 12 Nays 0
6	CS/SB 396 Education / Hukill (Similar H 867)	Student Loan Debt; Defining the term "student loans"; requiring postsecondary institutions to annually provide certain students with specified information regarding their student loans; providing that an institution does not incur any liability for providing such information, etc. ED 02/21/2017 Fav/CS RC 03/29/2017 Favorable	Favorable Yeas 10 Nays 0
7	CS/CS/SB 398 Judiciary / Regulated Industries / Passidomo (Similar CS/CS/H 483)	Estoppel Certificates; Revising requirements relating to the issuance of an estoppel certificate to specified persons; requiring a condominium, cooperative, or homeowners' association to designate a street or e-mail address on its website for estoppel certificate requests; prohibiting an association from charging a preparation and delivery fee or making certain claims if it fails to deliver an estoppel certificate within certain timeframes, etc. RI 02/22/2017 Fav/CS JU 03/14/2017 Fav/CS RC 03/29/2017 Fav/CS	Fav/CS Yeas 11 Nays 1
8	SB 954 Passidomo (Compare CS/H 105, H 733, H 1325, S 544, S 598, S 1160)	Canvassing of Vote-by-mail Ballots; Authorizing use of the vote-by-mail ballot cure affidavit if an elector's signature does not match the signature in the registration books or precinct register; requiring the supervisor of elections to immediately notify an elector upon receipt of a vote-by-mail ballot with a missing or mismatched signature; specifying that a Florida driver license or Florida identification card are acceptable forms of identification for purposes of curing a vote-by-mail ballot, etc. EE 03/07/2017 Favorable JU 03/22/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 29, 2017, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 440 Military and Veterans Affairs, Space, and Domestic Security / Gibson (Identical CS/H 401)	Notaries Public; Expanding the list of forms of identification which a notary public may rely on in notarizing a signature on a document to include a veteran health information card, etc. MS 02/21/2017 Fav/CS CM 03/06/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 12 Nays 0
10	SR 574 Rader (Similar HR 281)	United Nations Security Council Resolution 2334; Opposing United Nations Security Council Resolution 2334 and requesting its repeal or fundamental alteration, etc. JU 03/14/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 9 Nays 1
11	SJR 882 Bean (Identical HJR 811)	Election of Secretary of State/Membership of Cabinet; Proposing amendments to the State Constitution to provide for the election of the Secretary of State and his or her inclusion as a member of the Cabinet, etc. EE 03/07/2017 Favorable RC 03/29/2017 Favorable	Favorable Yeas 9 Nays 1
12	CS/SB 1062 Governmental Oversight and Accountability / Powell (Similar CS/H 239)	Public Records/Protective Injunction Petitions; Providing an exemption from public records requirements for petitions, and the contents thereof, for injunctions for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which are dismissed in certain circumstances; providing a statement of public necessity, etc. JU 03/14/2017 Favorable GO 03/22/2017 Fav/CS RC 03/29/2017 Fav/CS	Fav/CS Yeas 10 Nays 0
13	CS/SB 1052 Judiciary / Simmons (Identical CS/H 677)	Justifiable Use of Force; Deleting a requirement that a person first be attacked in his or her dwelling, residence, or vehicle before using or threatening to use force, etc. JU 03/14/2017 Temporarily Postponed JU 03/22/2017 Fav/CS RC 03/29/2017 Fav/CS	Fav/CS Yeas 8 Nays 4

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 29, 2017, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/CS/SB 416 Criminal Justice / Judiciary / Montford (Similar CS/CS/H 151)	Use of Animals in Proceedings Involving Minors; Specifying that the court may allow the use of therapy animals or facility dogs in certain proceedings; removing the requirement that certain animals be registered; defining terms, etc. JU 02/21/2017 Fav/CS CJ 03/13/2017 Fav/CS RC 03/29/2017 Favorable	Favorable Yeas 10 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 Rules

BILL: CS/SB 148

INTRODUCER: Education Committee and Senator Garcia

SUBJECT: Students Remaining on School Grounds During School Hours

DATE: March 28, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Hand</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2. <u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3. <u>Benvenisty</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 148 authorizes district school boards to adopt policies for allowing students to leave school grounds during school hours, with some exceptions. Specifically, the bill:

- Clarifies that district school board procedures for granting permission for students to leave school grounds during school hours includes the school lunch period; and
- Provides that in a district that has more than 100,000 students in prekindergarten through grade 12, a school may not permit a student to leave school grounds for the lunch period unless the student's parent has, in writing, consented for his or her child to leave school grounds during the lunch period for the school year.

II. Present Situation:

District School Boards Powers and Duties

District school boards are authorized to operate, control, and supervise all free public schools within the school district.¹ More specifically, "[t]he responsibility for actual operation and administration of all schools needed within the districts in conformity with rules and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable

¹ Art. IX, s. 4(b), Fla. Const. *See also, School Board of Palm Beach County v. Florida Charter Education Foundation*, 2017 Fla. App. Lexis 494, (4th DCA, January 18, 2017). ("The Florida Constitution therefore creates a hierarchy under which a school board has local control, but the State Board [of Education] supervises the system as a whole. This broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated – and in fact encouraged by the very nature of supervision – by the Florida Constitution.").

and practicable opportunities authorized by law beyond those required by the state, are delegated by law to the school officials of the respective districts.”²

District school boards are also responsible for student welfare, including the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of the students.³

Open and Closed Campuses

District school boards have the discretion to determine whether school campuses are to be open or closed.⁴ Specifically, Florida law states that district school boards may “[p]rovide procedures for student dismissal precautions and for granting permission for students to leave school grounds during school hours, including releasing a student from school upon request by a parent or for public appearances of school groups.”⁵

The most recent data for Florida shows that 43 school districts reported a closed-campus policy as district policy, and 13 districts reported a closed-campus policy as a school option.⁶ Nationally, 72 percent of high schools maintain a closed campus.⁷

III. Effect of Proposed Changes:

The bill authorizes district school boards to adopt policies for allowing students to leave school grounds during school hours, with some exceptions. Specifically, the bill:

- Clarifies that district school board procedures for granting permission for students to leave school grounds during school hours includes the school lunch period; and
- Provides that in a district that has more than 100,000 students in prekindergarten through grade 12, a school may not permit a student to leave school grounds for the lunch period unless the student’s parent has, in writing, consented for his or her child to leave school grounds during the lunch period for the school year.

² Section 1001.30, F.S. *See also*, s. 1001.32(2), F.S., which provides that district school boards “may exercise any power except as expressly prohibited by the State Constitution or general law.”

³ Section 1001.42(8)(a), F.S.

⁴ Department of Education, *Agency Legislative Bill Analysis for SB 148* (2017), at 2; Section 1001.43(1)(c), F.S. School lunch policies are generally labelled “open campus” (e.g., students may go off campus) or “closed campus” (e.g., students are not allowed to leave campus). Public Health Advocacy Institute, *Off the Map: Extracurricular School Food, Open Campus Lunch*, (2009) available at http://www.phaionline.org/wp-content/uploads/2009/04/otm_open_campus_lunch.pdf. A school with a “modified” policy that only allows certain students who meet specified requirements to go off campus is considered to have an open campus policy. *Id.* The terms “open campus” and “closed campus” are not defined in Florida statute or rule; although, the term “closed-campus” has been used by the Department of Education in the context of violence prevention. *See*, page 4, Department of Education, *Florida Safe and Drug-Free Schools Program, State Report for 2009-2010* (2009) available at <http://www.fldoe.org/core/fileparse.php/7771/urlt/0084819-staterrep0910.pdf>.

⁵ Section 1001.43(1)(c), F.S.

⁶ Department of Education, *Florida Safe and Drug-Free Schools Program, State Report for 2009-2010* (2009) available at <http://www.fldoe.org/core/fileparse.php/7771/urlt/0084819-staterrep0910.pdf>, at 4.

⁷ Center for Disease Control and Prevention, *School Health Policies and Practices Study, Results from the School Health Policies and Practices Study 2014* (2015), available at https://www.cdc.gov/healthyyouth/data/shpps/pdf/shpps-508-final_101315.pdf at 104.

For the 2016-2017 school year, 8 school districts have over 100,000 students in prekindergarten through grade 12. The table below shows the student population and open versus closed campus policy for such school districts:⁸

District	Student Population	District Policy
Miami-Dade	357,249	Closed
Broward	271,852	Closed
Hillsborough	214,386	Closed
Orange	200,674	Closed
Palm Beach	192,271	No formal policy
Duval	129,479	Modified Open
Pinellas	102,905	Closed
Polk	102,295	Closed

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁸ Department of Education, *Florida's PK-20 Education Information Portal, Students, Enrollment, Build Your Own Table*, <https://edstats.fldoe.org/SASPortal/main.do> (last visited Jan. 25, 2017). The closest school districts under 100,000 students are Lee (92,686), Brevard (73,444), and Pasco (72,493). *Id.* E-mail, Department of Education (Jan. 27, 2017). Duval authorizes principals to determine whether lunches are open or closed; however, only six high schools allow students to leave during lunch, and they all require parental permission and for the students to meet specified criteria (e.g., honor roll and no referrals). Department of Education, *Agency Legislative Analysis for SB 148* (2017), at 2.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1001.43 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 Education on February 21, 2017:

Removes the short title of the act.

- B. Amendments:

None.

By the Committee on Education; and Senator Garcia

581-01913-17

2017148c1

A bill to be entitled

An act relating to students remaining on school grounds during school hours; amending s. 1001.43, F.S.; providing that a district school board may adopt policies for releasing students for the school lunch period; requiring schools in certain districts to obtain written parental consent before permitting students to leave school grounds during the lunch period; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 1001.43, Florida Statutes, is amended to read:

1001.43 Supplemental powers and duties of district school board.—The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

(1) STUDENT MANAGEMENT.—The district school board may adopt programs and policies to ensure the safety and welfare of individuals, the student body, and school personnel, which programs and policies may:

(c) Provide procedures for student dismissal precautions and for granting permission for students to leave school grounds during school hours, including releasing a student from school upon request by a parent, ~~or~~ for public appearances of school groups, or for the school lunch period. However, in a district that has more than 100,000 students in prekindergarten through grade 12, a school may not permit a student to leave school

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

581-01913-17

2017148c1

grounds for the lunch period unless the student's parent has, in writing, consented for his or her child to leave school grounds during the lunch period for the school year.

Section 2. This act shall take effect July 1, 2017.

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

The Florida Senate
State Senator René García
36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

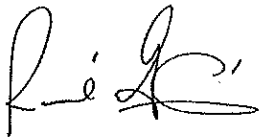
March 23rd, 2017

The Honorable Lizbeth Benacquisto
Chair, Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

Please have this letter serve as my formal request to have **SB 148: Students Remaining on School Grounds During School Hours**, be heard during the next scheduled Rules Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: John B. Phelps
Cynthia Futch

THE FLORIDA SENATE
APPEARANCE RECORD

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

8/29/17

Meeting Date

SB 148

Bill Number (if applicable)

Topic REMAINING ON SCHOOL GROUNDS

Amendment Barcode (if applicable)

Name DIANA PADGETT

Job Title GOV. CONSULTANT

Address 1371 MILLSTREAM RD.

Street

Phone 850-212-4204

TALL

City

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State

32312

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DHP CONSULTING @
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA SCHOOL NUTRITION ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 Rules

BILL: CS/CS/SB 264

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Artiles

SUBJECT: Self-storage

DATE: March 31, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Fav/CS
2. Kraemer	McSwain	RI	Favorable
3. Stallard	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 264 revises the options that an owner of a self-storage facility has for recourse against a tenant who is delinquent on rent or other expenses.

Current law permits the storage facility to sell the stored property of a delinquent tenant to recover unpaid rent and other expenses. Under the bill, these sales are expressly permitted to occur online, though they may still be conducted in-person, at the storage facility.

Current law specifies the notice and advertising that a storage facility must undertake before it may sell a delinquent tenant's general property. However, the bill imposes an additional requirement when the property is a motor vehicle or a watercraft, namely, a 60-day delay between the date a tenant becomes delinquent and the sale of the watercraft or motor vehicle stored by the tenant. In addition to selling a motor vehicle or watercraft, the bill expressly permits the storage facility to have it towed after the same 60-day delay. Moreover, the storage facility is not liable for the motor vehicle or watercraft after it is towed or for any damage that the item incurs after being towed. The wrecker operator that tows the item may sell it, and the storage facility might satisfy its lien from the sale.

Additionally, the bill deems a rental agreement's limit on the value of property stored in a unit to be the maximum value of the property actually stored in the unit. This provision may limit the liability of a storage facility, and avoid a dispute as to the value of the stored items, if the property is wrongfully sold. Lastly, the bill permits a storage facility to assess a reasonable late

fee for the nonpayment of rent. A reasonable late fee, as described in the bill, is \$20 or 20 percent of the monthly rent, whichever is greater. However, the late fee is permitted only if it is set forth in the rental agreement.

II. Present Situation:

The Self-storage Facility Act, codified as ss. 83.801-83.809, F.S., governs self-storage facilities in this state. The basic arrangement contemplated in the Act is a tenant¹ contracting with an owner² of a facility to store the tenant's personal property.³ In this arrangement, the storage facility faces the risk that a tenant will fail to pay rent or other expenses. However, the Act provides the facility with a degree of protection from this risk by granting the storage facility a lien on all stored property of a tenant⁴ and by authorizing the storage facility to sell the property of a delinquent tenant.⁵

Self-Storage Facility's Recourse as to a Delinquent Tenant

The lien that a storage facility has on its tenants' stored property attaches as of the date that the property is brought to the facility or as of the date the tenant takes possession of a self-contained unit.⁶

While the statute does not state it expressly, the statute infers that the storage facility may take no action on the lien until the tenant breaches the rental agreement by nonpayment.⁷ When this breach of contract occurs, the storage facility may enforce the lien in two ways. First, the storage facility may deny access to the tenant's property until the tenant pays what is due.⁸ Also, the storage facility may take the first steps toward selling the tenant's property. And the storage facility may later sell the property if the tenant does not pay the amount due before the lien sale occurs.⁹

Selling a Delinquent Tenant's Property to Enforce a Lien

If the storage facility decides to pursue the sale of the tenant's property to enforce the lien, the storage facility must proceed as follows. First, the storage facility must notify the tenant that the lien must be satisfied within 14 days or the storage facility will advertise the property for sale.

After 14 days, the storage facility may advertise the sale of the property. Among other requirements, the statutes require the sale to be advertised at least once a week for two consecutive weeks in a newspaper in general circulation in the facility's area.¹⁰

¹ Section 83.803(4), F.S.

² See s. 83.803(3), F.S., for the broad legal definition of this term.

³ Section 83.803(1), F.S.

⁴ See s. 83.805, F.S.

⁵ See s. 83.806, F.S.

⁶ *Id.* It is unclear if it is the sooner of these two occurrences that triggers the attachment of the lien.

⁷ Note that taking action to enforce the lien is not the only recourse provided in the Act for a storage facility faced with a nonpaying tenant. The storage facility may also withhold the tenant's access to the property. See, s. 803.8055, F.S.

⁸ Section 83.8055, F.S.

⁹ Section 83.806, F.S.

¹⁰ See, s. 83.806(4)(b), F.S., regarding how sales must be advertised if there is no newspaper in the area of the storage facility.

As for the sale itself, it may not take place until 15 days after the first advertisement, and must occur in a “commercially reasonable manner.”¹¹ But the tenant may redeem the property before the sale by paying the amount of rent due and the reasonable expenses incurred by the storage facility in advertising and arranging the sale.¹²

Additional Contractual Terms Permitted

The terms of the business relationship between a storage facility and a tenant discussed thus far are set forth in statute. However, the Act permits tenants and storage facilities to enter into contracts containing additional terms.¹³ As such, the Act provides a baseline or default set of rights and obligations to govern the storage facility-tenant relationship.

III. Effect of Proposed Changes:

Self-Storage Facility Online Lien Sale

The bill revises the options that an owner of a self-storage facility has for recourse against a tenant who is delinquent on rent or other expenses.

Current law permits the storage facility to sell the stored property of a delinquent tenant to recover unpaid rent and other expenses. Under the bill, the storage facility is expressly allowed to conduct the sale online. The current statutes do not address whether these sales may occur online.

Disposing of a Delinquent Tenant’s Motor Vehicle or Watercraft

New s. 83.806(10), F.S., sets forth two options for disposing of a motor vehicle or watercraft stored by a delinquent tenant. One option is to have the item towed, and the other option is to sell the item at auction. However, before selling the item or having it towed, the storage facility must let 60 days pass from the date the tenant became delinquent.

Towing the Motor Vehicle or Watercraft

If a storage facility chooses to have the motor vehicle or watercraft of a delinquent tenant towed, the storage facility has no liability for the item after it is towed or for any damage that occurs to the item after it is towed.

The wrecker operator who tows the motor vehicle or watercraft acquires a lien on the item.¹⁴ And after the wrecker operator attempts to give notice to the vehicle owner, insurer, and lienholders, the wrecker operator may sell the vehicle or watercraft.¹⁵ The proceeds of the sale

¹¹ Section 83.806(5), F.S.

¹² See, s. 83.806(6), F.S.

¹³ See, ss. 83.808(1) and 83.809(1), F.S.

¹⁴ Section 713.78(2), F.S.

¹⁵ Section 713.78(6), F.S.

must then be used to satisfy lienholders after the payment of towing, storage charges, and the costs of the sale.¹⁶

Selling the Motor Vehicle or Watercraft

A storage facility's other option for disposing of a delinquent tenant's motor vehicle or watercraft is to sell it as it would any other item stored by a delinquent tenant.¹⁷

Self-Storage Facility Liability Limitation

The bill appears to limit a storage facility's liability for stored property that is lost, stolen, or wrongfully sold. This limitation is set forth in new s. 83.806(9), F.S., which states:

If a rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space.

This provision might also mitigate the risk of having to engage in costly disputes about the value of stored property if the property is lost, stolen, or wrongfully sold in a lien sale.¹⁸

Late Fees for Nonpayment of Rent

The bill also permits a storage facility to charge a reasonable late fee for each rental period that a tenant does not pay rent. However, this fee may be imposed and collected only if its amount is set forth in the contract with the tenant. Also, the fee may not exceed the greater of \$20 or 20 percent of the monthly rent.¹⁹ Current law does not expressly permit or prohibit a late fee, nor does it limit the amount of the fee.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁶ *Id.*

¹⁷ Recall, however, that a motor vehicle or watercraft may not be sold until 60 days from the date on which a tenant becomes delinquent, though this 60-day delay is not required before selling other property of a delinquent tenant.

¹⁸ A somewhat similar provision, contained not in statute but in a rental agreement, was upheld in *Muns v. Shugard Income Props. Fund 16 – Ltd. Pshp*, 682 So.2d 166 (Fla. 4th DCA 1996). The provision at issue in that case expressly limited liability to \$250 in the event of a wrongful foreclosure on the tenant's stored property.

¹⁹ New s. 83.808(3), F.S. The bill also provides that the late fee is not a penalty.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill expressly states that lien sales by a self-storage facility may be conducted on the Internet. This could increase the use of Internet-based sales by storage facilities, and these sales would likely benefit the websites that would host these sales. Additionally, the use of Internet-based sales may increase the number of bidders on items from a delinquent tenant's storage unit and result in higher prices for items sold. As a result, there may be additional funds to pay the storage facility's lien and additional funds for the tenant.

The bill authorizes storage facilities to have a delinquent tenant's motor vehicle or watercraft towed. If the wrecker operator later sells the item, the costs of towing and selling the item are recoverable from the proceeds. Therefore, the bill could impact a delinquent tenant whose motor vehicle or watercraft is disposed of in this manner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Current law provides that an advertisement for the sale of a delinquent tenant's stored property must include the "*place . . . of the sale or other disposition.*"²⁰ (Emphasis added.) The bill does not specify whether the advertisement must include the physical address of the self-service storage facility or the self-contained storage unit, the address of the public website that customarily conducts personal property auctions, or both addresses. The Legislature may wish to amend the bill to clarify whether the advertisement must include the physical address of the facility and unit, the website address, or both.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 83.806 and 83.808 of the Florida Statutes.

²⁰ See s. 83.806(4)(a)3., F.S.

IX. Additional Information:

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

CS/CS by Rules on March 29, 2017:

The committee substitute clarifies that a wrecker operator who tows a motor vehicle or watercraft of a delinquent tenant has a lien on the item.

CS by Judiciary on February 7, 2017:

The bill specified the way in which a storage facility must attempt to identify any lienholder or owner of a motor vehicle or watercraft stored by a delinquent tenant prior to selling the item. The bill also specified the way in which the storage facility must give notice of the potential sale to any identified lienholder or owner of these items. In contrast, the committee substitute does not specify the way in which storage facilities must perform these tasks.

- B. **Amendments:**

None.



811978

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Articles) recommended the following:

Senate Amendment (with title amendment)

Between lines 84 and 85
insert:

Section 1. Subsection (2) of section 713.78, Florida
Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles
and vessels.—

(2) Whenever a person regularly engaged in the business of
transporting vehicles or vessels by wrecker, tow truck, or car
carrier recovers, removes, or stores a vehicle or vessel upon



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instructions from:

(a) The owner thereof;

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle or vessel is wrongfully parked, and the removal is done in compliance with s. 715.07;

(c) The landlord or a person authorized by the landlord, when such motor vehicle or vessel remained on the premises after the tenancy terminated and the removal is done in compliance with s. 83.806 or s. 715.104; or

(d) Any law enforcement agency,

she or he shall have a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if the vehicle is stored for less than 6 hours.

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

And the title is amended as follows:

Delete line 16

and insert:

rent collection or lien enforcement; amending s.

713.78, F.S.; conforming a provision to changes made

by the act; providing an

By the Committee on Judiciary; and Senator Artiles

590-01724-17

2017264c1

A bill to be entitled

An act relating to self-storage; amending s. 83.806, F.S.; providing that a lien sale may be conducted on certain websites; providing that a self-storage facility owner is not required to have a license to post property for online sale; providing limits for the maximum valuation of property under certain circumstances; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien; amending s. 83.808, F.S.; authorizing an owner to impose and collect a late fee from a tenant under certain circumstances; specifying that late fees in a specified amount are deemed reasonable and do not constitute a penalty; authorizing an owner to charge the tenant certain reasonable expenses incurred in rent collection or lien enforcement; providing an effective date.

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

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended, and subsections (9) and (10) are added to that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or

590-01724-17

2017264c1

unit owner is not required to be licensed to post property online for sale pursuant to this subsection. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b)-(a) The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication.

(c)-(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space.

(10) If a lien is claimed on property that is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for 60 days after the

590-01724-17

2017264c1

62 maturity of the obligation to pay the rent and other charges,
63 the facility or unit owner may sell the property pursuant to
64 this section or have the property towed. If a motor vehicle or
65 watercraft is towed, the facility or unit owner is not liable
66 for the motor vehicle or watercraft or any damage to the motor
67 vehicle or watercraft once a wrecker operator takes possession
68 of the property. The wrecker operator taking possession must
69 comply with all notification and sale requirements provided in
70 s. 713.78.

71 Section 2. Subsection (3) is added to section 83.808,
72 Florida Statutes, to read:

73 83.808 Contracts.—

74 (3) A reasonable late fee may be imposed and collected by a
75 facility or unit owner for each period that a tenant does not
76 pay rent when due under the rental agreement; however, the fee
77 may be imposed and collected only if the amount of the late fee
78 and the conditions for imposing such fee are stated in the
79 rental agreement or in an addendum to that agreement. For
80 purposes of this subsection, a late fee of \$20 or 20 percent of
81 the monthly rent, whichever is greater, is reasonable. Such late
82 fee does not constitute a penalty. In addition to the late fee,
83 any reasonable expense incurred by an owner as a result of rent
84 collection or lien enforcement may be charged to the lessee.

85 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

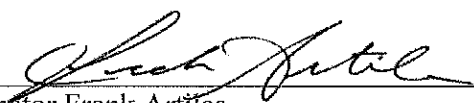
To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill #264**, relating to Self-storage, be placed on the:

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



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/29/17

Meeting Date

SB 264

Bill Number (if applicable)

Topic Self Storage Facilities

Amendment Barcode (if applicable)

Name Joseph Salzwerg (Isauls-Verg?)

Job Title

Address 301 S. Bronough St., Suite 600

Phone

Street

TLH

FL

32301

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self Storage Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 Rules

BILL: CS/SB 312

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Eyewitness Identification

DATE: March 28, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Hrdlicka	CJ	Fav/CS
2. Parks	Cibula	JU	Favorable
3. Cellon	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 312 creates procedures for state, county, and municipal law enforcement agencies to follow when they have a “lineup” for an eyewitness to identify a suspect. The procedures apply whenever a law enforcement agency is investigating a crime and showing potential suspects to an eyewitness for identification. These procedures require the use of a lineup administrator who is unaware of which person in a live lineup is the suspect. For photo lineups, the procedures prohibit the photo administrator from knowing which photograph is presented to the eyewitness.

The bill further provides that the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement are responsible for educating police departments on of implementing the new guidelines.

II. Present Situation:

Eyewitness misidentification of crime suspects has contributed to 64 percent of the Florida cases in which DNA evidence later exonerated the defendant.¹ Of the 349 DNA exonerations nationwide, more than 70 percent had a mistaken identification issue.²

¹ This represents nine of the 14 DNA-based exonerations in Florida. Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

² Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

Lineups

A lineup should be familiar to anyone who has seen police work depicted in popular media. During a lineup, officers ask an eyewitness to a crime to identify the suspect from among various people lined up in a room or from their pictures (usually the other people bear a resemblance to the suspect). If the eyewitness correctly identifies the actual suspect from the lineup, the identification can be used as evidence in a case against the suspect.

While a lineup is thus a valuable tool for officers, concerns have arisen that the eyewitness can be unduly influenced by several factors, most notably having an officer present who knows which person is the suspect.

Standards for Lineups

The FDLE, in collaboration with several other law enforcement organizations, published standards in 2011 which strive to establish neutral lineups.³ The FDLE standards are intended to allow officers the flexibility of implementing a neutral lineup procedure.⁴

Guidelines and commentary instruct agencies to:

- Keep administration neutral by using someone unaffiliated with the investigation to administer the lineup;
- Inform an eyewitness of the goals of the procedure beforehand; and
- Obtain an acknowledgement from the eyewitness before proceeding.⁵

The guidelines also encourage officers to follow consistent and specific procedures.⁶ Being guidelines, they are not binding.

Florida Law Enforcement Training

The Criminal Justice Standards and Training Commission (CJSTC), created within the Florida Department of Law Enforcement, is responsible for, among other things, establishing uniform minimum training standards for training officers in the various criminal justice disciplines and establishing minimum curricular requirements for criminal justice training schools.⁷

Additionally, the CJSTC is tasked with designing, implementing, maintaining, evaluating, revising, or adopting certain statutorily approved training programs. These programs include basic recruit, advanced, career development, and specialized training.⁸

³ Florida Department of Law Enforcement, Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification (Rev. Jun. 15, 2011)

<https://www.fdle.state.fl.us/cms/Guidelines/Documents/Standards.aspx>.

⁴ Florida Department of Law Enforcement, Eyewitness Guidelines, <https://www.fdle.state.fl.us/cms/Guidelines/Eyewitness-Guidelines.aspx> (last visited Mar. 11, 2017).

⁵ Florida Department of Law Enforcement, Eyewitness Guidelines Commentary (Rev. Jun. 15, 2011), <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx>.

⁶ *Id.*

⁷ Sections 943.11 and 943.12(5) and (8), F.S.

⁸ Section 943.17(1)(a)-(e), F.S.

III. Effect of Proposed Changes:

The bill codifies many of the standards for conducting live and photo lineups which were developed in 2011 by the Florida Department of Law Enforcement and associations representing sheriffs, police chiefs, and prosecuting attorneys.

Lineup Procedures

The new procedures, which are codified in s. 92.70, F.S., cover live lineups, where the “suspects” are shown in person to the eyewitness, and photo lineups, where pictures of the “suspects” are shown to the eyewitness.

Under the bill, any live lineup in a law enforcement investigation must be conducted by an “independent administrator,” someone “who is not participating in the investigation ... and is unaware of which person in the lineup is the suspect.” If an independent administrator cannot be found, no live lineup may be conducted.

A photo lineup should also be conducted with an independent administrator, but if one cannot be found, the agency can use any technique that “achieves neutral administration,” as long as the administrator of the lineup has no idea which pictures the eyewitness is viewing at which time. Specific examples include using an “automated computer program” to show the pictures to the eyewitness, and giving the photos to the eyewitness from a shuffled and randomly numbered stack of folders.

Before the lineup is given, the bill also requires the agency to instruct the eyewitness:

- 1) The perpetrator might or might not be in the lineup;
- 2) The lineup administrator does not know the suspect’s identity (this instruction need not be given if an alternative method is used in lieu of using an independent administrator);
- 3) The eyewitness should not feel compelled to make an identification;
- 4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
- 5) The investigation will continue with or without an identification.

Remedies for Improper Lineups

The bill also specifies consequences in subsequent judicial proceedings of the failure of a law enforcement agency to follow the required procedures. Notably, this section is not included in the FDLE standards on which the bill is modeled.

The failure to properly administer the lineup may be considered by the judge on a motion to suppress the eyewitness identification. The failure to follow procedures is also admissible in support of claims of eyewitness misidentification. Finally, the jury must be instructed that it may consider evidence of compliance or noncompliance with the procedures to determine the reliability of eyewitness identifications when compliance with the procedures is at issue.

Criminal Justice Standards and Training Commission

In addition to the procedures for lineups, the bill directs the Criminal Justice Standards and Training Commission to consult with the Department of Law Enforcement to create educational materials and provide training programs on conducting lineups.

The bill takes effect on October 1, 2017.

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

Article VII, s. 18 of the State Constitution restricts the authority of the Legislature to enact legislation requiring counties and municipalities to spend funds or take actions requiring the expenditure of funds. However, section (d) of s. 18 exempts criminal laws from these restrictions. Accordingly, the authority of the Legislature to enact this bill is not restricted because the bill relates to criminal laws.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Standards and Training Commission, through the Department of Law Enforcement does not anticipate any new expenditures as a result of the bill. Its current materials and training are already consistent with the requirements of the bill.⁹

VI. Technical Deficiencies:

None.

⁹ Florida Department of Law Enforcement, 2017 Legislative Bill Analysis for CS/SB 312 (Feb. 22, 2017).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 92.70, Florida Statutes.

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

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

CS by Criminal Justice on February 21, 2017:

The CS eliminated the Criminal Justice Standards and Training responsibility of specifying and approving alternative lineup procedures as these are described in the bill.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Baxley

591-01907-17

2017312c1

A bill to be entitled

An act relating to eyewitness identification; creating s. 92.70, F.S.; providing a short title; defining terms; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures; requiring eyewitnesses to sign an acknowledgment that they have received the instructions about the lineup procedures from the law enforcement agency; requiring lineup administrators to document the refusal of an eyewitness to acknowledge such receipt; specifying remedies for failing to adhere to the eyewitness identification procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and provide training programs on how to conduct lineups; providing an effective date.

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

Section 1. Section 92.70, Florida Statutes, is created to read:

92.70 Eyewitness identification.-

(1) SHORT TITLE.-This section may be cited as the "Eyewitness Identification Reform Act."

(2) DEFINITIONS.-As used in this section, the term:

(a) "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

(b) "Independent administrator" means a person who is not

Page 1 of 4

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

591-01907-17

2017312c1

participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect.

(c) "Lineup" means a photo lineup or live lineup.

(d) "Lineup administrator" means the person who conducts a lineup.

(e) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

(f) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

(3) EYEWITNESS IDENTIFICATION PROCEDURES.-A lineup conducted in this state by a state, county, municipal, or other law enforcement agency must meet all of the following requirements:

(a) The lineup must be conducted by an independent administrator. However, in lieu of using an independent administrator, a law enforcement agency may conduct a photo lineup eyewitness identification procedure using an alternative method specified in subparagraph 1., subparagraph 2., or subparagraph 3. Any alternative method must be carefully structured to achieve neutral administration and to prevent the lineup administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

1. An automated computer program that can automatically administer the photo lineup directly to an eyewitness and

Page 2 of 4

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

591-01907-17

2017312c1

prevent the lineup administrator from seeing which photograph the eyewitness is viewing until after the procedure is completed.

2. A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the lineup administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.

3. Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing which photograph is being presented to the eyewitness during the identification procedure.

(b) Before a lineup, the eyewitness must be instructed that:

1. The perpetrator might or might not be in the lineup;

2. The lineup administrator does not know the suspect's identity, except that this instruction need not be given when a specified and approved alternative method of neutral administration is used;

3. The eyewitness should not feel compelled to make an identification;

4. It is as important to exclude innocent persons as it is to identify the perpetrator; and

5. The investigation will continue with or without an identification.

The eyewitness shall acknowledge, in writing, having received a copy of the lineup instructions. If the eyewitness refuses to sign a document acknowledging receipt of the instructions, the

591-01907-17

2017312c1

lineup administrator must document the refusal of the eyewitness to sign a document acknowledging receipt of the instructions, and the lineup administrator must sign the acknowledgment document himself or herself.

(4) REMEDIES.—All of the following remedies are available as consequences of compliance or noncompliance with any requirement of this section:

(a)1. A failure on the part of a person to comply with any requirement of this section shall be considered by the court when adjudicating motions to suppress eyewitness identification.

2. A failure on the part of a person to comply with any requirement of this section is admissible in support of a claim of eyewitness misidentification, as long as such evidence is otherwise admissible.

(b) If evidence of compliance or noncompliance with any requirement of this section is presented at trial, the jury shall be instructed that the jury may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

(5) EDUCATION AND TRAINING.—The Criminal Justice Standards and Training Commission, in consultation with the Department of Law Enforcement, shall create educational materials and provide training programs on how to conduct lineups in compliance with this section.

Section 2. This act shall take effect October 1, 2017.



SENATOR DENNIS BAXLEY
12th District

THE FLORIDA SENATE

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 15, 2017

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, Florida 32399

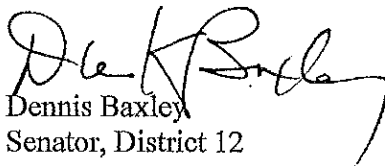
Dear Chairwoman Benacquisto,

I respectfully request you place Senate Bill 312, relating to Eyewitness Protection on the Rules agenda at your earliest convenience.

This bill requires state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures. It includes that a lineup must be conducted by an independent administrator or an alternative method such as using a computer or photo lineup.

I appreciate your favorable consideration.

Onward & Upward,


Dennis Baxley
Senator, District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/17

Meeting Date

312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director

Address 1100 E. Park Ave.

Phone 886-561-6767

Street

Tallahassee

FL

32301

City

State

Zip

Email smiller@floridainnocence.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Innocence Project 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
APPEARANCE RECORD

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

March 29, 2017

Meeting Date

SB 312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Chief Stephan Dembinsky

Job Title Chief of Police

Address 2636 Mitcham Drive

Street

Phone 850-219-3631

Tallahassee FL 32308

City

State

Zip

Email bhoward@fpc9.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/2017

Meeting Date

312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

Email mdunagan@flsheriffs.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 29, 2017

Meeting Date

CS/SB 312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Ave.

Phone 352-338-7370

Street

Gainesville

Florida

32601

Email scotts@pdo8.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
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 Rules

BILL: CS/CS/SB 334

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Steube

SUBJECT: Prejudgment Interest

DATE: March 30, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 334 generally codifies principles from case law that authorize a plaintiff to recover prejudgment interest on awards of economic damages and on any costs awarded as part of the judgment.

II. Present Situation:

Civil justice is guided by the principle that an injured person should be compensated and restored to the same position that he or she was in before the injury occurred. This compensation is awarded to a plaintiff in the form of damages. Over the centuries, several forms of damages have evolved with varying degrees of acceptance. Prejudgment interest is one form of damages that was once rejected in most American jurisdictions but has now gained acceptance in a growing number of states.^{1,2}

¹ Historically, many religious groups believed that charging interest was immoral and a form of usury prohibited by religious law. Therefore, interest was awarded sparingly and in a limited number of cases, but only at the discretion of the jury. By the 1800s, this prohibition began to recede and American courts awarded interest on a small group of claims, but only when the amount of the claim was certain and when it was payable on a specific date. See Aric Jarrett, *Comment: Full Compensation, Not Overcompensation: Rethinking Prejudgment Interest Offsets in Washington*, 30 SEATTLE U. L. REV. 703, 707 (Spring, 2007).

² Email from Heather Morton, Program Principal, National Conference of State Legislatures (Feb. 9, 2017) (on file with the Senate Committee on Judiciary) and Florida Justice Association, *Prejudgment Interest in Tort Cases, A Question of Fairness and Efficacy*, 12 (Feb. 2017) (on file with the Senate Committee on Judiciary). The reports are not in complete agreement, perhaps because different research methodologies or search terms were employed. Both surveys agreed that Alabama, Arizona, Arkansas, Florida, and Kansas do not currently have statutes permitting prejudgment interest. The surveys agreed on

Prejudgment Interest

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is interest on a judgment which is calculated from the date of the final judgment until the plaintiff collects the award from the defendant. Prejudgment interest is an additional award that compensates a plaintiff for the loss of the use of his or her money from the time the claim accrues until the final judgment.³ Post-judgment interest is designed to encourage the prompt payment of damages and to compensate for the inability to use the award while an unsuccessful appeal is resolved.

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

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.⁴

Florida law generally prohibits the award of prejudgment interest for plaintiffs in personal injury⁵ and wrongful death claims, but does allow it in some tort areas.⁶ The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule occurs when a plaintiff can establish that he or she suffered the loss of a vested property right, such as a negligently destroyed building.⁷ Prejudgment interest has historically been allowed in this state for actions based on contract and the interest accrues from the date the debt is due.⁸

Two theories of prejudgment interest have developed over time. Under the “loss theory,” prejudgment interest is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.⁹ The Florida Supreme Court follows this theory wherein the loss, itself, is the

some specific states that do allow prejudgment interest. Beyond that point, the surveys often disagreed as to which additional states do not permit prejudgment interest. Perhaps some states do not explicitly provide for pre-judgment interest by statute but may permit limited forms of pre-judgment interest awards through case law.

³ 44B AM. JUR. 2D INTEREST AND USURY s. 39 (2016).

⁴ *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.*, 474 So. 2d 212 (Fla. 1985).

⁵ *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (Fla. 1955).

⁶ *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.

⁷ *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).

⁸ *Lumbermens Mut. Casualty Co. v. Percefull*, 653 So. 2d 389 (Fla. 1995).

⁹ *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.

wrongful deprivation. The second theory, which is not followed in Florida, is the “penalty theory” where prejudgment interest is awarded to penalize the defendant.¹⁰

Proponents who seek prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation is protracted. Opponents assert that prejudgment interest provides over-compensation and encourages premature settlements.

Economic Damages

Economic damages are damages that can be computed from records or documents. They generally include past and future medical bills, loss of past wages and future earning capacity, funeral expenses, and damage to someone’s personal or real property.¹¹

Noneconomic Damages

Non-economic damages are the subjective intangible items that cannot be measured with certainty. Those items generally include physical pain and suffering, mental anguish, and the loss of enjoyment of life. Unlike economic damages, which are defined in chapter 768, pertaining to negligence, noneconomic damages are not defined there.¹²

Attorney Fees

The Florida Bar regulates fees that an attorney may charge and collect.¹³ In addition to setting out factors that should be considered when determining what a reasonable fee is, the bar’s Rules of Professional Conduct also establish the particulars that must be contained in a contingency fee agreement as well as the percentages that may be charged. Contingency fee agreements are generally used in personal injury cases. If the plaintiff prevails, the plaintiff’s attorney receives a predetermined percentage of the fees plus litigation costs, but if the plaintiff loses, the attorney does not recover fees and costs.

Courts are authorized to award prejudgment interest on awards of attorney fees at least when the right to attorney fees is established by statute or contract.¹⁴ According to the Florida Supreme Court, the failure to award prejudgment interest on attorney fees would amount to a penalty on the prevailing party for the for other party’s delay in payment.¹⁵ “Interest accrues from the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been determined.”¹⁶

¹⁰ *Bosem v. Musa Holdings, Inc.* 46 So. 3d 42, 45 (Fla. 2010).

¹¹ See s. 768.81(1)(b), F.S., for a more detailed list of economic damages.

¹² Noneconomic damages are defined in ch. 766, Medical Malpractice and Related Matters, as “nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law, . . .” Section 766.202, F.S.

¹³ Rules Regulating the Florida Bar, Rules of Professional Conduct, Rule 4-1.5.

¹⁴ *Quality Engineered Installation v. Higley S.*, 670 So. 2d 929 (Fla. 1996); *Weiderhold v. Weiderhold*, 696 So. 2d 923 (Fla. 4th DCA 1997).

¹⁵ *Quality Engineered* at 930.

¹⁶ *Id.* at 930-31.

Costs

If a plaintiff prevails in an action, he or she is entitled to recover some of the costs involved in the litigation. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, the burden of proof is on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case when the action was taken. The guidelines are advisory only, and the taxation of costs decision is within the broad discretion of the court.¹⁷

The Uniform Guidelines list three categories of costs—litigation costs that should be taxed, litigation costs that may be taxed as costs, and litigation costs that should not be taxed as costs.

Litigation costs that should be taxed include certain costs relating to depositions; documents and exhibits; expert witnesses; witnesses; court reporting costs; and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem.

Litigation costs that may be taxed as costs include certain mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses.

Litigation costs that should not be taxed as costs includes the costs of long distance telephone calls, expenses relating to consulting non-testifying experts, travel time, travel expenses of attorneys, and the costs of privilege reviews of documents.

The Florida Supreme Court has not addressed whether prejudgment interest is authorized for litigation costs in all cases in which costs are awarded. However, the principles the Court set forth in *Boulis v. DOT*¹⁸ and *Quality Engineered v. Higley S.*¹⁹ indicate that prejudgment interest generally applies to expenses paid by a party before the entry of a judgment from the date those expenses are paid once the trial court determines reasonable entitlement.²⁰

III. Effect of Proposed Changes:

This bill generally codifies principles from case law that authorize a plaintiff to recover prejudgment interest on awards of economic damages and on any costs awarded as part of the judgment.

¹⁷ Fla. R. Civ. P. Taxation of Costs. The costs that should be taxed generally include costs associated with certain depositions, documents and exhibits, expert witnesses, witnesses, court reporting costs other than for depositions, and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem. Litigation costs that may be taxed as costs include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses. Litigation costs that should not be taxed as costs include the cost of long distance telephone calls with witnesses, any expenses relating to consulting but non-testifying experts, cost incurred in connection with any matter which was not reasonably calculated to lead to the discovery of admissible evidence, the travel time of attorneys and experts, travel expenses of attorneys, and the cost of privilege review of documents, including electronically stored information. See the guidelines for more specific criteria, available at

[https://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](https://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf) at 347-349.

¹⁸ *Boulis v. DOT*, 773 So. 2d 959 (Fla. 1999).

¹⁹ *Quality Engineered Installation v. Higley S.*, 670 So. 2d 929 (Fla. 1996).

²⁰ *Boulis*, 773 So. 2d at 962.

Specifically, the bill directs courts to include in the final judgment interest on each component of economic damages. This interest accrues from the date of the loss of an economic benefit or a payment made by the plaintiff. Interest accrues on costs beginning on the first day of the month immediately following the month in which the costs were paid. The applicable interest rate is the same interest rate that applies to interest on judgements, which is currently 4.97 percent and is scheduled to increase to 5.05 percent on April 1, 2017.²¹

The bill takes effect July 1, 2017, and applies to causes of action that accrue on or after July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by awards of receive prejudgment interest. Defendants may have an incentive to settle lawsuits to avoid the accrual of prejudgment interest.

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 334. However, in an analysis of a similar bill from 2015, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.²² However, it appears unlikely that the bill will result in significant workload to the court system.

²¹ Office of the Chief Financial Officer, Judgment Interest Rates, <http://www.myfloridacfo.com/Division/AA/Vendors/> (last visited Mar. 30, 2017).

²² Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 794* (March 31, 2015) (on file with the Senate Committee on Judiciary).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 55.035, 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/CS by Rules March 29, 2017

The committee substitute no longer authorizes prejudgment interest on noneconomic damages or attorney fees as provided in the underlying bill.

CS by Judiciary on February 21, 2017:

The committee substitute differs from the underlying bill in the following ways:

- Prejudgment interest for noneconomic damages accrues from the date that the defendant receives notice of a claim by the plaintiff.
- Prejudgment interest on attorney fees or costs begins to accrue on the date of the entitlement of the award which is fixed through an agreement, arbitration award, or court determination.
- Language is deleted which states that interest may not accrue on prejudgment interest that was awarded in the final judgment.
- Language is added to clarify that the bill does not affect prejudgment interest to the extent that it is currently authorized by statute or common law.
- The bill has no retroactive application, and only applies to causes of action that accrue on or after July 1, 2017.

B. Amendments:

None.



266818

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 55.035, Florida Statutes, is created to
read:

55.035 Prejudgment interest.—In any action in which a
plaintiff recovers noneconomic damages, a court may award
prejudgment interest upon a motion by the plaintiff if the court
finds that the award is warranted based on the nature of the
damages, the time elapsed between the date the defendant



266818

received written notice of the claim and the verdict or judgment, and the conduct of the parties and counsel in expeditiously resolving the case. The interest rate that applies to prejudgment interest awarded under this section is the rate established pursuant to s. 55.03.

Section 2. This act does not affect the accrual of prejudgment interest before the effective date of the act if otherwise authorized by statute or common law.

Section 3. This act shall take effect July 1, 2017, and shall apply to causes of action that accrue on or after that date.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled
An act relating to prejudgment interest; creating s. 55.035, F.S.; authorizing a court to award prejudgment interest on noneconomic damages under certain circumstances; specifying the rate at which interest accrues; providing for construction and applicability; providing an effective date.



398962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Substitute for Amendment (266818) (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 55.035, Florida Statutes, is created to
read:

55.035 Prejudgment interest.—In any action in which a
plaintiff recovers noneconomic damages, a court may award
prejudgment interest on those damages upon a motion by the
plaintiff if the court finds that the award is warranted based



398962

on the nature of the damages, the time elapsed between the date the defendant received written notice of the claim and the verdict or judgment, and the conduct of the parties and counsel in expeditiously resolving the case. The interest rate that applies to prejudgment interest awarded under this section is the rate established pursuant to s. 55.03.

Section 2. This act does not affect the accrual of prejudgment interest before the effective date of the act if otherwise authorized by statute or common law.

Section 3. This act shall take effect July 1, 2017, and shall apply to causes of action that accrue on or after that date.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to prejudgment interest; creating s. 55.035, F.S.; authorizing a court to award prejudgment interest on noneconomic damages under certain circumstances; specifying the rate at which interest accrues; providing for construction and applicability; providing an effective date.



471646

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Bradley and Galvano) recommended the following:

Senate Amendment to Substitute Amendment (398962) (with title amendment)

Delete lines 8 - 23
and insert:

55.035 Prejudgment interest.—In a negligence action in which a plaintiff recovers economic damages as the result of a personal injury, the court shall include in the final judgment interest on each component of economic damages. Such interest accrues from the date of the loss of an economic benefit or



471646

payment made by the plaintiff. If the plaintiff recovers costs,
the court shall include in the final judgment interest on such
costs beginning on the first day of the month immediately
following the month in which costs were paid. The rate of
interest applicable to this section is the rate established
pursuant to s. 55.03.

Section 2. This act applies to causes of action that accrue
on or after July 1, 2017.

Section 3. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete lines 31 - 34

and insert:

55.035, F.S.; requiring a court to include interest on
economic damages and costs in the final judgment of a
negligence action as a result of a personal injury;
specifying the date from which interest accrues;
prescribing the applicable interest rate; providing
applicability;

By the Committee on Judiciary; and Senator Steube

590-01947-17

2017334c1

A bill to be entitled

An act relating to prejudgment interest; creating s. 55.035, F.S.; requiring a court to include interest in a final judgment in an action from which a plaintiff recovers economic or noneconomic damages; specifying the dates from which interest accrues; requiring a court to include interest on attorney fees and costs in the final judgment, if recovered; specifying the rate at which interest accrues; providing for construction and applicability; providing an effective date.

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

Section 1. Section 55.035, Florida Statutes, is created to read:

55.035 Prejudgment interest.—

(1) In any action in which a plaintiff recovers economic or noneconomic damages, the court shall include interest on each component of damages in the final judgment.

(a) For economic damages, interest accrues from the date of the loss of an economic benefit to the plaintiff.

(b) For noneconomic damages, interest accrues from the date the defendant received notice of a claim from the plaintiff.

(2) If the plaintiff recovers attorney fees or costs, the court shall include in the final judgment interest on such fees or costs beginning on the date the entitlement to attorney fees is fixed through an agreement, an arbitration award, or a court determination.

Page 1 of 2

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

590-01947-17

2017334c1

(3) The rate of interest applicable to this section is the rate established pursuant to s. 55.03.

Section 2. This act does not affect the accrual of prejudgment interest before the effective date of the act if otherwise authorized by statute or common law.

Section 3. This act shall take effect July 1, 2017, and shall apply to causes of action that accrue on or after that date.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

February 21, 2017

The Honorable Lizbeth Benaquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 334 – Prejudgement Interest, has been referred to the Senate Rules Committee. This bill passed the Senate Judiciary Committee on February 21. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

03.29.17

Meeting Date

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

334

Bill Number (if applicable)

471646

Amendment Barcode (if applicable)

Topic Prejudgment Interest

Name Andrew Bolin

Job Title _____

Address 201 One Tampa City Center

Street

Tampa

City

FL

State

33602

Zip

Phone 813-226-3000

Email asb@bmmbw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

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)

3/29/17

Meeting Date

5 334

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gerald Wester

Job Title _____

Address 101 E College Ave 3501
Street
Tallahassee, FL 32301
City State Zip

Phone 850 445 7256

Email GWester@capcityconsulting.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-29-17

Meeting Date

334

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name James Harold Thompson

Job Title Lobbyist

Address 123 S. Calhoun

Phone 850-545-9556

Street

Tallahassee

FL

32302

City

State

Zip

Email jthompson@casley.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CSX Transportation

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

Mar. 29, 2017
Meeting Date

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

CS/SB 334
Bill/Number (if applicable)

Topic Pre-judgment Interest

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title State Affairs Director - Southeast Region

Address 3933 Victoria Lakes Dr. South

Phone 317-417-5618

Jacksonville FL 32226
City State Zip

Email lreynolds@namic.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Association of Mutual Insurance Companies

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

3/29/17
Meeting Date

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

SB 334
Bill Number (if applicable)

Topic Pre judgement Interest

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams St
Street

Phone 224 2173

TLT
City State Zip

Email bbevis@airbicon

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2017

Meeting Date

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

334

Bill Number (if applicable)

NA

*Amendment Barcode (if applicable)*Topic Prejudgment InterestName Michael CarlsonJob Title PresidentAddress 215 S. Monroe St. Ste. 835*Street*Tallahassee*City*FL*State*32301*Zip*Phone 850-597-7425Email michael.carlson@piff.netSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)Representing Personal Insurance Federation of FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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)

3/29/17

Meeting Date

334

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5361

Killaloe FL 32301
City State Zip

Email tim.nungesser@flbog

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NFIB

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)

3-29
Meeting Date

334?
CS SB 344
Bill Number (if applicable)

Topic Pre Judgement Interest

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title _____

Address 108 S. Monroe St
Street
Tall Fla 32301
City State Zip

Phone 850-668-0444

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Institute for Legal Reform

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)

1/29/2017
Meeting Date

334
Bill Number (if applicable)

Topic PJI

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun St 600

Phone 850 224-7000

Street

City

TLH

State

FL

Zip

32301

Email mark.delegal@hkclaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Chamber

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)

3/29
Meeting Date

334
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee

City

FL

State

32301

Zip

Email Samantha@frf.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation

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

03.29.17

Meeting Date

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

334

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Andrew Bolin

Job Title _____

Address 201 One Tampa City Center

Phone 813-226-3000

Street

Tampa

FL

33602

Email asb@bmmbw.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Justice Reform Institute

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 Rules

BILL: SB 372

INTRODUCER: Senator Stargel

SUBJECT: Reemployment Assistance Fraud

DATE: March 28, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Little	McKay	CM	Favorable
2. Jones	Miller	TR	Favorable
3. Little	Phelps	RC	Favorable

I. Summary:

SB 372 authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to provide certain driver license images to the Department of Economic Opportunity (DEO) in order to facilitate in the detection of fraudulent reemployment assistance claims.

The DHSMV estimates programing and implementation of the bill will cost approximately \$20,025. The bill may have an indeterminate positive fiscal impact on DEO's Reemployment Assistance Program.

The bill is effective upon becoming law.

II. Present Situation:

Reemployment Assistance Program

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet eligibility requirements of state law.¹ The program is administered as a partnership of the federal government and the states.²

Florida's unemployment insurance program was created by the Legislature in 1937.³ The program was rebranded as the "Reemployment Assistance Program" in 2012.⁴ The DEO is

¹ United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Mar. 7, 2017).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

³ Chapter 18402, Laws of Fla.

⁴ Chapter 2012-30, Laws of Fla.

responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.⁵

An unemployed individual must apply to the DEO for benefits using Florida's Online Reemployment Assistance System.⁶ The DEO application process requires the claimant to provide their social security number and a secondary form of identification. Acceptable secondary forms of identification include any of the following:

- A driver's license containing a photograph or identifying information such as name, date of birth, sex, height, and address;
- Documentation issued by a federal, state, or local government agency containing a photograph or identifying information such as name, date of birth, sex, height, and address;
- A school identification card with photograph;
- A United States (U.S.) military ID, dependent's ID card, or U.S. Coast Guard Merchant Mariner card;
- Native American tribal document;
- U.S. passport (expired or unexpired); or
- Certificate of U.S. Citizenship or Certificate of Naturalization.⁷

In order to receive benefits, an applicant must also meet certain monetary and nonmonetary eligibility requirements.⁸ Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits.⁹

Fraudulent Claims

In 2014, the DEO implemented the Fraud Initiative and Rules Rating Engine (FIRRE) program in order to detect fraud and identity theft within public-assistance programs. In the first year of implementation, the FIRRE program detected over 70,000 fraudulent claims for reemployment assistance benefits.¹⁰

In order to identify falsely filed claims, the FIRRE program cross matches identification information with external entities, including the claimant's social security and driver license information.¹¹ To cross match driver license information, the DEO has been provided limited access to the information database used by the DHSMV.¹² The DEO's current access does not include digital images contained in DHSMV's Driver and Vehicle Information Database

⁵ Section 20.60(5)(c), F.S. and s. 443.171, F.S.

⁶ Rule 73B-11.013(1), F.A.C.

⁷ Rule 73B-11.013(6), F.A.C.

⁸ See s. 443.091, F.S. and Rule 73B-11.013, F.A.C.

⁹ Section 443.151(3)(a), F.S.

¹⁰ Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. DEO, RE: Identify Theft and Fraud in Public Benefit Systems (March 13, 2015), available at <http://floridajobs.org/docs/default-source/communicationsfiles/3-13-15-deo-letter.pdf> (last visited Mar. 7, 2017).

¹¹ Department of Economic Opportunity, *Senate Bill 1216 Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

¹² *Id.*

(DAVID). Under s. 322.142, F.S., other state agencies have been given access to reproductions of the digital images for similar purposes.¹³ Federal law allows states to make such information available for a government agency to carry out its functions.¹⁴

Penalties and Disqualification

Under current law, any person who establishes a fictitious employing unit¹⁵ by submitting fraudulent documents through a computer system, by alteration or destruction of computer files, or by theft of financial instruments, data, and other assets for the purpose of enabling any person to receive benefits under the reemployment program commits a felony of the third degree.¹⁶ Establishment of a fictitious employing unit in violation of the reemployment assistance program is considered racketeering activity under Florida law.¹⁷

Any person who makes false or fraudulent representations for the purpose of obtaining benefits contrary to the reemployment assistance program commits a felony of the third degree. Each false or fraudulent representation constitutes a separate offense.¹⁸ A person who makes such representation is subject to a disqualification of benefits, beginning with the week in which the false or fraudulent representation is made. The disqualification may be imposed for a period of up to one year following the date the DEO discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation is repaid in full.¹⁹ The duration of disqualification for false or fraudulent representations in other states is comparable to Florida's current penalty, as the disqualification time period in most states is 52 weeks.²⁰

Recovery for Overpayment

Any person who receives benefits by fraud, to which he or she is not entitled, is liable for repaying those benefits to the DEO. Florida law also allows the DEO to impose a penalty equal to 15 percent of the amount overpaid.²¹

Upon discovery of an overpayment, the DEO makes a determination of the amount of overpayment and attempts to make recovery of the payment. To enforce this provision, the DEO must find the existence of fraud through a redetermination or a decision within two years after the fraud was committed. Any recovery or recoupment of benefits must be commenced within

¹³ Section 322.142(4), F.S., provides access to digital license images, through interagency agreement, to the Department of Business and Professional Regulation, the Department of Health, the Department of State, the Department of Children and Family Services, the Agency for Health Care Administration, and the Department of Financial Services.

¹⁴ 18 U.S.C. s. 2721(b)(1)

¹⁵ An employing unit means "an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing; or the legal representative of a deceased person; which has or had in its employ one or more individuals performing services for it within this state." Section 443.036(20), F.S.

¹⁶ Section 443.071(4), F.S.

¹⁷ Section 895.02(8)(a)7., F.S.

¹⁸ Section 443.071(1), F.S.

¹⁹ Section 443.101(6), F.S.

²⁰ For a review of other state laws, see US Dept. of Labor, *2016 Comparison of State Unemployment Laws*, available at <https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2016/complete.pdf> (last visited Mar. 7, 2017).

²¹ Section 443.151(6)(a), F.S.

seven years after the redetermination or decision.²² The DEO is required to collect the repayment of benefits without interest by the deduction of benefits through a redetermination or by a civil action.²³

III. Effect of Proposed Changes:

The bill amends s. 322.142, F.S., relating to color photographic or digital imaged licenses, to authorize the DHSMV to make and issue reproductions of color photographic or digital imaged licenses and signatures of licensees to the DEO. The DEO will be able to use such reproductions to facilitate in the validation of reemployment assistance claims and to identify fraudulent or false reemployment assistance claims.

Allowing the DEO access to the DHSMV database will likely increase the number of fraudulent and false claims detected by the DEO.²⁴

The bill provides an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

Private Sector Impact:

None.

²² *Id.*

²³ Section 443.151(6)(e), F.S.

²⁴ Department of Economic Opportunity, *Senate Bill 1216 Agency Legislative Bill Analysis*, (Jan. 7, 2016) (on file with the Senate Committee on Commerce and Tourism).

B. Government Sector Impact:

The DHSMV estimates programing and implementation of the bill will cost approximately \$20,025.²⁵

To the extent that the bill increases the number of fraudulent or false reemployment assistance claims detected by the DEO, there may be a positive fiscal impact to the Unemployment Compensation Benefit Trust Fund²⁶.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 322.142 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.

²⁵ Department of Highway Safety and Motor Vehicles, *Senate Bill 372 Agency Legislative Bill Analysis*, (Feb. 6, 2017) (on file with the Senate Committee on Commerce and Tourism).

²⁶ Section 443.191, F.S.

By Senator Stargel

22-00467-17

2017372__

A bill to be entitled

An act relating to reemployment assistance fraud; amending s. 322.142, F.S.; authorizing reproductions from certain files or digital records maintained by the Department of Highway Safety and Motor Vehicles to be made and issued to the Department of Economic Opportunity pursuant to an interagency agreement for specified purposes; providing an effective date.

WHEREAS, the incidence of identity theft and the resulting fraud has reached a crisis level, and

WHEREAS, identity theft is especially problematic in this state, and the Federal Trade Commission reports that Florida has the highest per capita rate of reported fraud in the nation, and

WHEREAS, stolen identities are used to commit an ever-expanding range of fraud, including public assistance fraud, and

WHEREAS, identity theft and related fraud harm those whose identities are stolen, rob the social safety net of precious resources, impose unwarranted costs on taxpayers, and undermine public confidence in government, and

WHEREAS, the Department of Economic Opportunity's efforts to detect, prevent, and prosecute fraud have revealed that thousands of fraudulent claims for reemployment assistance are being filed, and

WHEREAS, the Department of Economic Opportunity has made prevention, detection, and prosecution of reemployment assistance fraud a top priority and has identified additional resources and tools necessary to effectively combat fraud, NOW, THEREFORE,

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

22-00467-17

2017372__

Section 1. Present paragraphs (k), (l), and (m) of subsection (4) of section 322.142, Florida Statutes, are redesignated as paragraphs (l), (m), and (n), respectively, and a new paragraph (k) is added to that subsection, to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may be made and issued only:

(k) To the Department of Economic Opportunity pursuant to an interagency agreement to facilitate the validation of reemployment assistance claims and the identification of fraudulent or false reemployment assistance claims.

Section 2. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

SENATOR KELLI STARGEL
22nd District

3/15/2017

The Honorable Lizbeth Benacquisto
Senate Committee on Rules, Chair
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request that SB 372, related to *Reemployment Assistance Fraud*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 22

Cc: John B. Phelps/ Staff Director
Cynthia Futch/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-28-17

Meeting Date

372

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lance Lozano

Job Title Chief Operating Officer

Address 116 S. Monroe St.

Phone 850-681-6265

Street

Tallahassee

FL

32301

City

State

Zip

Email llozano@fuba.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida United Businesses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/17
Meeting Date

372
Bill Number (if applicable)

Topic ~~Senate~~ SB 372

Amendment Barcode (if applicable)

Name Cissy Proctor

Job Title Executive Director

Address 107 E Madison St Phone

Street

Tallahassee FL

State

32399

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Department of Economic Opportunity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/17

Meeting Date

372

Bill Number (if applicable)

Topic Reemployment Assistance

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 130 S Bronough St
Street

Phone 521-1200

Tallahassee FL 32301
City State Zip

Email cjohnson@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 396

INTRODUCER: Senators Hukill and Bean

SUBJECT: Student Loan Debt

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	Fav/CS
2.	Androff	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 396 requires certain postsecondary education institutions to provide information regarding student loans annually to students. Specifically, the bill:

- Defines “student loans” to mean federal loans disbursed to a student to pay for education-related expenses.
- Establishes the requirement that a postsecondary education institution that disburses state financial aid provide the following up-to-date information annually to each student receiving student loans:
 - An estimate of the student’s total amount of borrowed student loans.
 - An estimate of the student’s total potential loan repayment amount associated with the total amount of student loans borrowed by the student.
 - An estimate of the student’s monthly loan repayment amount for the student’s total amount of borrowed student loans.
 - The percentage of the borrowing limit that the student has reached at the time the information is provided.
- Provides that an institution does not incur liability for providing the specified information.

The bill takes effect July 1, 2017.

II. Present Situation:

A student may receive financial aid from a variety of sources to pay for education-related expenses associated with pursuing higher education, including federal aid, state aid, aid from the

postsecondary education institution the student attends, and aid from private and nonprofit organizations.¹

Federal student aid includes grants, loans and work-study programs.² Federal grant aid is generally not required to be repaid unless, for instance, a student withdraws and owes a refund.³ Federal loans are borrowed money for postsecondary education that must be repaid, with interest.⁴ A student may participate in a federal work-study program through which he or she earns money to assist with the costs of higher education.⁵

Florida provides financial assistance programs through grants and scholarship programs.⁶ Postsecondary education institutions also offer financial aid from their own institutional funds.⁷ In addition, students may seek aid in the form of scholarships or grants from a nonprofit or private organization to assist with the costs of higher education,⁸ which are generally not required to be repaid. Finally, students may borrow funds from private loan sources to pay for higher education.⁹

Federal Student Loans

The federal government offers loans to eligible students for the purpose of assisting with the costs of higher education.¹⁰ A direct loan is a federal student loan, through the William D. Ford Federal Direct Loan Program, for which eligible students and parents borrow directly from the U.S. Department of Education at participating schools.¹¹ Direct loans include the following four types of loans:¹²

- Direct subsidized loans are loans to eligible undergraduate students who demonstrate financial need to help cover the costs of higher education;
- Direct unsubsidized loans are loans to eligible undergraduate, graduate, and professional students that are not need-based;
- Direct PLUS loans are loans to graduate or professional students and parents of dependent undergraduate students to help pay for educational expenses not covered by other financial aid; and
- Direct consolidation loans allow student borrowers to combine all eligible federal student loans into a single loan with a single loan servicer.

¹ U.S. Department of Education, *Types of Aid*, <https://studentaid.ed.gov/sa/types> (last visited Feb. 20, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Florida Department of Education, Office of Student Financial Assistance, *State Scholarships and Grant Programs*, <http://www.floridastudentfinancialaid.org/SSFAD/home/uamain.htm> (last visited Feb. 20, 2017).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ 34 C.F.R. s. 668.

¹¹ 34 C.F.R. s. 685.100.

¹² *Id.*

The U.S. Department of Education also offers the federal Perkins loan program, a school-based loan program for undergraduates and graduate students with exceptional financial need.¹³ The school is the lender of Perkins loans and the loan amount is capped.¹⁴

Free Application for Federal Student Aid

An eligible student who wishes to receive federal loans is required to annually complete and submit a Free Application for Federal Student Aid (FAFSA).¹⁵ The postsecondary education institution at which the student is enrolled receives the FAFSA and is responsible for distributing the loan award letter, which specifies the amount of loan that the student is eligible for at the school and provides instructions on how to accept all or part of the loan.¹⁶ Students who borrow federal student loans may visit the *My Federal Student Aid* website to view information about the federal student loans they have borrowed.¹⁷ This website provides students with access to their total loan obligations, repayment calculators, information regarding loan servicers, and other data related to federal student loans.¹⁸

Borrowing Limit

The federal government limits the amount in subsidized and unsubsidized loans that a student may borrow each academic year (annual loan limits) and the total amount the student may borrow for undergraduate and graduate study (aggregate loan limits).¹⁹ The actual loan amount a student is eligible to receive may be less than the annual loan limit depending on the year of study and whether or not the student is a dependent or independent student.²⁰ The student's FAFSA answers determine whether the student is considered dependent or independent.²¹ The FAFSA questions that determine dependency status change annually.²²

A student who reaches the aggregate loan limit is not eligible to receive additional loans, unless the student first makes a payment that reduces his or her outstanding loan debt below the aggregate loan limit.²³ The student may then borrow up to the amount of his or her remaining eligibility under the aggregate loan limit after his or her outstanding loan limit is within the aggregate loan limit established by the federal government.²⁴

¹³ 34 C.F.R. s. 674.1.

¹⁴ 34 C.F.R. s. 674.12.

¹⁵ 34 C.F.R. s. 685.201.

¹⁶ U.S. Department of Education, *Student Loan Types*, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much> (last visited Feb. 20, 2017).

¹⁷ U.S. Department of Education, *Understanding Repayment*, <https://studentaid.ed.gov/sa/repay-loans/understand/servicers> (last visited Feb. 20, 2017).

¹⁸ U.S. Department of Education, *My Federal Student Aid*, <https://studentaid.ed.gov/sa/?login=true> (last visited Feb. 20, 2017).

¹⁹ U.S. Department of Education, *Student Loan Types*, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much> (last visited Feb. 20, 2017).

²⁰ *Id.*

²¹ U.S. Department of Education, *Filling out the FAFSA*, <https://studentaid.ed.gov/sa/fafsa/filling-out/dependency#dependent-or-independent> (last visited Feb. 20, 2017).

²² *Id.*

²³ *Id.*

²⁴ U.S. Department of Education, *Student Loan Types*, <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#how-much> (last visited Feb. 20, 2017).

Loan Disclosure Requirements

Federal law requires that every postsecondary education institution eligible to participate in the federal loan programs must provide student borrowers with entrance counseling prior to the initial disbursement of federal funds.²⁵ Specifically, the federal loan entrance counseling must include the following information:²⁶

- The effect of accepting the loan on the eligibility of the borrower for other forms of student financial assistance;
- An explanation of the use of the master promissory note;
- Information on how interest accrues and is capitalized;
- Options for the student to pay interest on specified loans while in school;
- Sample monthly repayment amounts;
- The borrower's obligation to repay the full loan amount;
- Consequences of default on the loan;
- Information on borrower records available on the National Student Loan Data System; and
- Contact information for an individual the borrower may contact with questions regarding the loan.

Federal law also requires each postsecondary education institution eligible to participate in federal financial assistance programs to provide exit counseling to student borrowers of federal loans prior to the completion of the borrower's course of study or departure from the institution.²⁷ This exit counseling must include:²⁸

- Available repayment plans;
- Debt management strategies;
- An explanation of repayment options for each loan;
- A general description of any loan forgiveness program;
- A description of any forbearance provisions;
- Default consequences;
- Consolidation options;
- Available tax benefits; and
- Information regarding the National Student Loan System.

State Reporting Requirements

Each state university and Florida College System (FCS) institution is required to provide to each enrolled student, prior to registration, electronic access to the economic security report of employment and earnings outcomes prepared by the Department of Economic Opportunity.²⁹ The economic security report provides estimated earnings potential and salary ranges for specified degree programs offered by the institutions.³⁰ Based on this information, a student may

²⁵ 20 U.S.C. s. 1092(l)(1).

²⁶ 20 U.S.C. s. 1092(l)(2).

²⁷ 20 U.S.C. s. 1092(b)(1)(A).

²⁸ *Id.*

²⁹ Section 1001.706(5)(d), F.S.; Department of Economic Opportunity, *Economic Security Report 2016*, http://www.beyondeducation.org/temp/ER_Report.pdf (last visited Feb. 20, 2017).

³⁰ Section 1001.706(5)(d), F.S.

consider various financial aid options, including borrowing loans, to pursue a postsecondary education degree program of their choice.

Board of Governors

The Board of Governors of the State University System of Florida (BOG) must develop an accountability plan for the State University System and each constituent university, which must address institutional and system achievement of the goals and objectives specified in the BOG's strategic plan.³¹ The BOG strategic plan must include, but is not limited to, performance measures and standards for student loan burden and default rates.³²

Each university board of trustees is required to establish a policy for the administration, distribution and use of student financial aid, including student loans, that complies with existing federal or state law relating to financial aid.³³

State Board of Education

Each board of trustees of an FCS institution is authorized to create policies related to student financial assistance and other student services, subject to rules of the State Board of Education (SBE).³⁴ Each FCS institution must submit specified financial reports to the Florida Department of Education (DOE) in addition to maintaining enrollment-related financial records.³⁵ SBE rules require that each FCS institution enrolling students who receive state financial aid and tuition assistance:³⁶

- Develop written procedures for the administration of aid programs;
- Provide adequate staff;
- Coordinate institutional, state, federal, and state tuition awards to students;
- Maintain auditable records of state student aid and tuition assistance funds;
- Retain these records for five years;
- Verify and certify student eligibility;
- Disburse state aid and tuition assistance funds;
- Maintain student acknowledgement of receipt of funds;
- Provide reports required by the DOE; and
- Comply with refund policies.

Nonpublic Postsecondary Education Institutions

Nonpublic postsecondary institutions³⁷ must comply with the following student loan related reporting requirements specified in Florida law:³⁸

³¹ Section 1001.706(5)(c), F.S.

³² Section 1001.706(5)(b)1., F.S.

³³ Florida Board of Governors Regulation 3.009.

³⁴ Section 1001.64(1) and (8), F.S.

³⁵ Rule 6A-14.072, F.A.C.

³⁶ Rule 6A-20.002, F.A.C.

³⁷ This includes every institution that is under the jurisdiction of the Commission for Independent Education or that is exempt from the jurisdiction or purview of the Commission pursuant to section 1005.06(1)(c) or (f) and that directly or indirectly solicits student enrollment. Section 1005.04, F.S.

³⁸ Section 1005.04(1), F.S.

- Inform each student accurately about financial assistance and obligations for repayment of loans, describe any employment placement services provided and the limitations thereof, and refrain from misinforming the public about guaranteed placement, market availability, or salary amounts.³⁹
 - This disclosure must be in writing and signed and dated by each student applying for and receiving a student loan, to the effect that the student understands that he or she is obligated to repay the loan, the terms and amounts of repayments, and when repayments will begin.⁴⁰
- Publish and follow equitable refund policies and follow these refund policies in addition to federal refund guidelines.⁴¹

III. Effect of Proposed Changes:

CS/SB 396 requires certain postsecondary education institutions to provide information regarding student loans annually to students. Specifically, the bill:

- Defines “student loans” to mean federal loans disbursed to a student to pay for education-related expenses.
- Establishes the requirement that a postsecondary education institution that disburses state financial aid provide the following up-to-date information annually to each student receiving student loans:
 - An estimate of the student’s total amount of borrowed student loans.
 - An estimate of the student’s total potential loan repayment amount associated with the total amount of student loans borrowed by the student.
 - An estimate of the student’s monthly loan repayment amount for the student’s total amount of borrowed student loans.
 - The percentage of the borrowing limit that the student has reached at the time the information is provided.
- Provides that an institution does not incur liability for providing the specified information.

Student Loans Definition

The bill defines “student loans,” for purposes of the information that must be annually provided to enrolled students, to mean federal loans disbursed to a student to pay for education-related expenses. Postsecondary education institutions do not have access to information on private loans borrowed by a student, unless the student provides such information to the institutions.⁴²

Student Loan Disclosure Requirements

The bill requires public and private postsecondary education institutions that disburse state financial aid to annually provide the following up-to-date information to each student receiving student loans:

- An estimate of the student’s total amount of borrowed student loans.

³⁹ Section 1005.04(1)(c), F.S.

⁴⁰ Rule 6E-1.0032(6)(h), F.A.C.

⁴¹ Section 1005.04(1)(f), F.S.

⁴² Florida Department of Education, *CS/SB 396 Analysis* (2017), at 7.

- An estimate of the student's total potential loan repayment amount, including principal and interest, for the total amount of borrowed student loans.
- An estimate of the student's monthly loan repayment amounts for the total amount of borrowed student loans.
- The percentage of the borrowing limit that the student has reached at the time the institution provides the information.

The specified requirements may assist with reinforcing the information available to students who complete the federal Free Application for Federal Student Aid (FAFSA), regarding federal student loans and obligations related to incurring debt. Consequently, the bill may increase students' awareness about their aggregate federal student loan debt, estimated repayment obligations, and the consequences of failing to repay federal loans. Students may use this information to consider various financial aid options, including borrowing student loans, in planning to pay for education-related expenses.

The bill provides that an institution does not incur liability for providing the annually required student loan information.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1009.894 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 Education on February 21, 2017:

The committee substitute clarifies that:

- Student loans means federal loans disbursed to a student to pay for education-related expenses.
- A postsecondary institution that disburses state financial aid must annually provide up-to-date information on the total loans borrowed and loan repayment obligations to each enrolled student receiving student loans.

B. Amendments:

None.

By the Committee on Education; and Senators Hukill and Bean

581-01930-17

2017396c1

A bill to be entitled

An act relating to student loan debt; creating s. 1009.894, F.S.; defining the term "student loans"; requiring postsecondary institutions to annually provide certain students with specified information regarding their student loans; providing that an institution does not incur any liability for providing such information; providing an effective date.

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

Section 1. Section 1009.894, Florida Statutes, is created to read:

1009.894 Student loan information.-

(1) As used in this section, the term "student loans" means federal loans disbursed to a student to pay for education-related expenses.

(2) Beginning with the 2017-2018 academic year, a postsecondary institution that disburses state financial aid shall annually provide each student receiving student loans with the following up-to-date information:

(a) An estimate of:

1. The student's total amount of borrowed student loans.

2. The student's total potential loan repayment amount, including principal and interest, for the total amount of borrowed student loans.

3. The student's monthly loan repayment amounts for the total amount of borrowed student loans at the time the institution provides the student loan information required under

581-01930-17

2017396c1

this paragraph.

(b) The percentage of the borrowing limit that the student has reached at the time the information under paragraph (a) is provided.

(3) An institution does not incur liability for providing information to a student under this section.

Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education, *Chair*
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on the Environment
and Natural Resources
Health Policy
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
14th District

February 21, 2017

The Honorable Lizbeth Benacquisto
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 396 – Student Loan Debt

Dear Chairwoman Benacquisto:

Senate Bill 396, relating to Student Loan Debt has been referred to the Rules Committee. I am requesting your consideration on placing SB 396 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee
Cynthia Futch, Administrative Assistant of the Rules Committee

REPLY TO:

- ☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/29/2017
Meeting Date

CB396
Bill Number (if applicable)

Topic Student loan debt

Amendment Barcode (if applicable)

Name Emily Dovydaitis (dough-vee-dye-tus)

Job Title Director of Campus Life, UCF Student Government

Address 4000 Central Florida Blvd
Street

Phone 407-541-9187

Orlando
City

FL
State

32816
Zip

Email emily.dovydaitis@
knights.ucf.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing University of Central Florida - Student government

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 Rules

BILL: CS/CS/CS/SB 398

INTRODUCER: Rules Committee; Judiciary Committee; Regulated Industries Committee; and Senator Passidomo

SUBJECT: Estoppel Certificates

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.	Davis	Cibula	JU	Fav/CS
3.	Oxamendi	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 398 revises requirements for estoppel certificates for condominium, cooperative, and homeowners' associations. Under current law, when an ownership interest in a condominium unit, cooperative unit, or homeowners' parcel is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a condominium, cooperative, or homeowners' association. Unpaid assessments may also become a lien on the property. Purchasers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association to protect against undisclosed financial obligations and to transfer title to the property free of any lien or encumbrance in favor of the association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

The bill:

- Revises the period in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days.
- Provides that an estoppel certificate delivered by hand, mail, or e-mail has a 30-day effective period, and a certificate sent by regular mail has a 35-day effective period.
- Identifies the persons who may complete the estoppel certificate on behalf of the board or association;
- Specifies the information that the association must provide in the estoppel certificate.

- Prohibits an association from charging a fee for an amended estoppel certificate, and provides a new effective period of 30 days or 35 days, depending on the method used to deliver the amended certificate.
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith relies upon the certificate.
- Prohibits an association from charging a fee for preparing and delivering an estoppel certificate that is requested, if it is not delivered within 10 business days.
- Authorizes the use of a summary proceeding pursuant to s. 51.011, F.S., to compel compliance with the estoppel certificate requirements for a cooperative association, as existing law provides for condominium and homeowners' associations.
- Permits an association to charge a maximum fee of \$250 for the preparation and delivery of an estoppel certificate, if there are no delinquent amounts owed to the association.
- Permits an association to charge an additional \$100 fee for an expedited estoppel certificate delivered within 3 business days after a request for an expedited certificate.
- Permits an association to charge an additional maximum fee of \$150, if there is a delinquent amount owed to the association.
- Specifies the maximum fee that an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association.
- Provides that a lender or purchaser who pays for the preparation of an estoppel certificate may not waive the right to reimbursement if the closing does not occur and the prevailing party in a suit to enforce a right of reimbursement shall be awarded damages, attorney fees, and costs.
- Authorizes a cooperative to charge a fee for preparing and delivering an estoppel certificate but the authorization must be established by a written resolution adopted by either the board or a written management, booking, or maintenance contract.

The bill has no fiscal impact on state government.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Condominiums

A condominium is a form of ownership of real property comprised entirely of units that may be owned by one or more persons, which have an undivided share in common elements.¹ The common elements are the portions of the condominium property not included in the units.² A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.³ A declaration governs the relationship between the

¹ Section 718.103(11), F.S.

² Section 718.103(8), F.S.

³ Section 718.104(2), F.S.

condominium unit owners and the condominium association.⁴ A condominium association is administered by an elected board of administration that can assess costs for common expenses.⁵

Cooperative Associations

A cooperative is a form of ownership of real property in which legal title vests in a corporation or other entity.⁶ A cooperative differs from a condominium because the cooperative holds the legal title to the unit and all common elements. The units are not individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative association may assess costs for the maintenance of common expenses.⁷

Homeowners' Associations

A homeowners' association is a Florida corporation responsible for the operation of a community in which the voting membership is composed of parcel owners or their agents, or a combination thereof. Membership in the association is a mandatory condition of parcel ownership.⁸ A homeowners' association is administered by an elected board of directors that is authorized to impose assessments.⁹

Assessments

An assessment is a unit or parcel owner's share of the funds required for the payment of the association's common expenses.¹⁰ A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted the annual budget.¹¹

Assessments that are unpaid may become a lien on the unit or parcel.¹² An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.¹³ This liability is without prejudice to an owner's right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.¹⁴

Estoppel Certificates

Delivery Requirements

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an

⁴ *Woodside Vill. Condo. Ass'n v. McClernan*, 806 So. 2d 452, 456 (Fla. 2002).

⁵ Section 718.103(1) and (4), F.S.

⁶ Section 719.103(12), F.S.

⁷ See ss. 719.106(1)(g) and 719.107, F.S.

⁸ Section 720.301(9), F.S.

⁹ Section 720.303(2)(c)2., F.S.

¹⁰ Sections 718.103(1), 719.103(1), and 720.301(1), F.S.

¹¹ Sections 718.103(24) and 719.103(23), F.S.

¹² Sections 718.116(5), 719.108(4), and 720.3085(1), F.S.

¹³ Sections 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.

¹⁴ *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (10th ed. 2014).

estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.¹⁵

Within 15 days after receiving a written request for an estoppel certificate, the association must provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel.¹⁶

Fees

Condominium and homeowners' associations must establish the authority to charge a fee for an estoppel certificate by a written resolution adopted by the board or by a written management, bookkeeping, or maintenance contract.¹⁷ The fee is payable upon the preparation of the certificate.¹⁸ A cooperative association may charge a fee for the preparation of the certificate, but is not required to establish the fee amount in a written resolution or by a written management, bookkeeping, or maintenance contract.¹⁹

Condominium and cooperative associations may charge a "reasonable" fee for preparation of an estoppel certificate.²⁰ Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel certificate. This has caused variations in the fee charged by associations for the preparation of an estoppel certificate.

Payment and Refund of the Fee

The fee for preparation of an estoppel certificate by a condominium or homeowners' association is payable upon the preparation of the certificate.²¹ Chapter 719, F.S., does not have a comparable provision for cooperative associations.

For a condominium or homeowners' association, if the certificate is requested in conjunction with the sale or mortgage of a unit and the closing does not occur, the preparer of the certificate must refund the fee to a third party payor within 30 days after receipt of the request for refund. A written request for a refund must be made no later than 30 days after the closing date for which the certificate was sought and include reasonable documentation that the sale did not occur. Payment of the refund is a legal obligation of the owner, and the association may collect the refunded amount from that owner in the same manner as an assessment.²² There is no corresponding requirement in chapter 719, F.S., for a refund of the fee for an estoppel certificate paid to a cooperative association.

¹⁵ Sections 718.116(8), 719.108(6), and 720.30851, F.S.

¹⁶ *Id.*

¹⁷ Sections 718.116(8)(d) and 720.30851(3), F.S.

¹⁸ *Id.*

¹⁹ Section 719.108(6), F.S.

²⁰ Sections 718.116(8)(c) and 719.108(6), F.S. There is no corresponding requirement in chapter 720, F.S., that the fee charged by a homeowners' association be reasonable.

²¹ Sections 718.116(8)(d) and 720.30851(3), F.S.

²² Sections 718.116(8)(d) and 720.30851(3), F.S. There is no corresponding requirement in chapter 719, F.S., for a refund of the fee for an estoppel certificate paid to a cooperative association.

Summary Proceedings

A condominium association and a homeowners' association may be compelled to comply with the requirements of providing an estoppel certificate as required in ss. 718.116(8) and 720.30851, F.S., respectively, by a summary proceeding pursuant to s. 51.011, F.S.²³ The prevailing party in the summary proceeding is entitled to recover reasonable attorney fees.²⁴ Current law does not provide a comparable provision to compel compliance with the estoppel certificate requirements for cooperative associations.

Community Association Living Study Council

After a series of public meetings in 2014, the Community Association Living Study Council,²⁵ by unanimous vote, made the following recommendations to the Legislature:

- That a reasonable cap be established for estoppel certificate fees and that such fees be tiered;
- The amount of the fee should depend on whether or not the owner is current in fees, delinquent in fees, or if the sale is a bulk purchase.²⁶

III. Effect of Proposed Changes:

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to revise the requirements for estoppel certificates issued by condominium, cooperative, and homeowners' associations, respectively.

Delivery of Estoppel Certificates

The bill revises the period in which an association must respond to a request for an estoppel certificate from 15 days to 10 *business* days. An association is required to designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate.

The bill requires that an association deliver an estoppel certificate by hand, mail, or e-mail to the requestor on the date of issuance. A certificate that is hand delivered or sent by electronic means has a 30-day effective period, and a certificate sent by regular mail has a 35-day effective period.

²³ Section 51.011, F.S., specifies a summary procedure for actions that specifically authorize this procedure by statute or rule. Under the summary procedure, the defendant's answer must contain all defenses of law or fact and be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, be filed within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. No discovery postpones the time for trial except for good cause shown or by stipulation of the parties. Summary procedure provides for an immediate trial, if requested.

²⁴ See 718.116(8)(b) and 720.30851(2), F.S.

²⁵ The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of 7 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. The Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes appointed an ex officio nonvoting member. The Legislature abolished the Council in 2014. See ch. 2014-133, Laws of Fla.

²⁶ Final Report Community Association Living Study Council, *Final Report*, March 31, 2014, p. 6, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/2014CALSCReport.pdf> (last visited March 12, 2017).

Who May Complete the Estoppel Certificate

The bill permits the estoppel certificate to be completed any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete the form on behalf of the board or association.

Required Form

The bill revises requirements for the issuance of an estoppel certificate to provide that an association must include all of the following information in substantially the following form in each certificate:²⁷

- Date of issuance;
- Name of the unit or parcel owner(s) reflected in the books and records of the association;
- Unit designation and address;
- Parking or garage space number, as reflected in the books and records of the association;
- Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection but no fee may be charged for this information;
- Fee for the preparation and delivery of the estoppel certificate;
- Name of the requestor; and
- Assessment information and other information.

The bill requires that the "Assessment Information" provided by an association contains the following information in substantially the form provided in the bill:

- The amount of regular periodic assessment levied against the unit or parcel;
- The amount of regular periodic assessment paid to date;
- The date the next installment of the regular periodic assessment is due;
- An itemized list of all assessments, special assessments, and other moneys owed on the date the certificate is issued to the association by the unit or parcel owner; and
- An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due during the effective period of the estoppel certificate.

The bill provides that the association must include the following additional information in the estoppel certificate:

- Provide the amount, if any, of a capital contribution fee, resale fee, transfer fee, or other fee due;
- State whether the association's records include any notice to the unit or parcel owner of violation of rule or regulation;
- Indicate whether the rules or regulations of the association require the approval of the board of directors of the association required for the transfer of the unit or parcel, and if applicable, whether the board approved the transfer;

²⁷ See ss. 718.116(8), 719.108(6), and 720.30851, F.S.

- Indicate whether the rules or regulations of the association provide a right of first refusal in favor of the members or association, and if applicable, include the applicable rules or regulations;
- Provide a list of, and contact information for, all other associations of which the unit is a member;
- Provide contact information for all insurance maintained by the association; and
- Provide the signature of an officer or authorized agent of the association.

Amending Estoppel Certificates

The bill permits the association to amend an estoppel certificate within the applicable effective period if additional information or a mistake becomes known. An association may not charge a fee for an amended estoppel certificate. An amended estoppel certificate:

- Becomes effective on the date it is issued and delivered if a sale or refinancing of the unit or parcel has not been completed during the effective period;
- Must be delivered on the date of issuance; and
- Has a new applicable effective period of 30 or 35 days, depending on the method used to deliver the amended certificate, beginning on the date the amended estoppel certificate is issued.

Effect of Estoppel Certificates

The bill provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith relies upon the certificate.

Requests from Designees or Mortgagees

If an association receives a request for an estoppel certificate from a unit owner or the unit or parcel owner's designee, or a unit or parcel mortgagee or the unit or parcel mortgagee's designee and fails to deliver the estoppel certificate within 10 business days, it may not charge a fee for preparation and delivery of what estoppel certificate.

Summary Proceedings

The bill provides for the use of a summary proceeding pursuant to s. 51.011, F.S., to compel compliance with the estoppel certificate requirements for a cooperative association. This provision is identical to the existing provisions in ss. 718.116(8)(b) and 720.30851(2), F.S., for condominium and homeowners' associations, respectively.

Fees – Single Units or Parcels

The bill provides that an association may charge a reasonable fee for preparation and delivery of an estoppel certificate for a single unit or parcel. Current law does not authorize a delivery fee. The bill establishes a maximum fee of \$250 for the preparation and delivery of an estoppel certificate, if there are no delinquent amounts owed to the association on the date the certificate is issued. The association may charge an additional \$100 fee for an expedited estoppel certificate

delivered within 3 business days after the request for issuance of an expedited estoppel certificate. The association may charge an additional maximum fee of \$150, if there is a delinquent amount owed to the association.

Fees – Multiple Units or Parcels

The bill provides the maximum fees that an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association. The association may deliver the statement of moneys due in one or more estoppel certificates. However, the association may not charge a total fee that exceeds:

- \$750 for 25 or fewer units or parcels;
- \$1,000 for 26 to 50 units or parcels;
- \$1,500 for 51 to 100 units or parcels; or
- \$2,500 for more than 100 units or parcels.

Right to Reimbursement

The bill provides that, a lender or purchaser who pays for the preparation of an estoppel certificate may not waive, by contract or agreement, the right to be reimbursed for the cost of the certificate if the closing on the property does not occur. The party that prevails in an action to enforce a right of reimbursement shall be awarded damages, applicable attorney fees, and costs.

Inflation Adjustment

The bill requires that the maximum allowable fees for an estoppel certificate must be adjusted for inflation every five years an amount equal to the annual increases for that five-year period in the Consumer Price Index. The DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

Effective Date

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill establishes maximum fees for estoppel certificates, specifies timeframes for providing the certificate, and provides the form of the certificate. These provisions may affect existing management, bookkeeping, or maintenance contracts that provide for the issuance of estoppel certificates and the fees for that service. Therefore, these provisions may implicate constitutional impairment of contract concerns.

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

None.

B. Private Sector Impact:

CS/CS/CS/SB 398 may cause condominium, cooperative, and homeowners' associations to incur costs to prepare and deliver an estoppel certificate. The bill will also make the costs that purchasers pay for estoppel certificates more predictable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

CS/CS/SB 398 (lines 46-49) requires that an association designate on its website a person or entity with a street or e-mail address for receipt of requests for estoppel certificates. No alternative method is provided if an association does not maintain a website, and the term "website" is not used in connection with the duties of associations in chapter 718 (Condominiums), chapter 719 (Cooperatives), or chapter 720 (Homeowners' Associations), F.S.²⁸

VII. Related Issues:**VIII. None. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.116, 719.108, and 720.30851.

²⁸ The term "website" is used in another context in s. 720.303(13(d), F.S., a provision that expired July 1, 2016 and has not been re-enacted.

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

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

CS/CS/CS by Rules Committee on March 29, 2017:

The committee substitute amends nearly identical provisions from the previous version of the bill that pertained to condominiums, cooperatives, and homeowner associations and:

- Identifies the persons who may complete the estoppel certificate on behalf of the board or association.
- Revises the required information on the estoppel certificate to clarify that the parking or garage space number is as reflected in the books and records of the association.
- Requires the association to answer whether members of the association have exercised a right of first refusal instead of requiring a copy of the rule or regulations that give members of the association a right of first refusal.
- Removes the following information from the list of information that must be included in an estoppel certificate: the storage locker number, if any; the amount, if any, of an association application fee; whether there is a credit balance on the current account; the list of utilities provided to the unit or parcel; a list of all recreational or land leases; and a description of any litigation or administrative proceeding to which the association is a party.
- Increases the maximum fee from \$200 to \$250 for an estoppel certificate in which there are no delinquent amounts owed;
- Decreases the maximum fee from \$200 to \$150 for an estoppel certificate in which there are delinquent amounts owed;
- Requires that the maximum allowable fees must be adjusted for inflation every five years an amount equal to the annual increases for that five-year period in the Consumer Price Index.

CS/CS by Judiciary on March 14, 2017:

The committee substitute removes virtually identical provisions from the underlying bill that pertained to condominiums, cooperatives, and homeowner associations. These provisions would have provided that:

- When the association fails to deliver a certificate within 15 business days, it waives any claim against a purchaser, mortgagee, and successors who would have relied on the certificate for an amount owed to the association through the date of closing that should have been reflected on the certificate; and
- The fee for preparing and delivering an estoppel certificate in conjunction with a sale or refinancing will be paid from the closing or settlement proceeds; but if the closing does not occur, the fee remains the obligation of the unit owner which may be collected as other assessments.

The committee substitute adds provisions pertaining to condominiums, cooperatives and homeowner associations which prohibit a lender or purchaser from waiving the right to reimbursement of the cost of an estoppel certificate and requiring a court to award the prevailing party in an action to enforce a right of reimbursement damages and applicable attorney fees and costs.

CS by Regulated Industries on February 22, 2017:

The committee substitute revises the form for the estoppel certificate in ss. 718.116(8)(a), 719.108(6)(a), and 720.30851(1), F.S., to:

- Require that it include the name of the unit or parcel owner(s) “reflected in the books and records of the association;”
- Delete the provision that requires the association to state whether the amount of any credit balance will be transferred to the new owner’s account or to the association;
- Require that it indicate whether the rules or regulations of the association require the approval of the board for the transfer of the unit or parcel, and if applicable, whether the board has approved the transfer; and
- Revise the requirement related to a description of litigation to require that the certificate provide a description of litigation or administrative proceedings in which the association is a party.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) of section 718.116, Florida
Statutes, is amended to read:

718.116 Assessments; liability; lien and priority;
interest; collection.—

(8) Within 10 business ~~15~~ days after receiving a written or
electronic request therefor from a unit owner or the unit
owner's ~~his or her~~ designee, or a unit mortgagee or the unit



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mortgagee's ~~his or her~~ designee, the association shall issue the
estoppel ~~provide a~~ certificate. Each association shall designate
on its website a person or entity with a street or e-mail
address for receipt of a request for an estoppel certificate
issued pursuant to this section. The estoppel certificate must
be provided by hand delivery, regular mail, or e-mail to the
requestor on the date of issuance of the estoppel certificate
~~signed by an officer or agent of the association stating all~~
~~assessments and other moneys owed to the association by the unit~~
~~owner with respect to the condominium parcel.~~

(a) An estoppel certificate may be completed by any board
member, authorized agent, or authorized representative of the
association, including any authorized agent, authorized
representative, or employee of a management company authorized
to complete this form on behalf of the board or association. The
estoppel certificate must contain all of the following
information and must be substantially in the following form:

1. Date of issuance:....

2. Name(s) of the unit owner(s) as reflected in the books
and records of the association:....

3. Unit designation and address:....

4. Parking or garage space number, as reflected in the
books and records of the association:....

5. Attorney's name and contact information if the account
is delinquent and has been turned over to an attorney for
collection. No fee may be charged for this information.

6. Fee for the preparation and delivery of the estoppel
certificate:....

7. Name of the requestor:....



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41 8. Assessment information and other information:

42
43 ASSESSMENT INFORMATION:

44 a. The regular periodic assessment levied against the unit
45 is \$.... per ...(insert frequency of payment)....

46 b. The regular periodic assessment is paid through
47 ...(insert date paid through)....

48 c. The next installment of the regular periodic assessment
49 is due ...(insert due date)... in the amount of \$.....

50 d. An itemized list of all assessments, special
51 assessments, and other moneys owed on the date of issuance to
52 the association by the unit owner for a specific unit is
53 provided.

54 e. An itemized list of any additional assessments, special
55 assessments, and other moneys that are scheduled to become due
56 for each day after the date of issuance for the effective period
57 of the estoppel certificate is provided. In calculating the
58 amounts that are scheduled to become due, the association may
59 assume that any delinquent amounts will remain delinquent during
60 the effective period of the estoppel certificate.

61
62 OTHER INFORMATION:

63 f. Is there a capital contribution fee, resale fee,
64 transfer fee, or other fee due? ...(Yes)... ...(No).... If yes,
65 specify the type and the amount of the fee.

66 g. Is there any open violation of rule or regulation
67 noticed to the unit owner in the association official records?
68 ...(Yes)... ...(No)....

69 h. Do the rules and regulations of the association



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applicable to the unit require approval by the board of
directors of the association for the transfer of the unit?
...(Yes)... ...(No).... If yes, has the board approved the
transfer of the unit? ...(Yes)... ...(No)....

i. Do rules or regulations applicable to the unit provide
for a right of first refusal in favor of the members or
association? ...(Yes)... ...(No).... If yes, include applicable
rules or regulations.

j. Provide a list of, and contact information for, all
other associations of which the unit is a member.

k. Provide contact information for all insurance maintained
by the association.

l. Provide the signature of an officer or authorized agent
of the association.

The association, at its option, may include additional
information in the estoppel ~~Any person other than the owner who~~
~~relies upon such certificate shall be protected thereby.~~

(b) An estoppel certificate that is hand delivered or sent
by electronic means has a 30-day effective period. An estoppel
certificate that is sent by regular mail has a 35-day effective
period. If additional information or a mistake related to the
estoppel certificate becomes known to the association within the
effective period, an amended estoppel certificate may be
delivered and becomes effective if a sale or refinancing of the
unit has not been completed during the effective period. A fee
may not be charged for an amended estoppel certificate. An
amended estoppel certificate must be delivered on the date of
issuance, and a new 30-day or 35-day effective period begins on



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such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) ~~(b)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney attorney's fees.

(f) ~~(e)~~ Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$150 for the preparation of the certificate. The amount of the fee must be included on the certificate.



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(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.
2. For 26 to 50 units, \$1,000.
3. For 51 to 100 units, \$1,500.
4. For more than 100 units, \$2,500.

(h)-~~d~~ The authority to charge a fee for the preparation and delivery of the estoppel certificate must ~~shall~~ be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or



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157 agreement. The prevailing party in any action brought to enforce
158 a right of reimbursement shall be awarded damages and all
159 applicable attorney fees and costs.

160 (i) The fees specified in this subsection shall be adjusted
161 every 5 years in an amount equal to the total of the annual
162 increases for that 5-year period in the Consumer Price Index for
163 All Urban Consumers, U.S. City Average, All Items. The
164 Department of Business and Professional Regulation shall
165 periodically calculate the fees, rounded to the nearest dollar,
166 and publish the amounts, as adjusted, on its website.

167 Section 2. Subsection (6) of section 719.108, Florida
168 Statutes, is amended to read:

169 719.108 Rents and assessments; liability; lien and
170 priority; interest; collection; cooperative ownership.—

171 (6) Within 10 business ~~15~~ days after receiving a written or
172 electronic request for an estoppel certificate from a unit owner
173 or the unit owner's designee, or a unit mortgagee or the unit
174 mortgagee's designee, the association shall issue the estoppel
175 certificate. Each association shall designate on its website a
176 person or entity with a street or e-mail address for receipt of
177 a request for an estoppel certificate issued pursuant to this
178 section. The estoppel certificate must be provided by hand
179 delivery, regular mail, or e-mail to the requestor on the date
180 of issuance of the estoppel certificate.

181 (a) An estoppel certificate may be completed by any board
182 member, authorized agent, or authorized representative of the
183 association, including any authorized agent, authorized
184 representative, or employee of a management company authorized
185 to complete this form on behalf of the board or association. The



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estoppel certificate must contain all of the following
information and must be substantially in the following form:

1. Date of issuance:....
2. Name(s) of the unit owner(s) as reflected in the books and records of the association:....
3. Unit designation and address:....
4. Parking or garage space number, as reflected in the books and records of the association:....
5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.
6. Fee for the preparation and delivery of the estoppel certificate:....
7. Name of the requestor:....
8. Assessment information and other information:
 - ASSESSMENT INFORMATION:
 - a. The regular periodic assessment levied against the unit is \$.... per ...(insert frequency of payment)....
 - b. The regular periodic assessment is paid through ...(insert date paid through)....
 - c. The next installment of the regular periodic assessment is due ...(insert due date)... in the amount of \$.....
 - d. An itemized list of all assessments, special assessments, and other moneys owed by the unit owner on the date of issuance to the association for a specific unit is provided.
 - e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period



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of the estoppel certificate is provided. In calculating the
amounts that are scheduled to become due, the association may
assume that any delinquent amounts will remain delinquent during
the effective period of the estoppel certificate.

OTHER INFORMATION:

f. Is there a capital contribution fee, resale fee,
transfer fee, or other fee due? ...(Yes)... ...(No).... If yes,
specify the type and amount of the fee.

g. Is there any open violation of rule or regulation
noticed to the unit owner in the association official records?
...(Yes)... ...(No)....

h. Do the rules and regulations of the association
applicable to the unit require approval by the board of
directors of the association for the transfer of the unit?
...Yes... ...(No).... If yes, has the board approved the
transfer of the unit? ...(Yes)... ..(No)....

i. Do rules or regulations applicable to the unit provide
for a right of first refusal in favor of the members or
association? ...(Yes)....(No).... If yes, include applicable
rules or regulations.

j. Provide a list of, and contact information for, all
other associations of which the unit is a member.

k. Provide contact information for all insurance maintained
by the association.

l. Provide the signature of an officer or authorized agent
of the association.

The association, at its option, may include additional



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information in the estoppel certificate.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

(f) Notwithstanding any limitation on transfer fees



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contained in s. 719.106(1)(i), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250 if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$150.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.
2. For 26 to 50 units, \$1,000.
3. For 51 to 100 units, \$1,500.
4. For more than 100 units, \$2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is



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requested in conjunction with the sale or mortgage of a parcel
but the closing does not occur and no later than 30 days after
the closing date for which the certificate was sought the
preparer receives a written request, accompanied by reasonable
documentation, that the sale did not occur from a payor that is
not the parcel owner, the fee shall be refunded to that payor
within 30 days after receipt of the request. The refund is the
obligation of the parcel owner, and the association may collect
it from that owner in the same manner as an assessment as
provided in this section. The right to reimbursement may not be
waived or modified by any contract or agreement. The prevailing
party in any action brought to enforce a right of reimbursement
shall be awarded damages and all applicable attorney fees and
costs.

(i) The fees specified in this subsection shall be adjusted
every 5 years in an amount equal to the total of the annual
increases for that 5-year period in the Consumer Price Index for
All Urban Consumers, U.S. City Average, All Items. The
Department of Business and Professional Regulation shall
periodically calculate the fees, rounded to the nearest dollar,
and publish the amounts, as adjusted, on its website
~~by a unit owner or mortgagee, the association shall provide a certificate~~
~~stating all assessments and other moneys owed to the association~~
~~by the unit owner with respect to the cooperative parcel. Any~~
~~person other than the unit owner who relies upon such~~
~~certificate shall be protected thereby. Notwithstanding any~~
~~limitation on transfer fees contained in s. 719.106(1)(i), the~~
~~association or its authorized agent may charge a reasonable fee~~
~~for the preparation of the certificate.~~



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Section 3. Section 720.30851, Florida Statutes, is amended to read:

720.30851 Estoppel certificates.—Within 10 business ~~15~~ days after receiving a written or electronic ~~the date on which a~~ request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(1) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

(a) Date of issuance:....

(b) Name(s) of the parcel owner(s) as reflected in the books and records of the association:....

(c) Parcel designation and address:....

(d) Parking or garage space number, as reflected in the books and records of the association:....

(e) Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.



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(f) Fee for the preparation and delivery of the estoppel certificate:....

(g) Name of the requestor:....

(h) Assessment information and other information:

ASSESSMENT INFORMATION:

1. The regular periodic assessment levied against the parcel is \$.... per ...(insert frequency of payment)....

2. The regular periodic assessment is paid through ...(insert date paid through)....

3. The next installment of the regular periodic assessment is due ...(insert due date)... in the amount of \$.....

4. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the parcel owner for a specific parcel is provided.

5. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

6. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ...(Yes)... ...(No).... If yes, specify the type and amount of the fee.

7. Is there any open violation of rule or regulation



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noticed to the parcel owner in the association official records?
...(Yes)... ...(No)....

8. Do the rules and regulations of the association
applicable to the parcel require approval by the board of
directors of the association for the transfer of the parcel?
...(Yes)... ...(No).... If yes, has the board approved the
transfer of the parcel? ...(Yes)... ...(No)....

9. Do rules or regulations applicable to the parcel provide
for a right of first refusal in favor of the members or
association? ...(Yes)... ...(No).... If yes, include applicable
rules or regulations.

10. Provide a list of, and contact information for, all
other associations of which the parcel is a member.

11. Provide contact information for all insurance
maintained by the association.

12. Provide the signature of an officer or authorized agent
of the association.

The association, at its option, may include additional
information in the estoppel certificate.

(2) An estoppel certificate that is hand delivered or sent
by electronic means has a 30-day effective period. An estoppel
certificate that is sent by regular mail has a 35-day effective
period. If additional information or a mistake related to the
estoppel certificate becomes known to the association within the
effective period, an amended estoppel certificate may be
delivered and becomes effective if a sale or refinancing of the
parcel has not been completed during the effective period. A fee
may not be charged for an amended estoppel certificate. An



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amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(3) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(4) If an association receives a request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate ~~for an estoppel certificate is received from a parcel owner or mortgagee, or his or her designee, the association shall provide a certificate signed by an officer or authorized agent of the association stating all assessments and other moneys owed to the association by the parcel owner or mortgagee with respect to the parcel. An association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate.~~

~~(1) Any person other than a parcel owner who relies upon a certificate receives the benefits and protection thereof.~~

(5) ~~(2)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney attorney's fees.

(6) An association or its authorized agent may charge a



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reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable parcel. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable parcel, an additional fee for the estoppel certificate may not exceed \$150.

(7) If estoppel certificates for multiple parcels owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those parcels may be delivered in one or more estoppel certificates, and, even though the fee for each parcel shall be computed as set forth in subsection (6), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

(a) For 25 or fewer parcels, \$750.

(b) For 26 to 50 parcels, \$1,000.

(c) For 51 to 100 parcels, \$1,500.

(d) For more than 100 parcels, \$2,500.

(8)-(3) The authority to charge a fee for the preparation and delivery of the estoppel certificate must ~~shall~~ be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later



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than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(9) The fees specified in this section shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

Section 4. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to estoppel certificates; amending ss.
718.116, 719.108, and 720.30851, F.S.; revising
requirements relating to the issuance of an estoppel



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certificate to specified persons; requiring a
condominium, cooperative, or homeowners' association
to designate a street or e-mail address on its website
for estoppel certificate requests; specifying delivery
requirements for an estoppel certificate; authorizing
an estoppel certificate to be completed by specified
persons; requiring that an estoppel certificate
contain certain information; providing an effective
period for an estoppel certificate based upon the date
of issuance and form of delivery; prohibiting an
association from charging a preparation and delivery
fee or making certain claims if it fails to deliver an
estoppel certificate within certain timeframes;
revising fee requirements for preparing and delivering
an estoppel certificate under various circumstances;
authorizing the statement of moneys due to be
delivered in one or more estoppel certificates under
certain circumstances; providing limits on a total fee
charged for the preparation and delivery of estoppel
certificates; requiring that the authority to charge a
fee for the preparation and delivery of estoppel
certificates be established by a specified written
resolution or provided by a certain type of contract;
providing that the right to reimbursement may not be
waived or modified by a contract or agreement;
requiring that the prevailing party in an action to
enforce a right to reimbursement be awarded certain
damages, fees, and costs; requiring that certain fees
be adjusted every certain number of years using a



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534 specified price index; requiring the Department of
535 Business and Professional Regulation to periodically
536 calculate the fees and publish the amounts on its
537 website, subject to certain requirements; conforming
538 provisions to changes made by the act; providing an
539 effective date.



537800

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
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	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment to Amendment (724766)

Delete lines 74 - 399
and insert:

i. Is there a right of first refusal provided to the members or the association? ... (Yes) ... (No) If yes, have the members or the association exercised that right of first refusal? ... (Yes) ... (No)

j. Provide a list of, and contact information for, all other associations of which the unit is a member.

k. Provide contact information for all insurance maintained



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by the association.

1. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel ~~Any person other than the owner who relies upon such certificate shall be protected thereby.~~

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that



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estoppel certificate.

(e) ~~(b)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(f) ~~(e)~~ Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$150 ~~for the preparation of the certificate. The amount of the fee must be included on the certificate.~~

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.
2. For 26 to 50 units, \$1,000.



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70 3. For 51 to 100 units, \$1,500.

71 4. For more than 100 units, \$2,500.

72 (h) ~~(d)~~ The authority to charge a fee for the preparation
73 and delivery of the estoppel certificate must ~~shall~~ be
74 established by a written resolution adopted by the board or
75 provided by a written management, bookkeeping, or maintenance
76 contract and is payable upon the preparation of the certificate.
77 If the certificate is requested in conjunction with the sale or
78 mortgage of a unit but the closing does not occur and no later
79 than 30 days after the closing date for which the certificate
80 was sought the preparer receives a written request, accompanied
81 by reasonable documentation, that the sale did not occur from a
82 payor that is not the unit owner, the fee shall be refunded to
83 that payor within 30 days after receipt of the request. The
84 refund is the obligation of the unit owner, and the association
85 may collect it from that owner in the same manner as an
86 assessment as provided in this section. The right to
87 reimbursement may not be waived or modified by any contract or
88 agreement. The prevailing party in any action brought to enforce
89 a right of reimbursement shall be awarded damages and all
90 applicable attorney fees and costs.

91 (i) The fees specified in this subsection shall be adjusted
92 every 5 years in an amount equal to the total of the annual
93 increases for that 5-year period in the Consumer Price Index for
94 All Urban Consumers, U.S. City Average, All Items. The
95 Department of Business and Professional Regulation shall
96 periodically calculate the fees, rounded to the nearest dollar,
97 and publish the amounts, as adjusted, on its website.

98 Section 2. Subsection (6) of section 719.108, Florida



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Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(6) Within 10 business ~~45~~ days after receiving a written or electronic request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(a) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:....

2. Name(s) of the unit owner(s) as reflected in the books and records of the association:....

3. Unit designation and address:....

4. Parking or garage space number, as reflected in the books and records of the association:....

5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.



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6. Fee for the preparation and delivery of the estoppel
certificate:....

7. Name of the requestor:....

8. Assessment information and other information:

ASSESSMENT INFORMATION:

a. The regular periodic assessment levied against the unit
is \$.... per ...(insert frequency of payment)....

b. The regular periodic assessment is paid through
...(insert date paid through)....

c. The next installment of the regular periodic assessment
is due ...(insert due date)... in the amount of \$.....

d. An itemized list of all assessments, special
assessments, and other moneys owed by the unit owner on the date
of issuance to the association for a specific unit is provided.

e. An itemized list of any additional assessments, special
assessments, and other moneys that are scheduled to become due
for each day after the date of issuance for the effective period
of the estoppel certificate is provided. In calculating the
amounts that are scheduled to become due, the association may
assume that any delinquent amounts will remain delinquent during
the effective period of the estoppel certificate.

OTHER INFORMATION:

f. Is there a capital contribution fee, resale fee,
transfer fee, or other fee due? ...(Yes)... ...(No).... If yes,
specify the type and amount of the fee.

g. Is there any open violation of rule or regulation
noticed to the unit owner in the association official records?



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... (Yes) ... (No)

h. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? ... Yes ... (No) If yes, has the board approved the transfer of the unit? ... (Yes) (No)

i. Is there a right of first refusal provided to the members or the association? ... (Yes) (No) If yes, have the members or the association exercised that right of first refusal? ... (Yes) (No)

j. Provide a list of, and contact information for, all other associations of which the unit is a member.

k. Provide contact information for all insurance maintained by the association.

l. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of



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issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

(f) Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250 if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$150.



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(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.
2. For 26 to 50 units, \$1,000.
3. For 51 to 100 units, \$1,500.
4. For more than 100 units, \$2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing



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party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(i) The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website ~~by a unit owner or mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. Any person other than the unit owner who relies upon such certificate shall be protected thereby. Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate.~~

Section 3. Section 720.30851, Florida Statutes, is amended to read:

720.30851 Estoppel certificates.—Within 10 business ~~15~~ days after receiving a written or electronic ~~the date on which a~~ request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand



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delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(1) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

(a) Date of issuance:....

(b) Name(s) of the parcel owner(s) as reflected in the books and records of the association:....

(c) Parcel designation and address:....

(d) Parking or garage space number, as reflected in the books and records of the association:....

(e) Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

(f) Fee for the preparation and delivery of the estoppel certificate:....

(g) Name of the requestor:....

(h) Assessment information and other information:

ASSESSMENT INFORMATION:

1. The regular periodic assessment levied against the parcel is \$.... per ...(insert frequency of payment)....

2. The regular periodic assessment is paid through ...(insert date paid through)....

3. The next installment of the regular periodic assessment



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is due ...(insert due date)... in the amount of \$.....

4. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the parcel owner for a specific parcel is provided.

5. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

6. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ...(Yes)... ...(No).... If yes, specify the type and amount of the fee.

7. Is there any open violation of rule or regulation noticed to the parcel owner in the association official records? ...(Yes)... ...(No)....

8. Do the rules and regulations of the association applicable to the parcel require approval by the board of directors of the association for the transfer of the parcel? ...(Yes)... ...(No).... If yes, has the board approved the transfer of the parcel? ...(Yes)... ...(No)....

9. Is there a right of first refusal provided to the members or the association? ...(Yes)... ...(No).... If yes, have the members or the association exercised that right of first refusal? ...(Yes)... ...(No)....

By the Committees on Judiciary; and Regulated Industries; and
Senator Passidomo

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1 A bill to be entitled
2 An act relating to estoppel certificates; amending ss.
3 718.116, 719.108, and 720.30851, F.S.; revising
4 requirements relating to the issuance of an estoppel
5 certificate to specified persons; requiring a
6 condominium, cooperative, or homeowners' association
7 to designate a street or e-mail address on its website
8 for estoppel certificate requests; specifying delivery
9 requirements for an estoppel certificate; requiring
10 that an estoppel certificate contain certain
11 information; providing an effective period for an
12 estoppel certificate based upon the date of issuance
13 and form of delivery; prohibiting an association from
14 charging a preparation and delivery fee or making
15 certain claims if it fails to deliver an estoppel
16 certificate within certain timeframes; revising fee
17 requirements for preparing and delivering an estoppel
18 certificate under various circumstances; authorizing
19 the statement of moneys due to be delivered in one or
20 more estoppel certificates under certain
21 circumstances; providing limits on a total fee charged
22 for the preparation and delivery of estoppel
23 certificates; requiring that the authority to charge a
24 fee for the preparation and delivery of estoppel
25 certificates be established by a specified written
26 resolution or provided by a certain type of contract;
27 providing that the right to reimbursement may not be
28 waived or modified by a contract or agreement;
29 requiring that the prevailing party in an action to

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30 enforce a right to reimbursement be awarded certain
31 damages, fees, and costs; conforming provisions to
32 changes made by the act; providing an effective date.
33
34 Be It Enacted by the Legislature of the State of Florida:
35
36 Section 1. Subsection (8) of section 718.116, Florida
37 Statutes, is amended to read:
38 718.116 Assessments; liability; lien and priority;
39 interest; collection.—
40 (8) Within 10 business ~~15~~ days after receiving a written or
41 electronic request therefor from a unit owner or the unit
42 owner's ~~his or her~~ designee, or a unit mortgagee or the unit
43 mortgagee's ~~his or her~~ designee, the association shall issue the
44 estoppel ~~provide a~~ certificate. Each association shall designate
45 on its website a person or entity with a street or e-mail
46 address for receipt of a request for an estoppel certificate
47 issued pursuant to this section. The estoppel certificate must
48 be provided by hand delivery, regular mail, or e-mail to the
49 requestor on the date of issuance of the estoppel certificate
50 ~~signed by an officer or agent of the association stating all~~
51 ~~assessments and other moneys owed to the association by the unit~~
52 ~~owner with respect to the condominium parcel.~~
53 (a) The estoppel certificate must contain all of the
54 following information and must be substantially in the following
55 form:
56 1. Date of issuance:....
57 2. Name(s) of the unit owner(s) reflected in the books and
58 records of the association:....

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- 59 3. Unit designation and address:....
 60 4. Parking or garage space number, if any:....
 61 5. Storage locker number, if any:....
 62 6. Attorney's name and contact information if the account
 63 is delinquent and has been turned over to an attorney for
 64 collection. No fee may be charged for this information.
 65 7. Fee for the preparation and delivery of the estoppel
 66 certificate:....
 67 8. Name of the requestor:....
 68 9. Assessment information and other information:

70 ASSESSMENT INFORMATION:

- 71 a. The regular periodic assessment levied against the unit
 72 is \$.... per ...(insert frequency of payment)....
 73 b. The regular periodic assessment is paid through
 74 ...(insert date paid through)....
 75 c. The next installment of the regular periodic assessment
 76 is due ...(insert due date)... in the amount of \$....
 77 d. An itemized list of all assessments, special
 78 assessments, and other moneys owed on the date of issuance to
 79 the association by the unit owner for a specific unit is
 80 provided.
 81 e. An itemized list of any additional assessments, special
 82 assessments, and other moneys that are scheduled to become due
 83 for each day after the date of issuance for the effective period
 84 of the estoppel certificate is provided. In calculating the
 85 amounts that are scheduled to become due, the association may
 86 assume that any delinquent amounts will remain delinquent during
 87 the effective period of the estoppel certificate.

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- 88
 89 OTHER INFORMATION:
 90 f. Is there a capital contribution fee, resale fee,
 91 transfer fee, or other fee due? ...(Yes)... ...(No).... If yes,
 92 specify the type and the amount of the fee.
 93 g. What is the amount, if any, of an association
 94 application fee?
 95 h. Is there a credit balance on the current account?
 96 ...(Yes)... ...(No)....
 97 i. Is there any violation of rule or regulation noticed to
 98 the unit owner in the association official records? ...(Yes)...
 99 ...(No)....
 100 j. Do the rules and regulations of the association
 101 applicable to the unit require approval by the board of
 102 directors of the association for the transfer of the unit?
 103 ...(Yes)... ...(No).... If yes, has the board approved the
 104 transfer of the unit? ...(Yes)... ...(No)....
 105 k. Do rules or regulations applicable to the unit provide
 106 for a right of first refusal in favor of the members or
 107 association? ...(Yes)... ...(No).... If yes, include applicable
 108 rules or regulations.
 109 l. Provide a list of utilities provided to the unit which
 110 are included in the assessments paid to the association.
 111 m. Provide a list of all recreational or land leases to the
 112 association affecting the unit.
 113 n. Provide a list of, and contact information for, all
 114 other associations of which the unit is a member.
 115 o. Provide a description of any litigation or
 116 administrative proceedings in which the association is a party.

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p. Provide contact information for all insurance maintained by the association.

q. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel. Any person other than the owner who relies upon such certificate shall be protected thereby.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee

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may not be charged for the preparation and delivery of that estoppel certificate.

(e)(b) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable ~~attorney~~ attorney's fees.

(f)(e) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an the association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$200, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$200 for the preparation of the certificate. The amount of the fee must be included on the certificate.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.

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175 2. For 26 to 50 units, \$1,000.
176 3. For 51 to 100 units, \$1,500.
177 4. For more than 100 units, \$2,500.
178 (h) ~~(d)~~ The authority to charge a fee for the preparation
179 and delivery of the estoppel certificate must ~~shall~~ be
180 established by a written resolution adopted by the board or
181 provided by a written management, bookkeeping, or maintenance
182 contract and is payable upon the preparation of the certificate.
183 If the certificate is requested in conjunction with the sale or
184 mortgage of a unit but the closing does not occur and no later
185 than 30 days after the closing date for which the certificate
186 was sought the preparer receives a written request, accompanied
187 by reasonable documentation, that the sale did not occur from a
188 payor that is not the unit owner, the fee shall be refunded to
189 that payor within 30 days after receipt of the request. The
190 refund is the obligation of the unit owner, and the association
191 may collect it from that owner in the same manner as an
192 assessment as provided in this section. The right to
193 reimbursement may not be waived or modified by any contract or
194 agreement. The prevailing party in any action brought to enforce
195 a right of reimbursement shall be awarded damages and all
196 applicable attorney fees and costs.

197 Section 2. Subsection (6) of section 719.108, Florida
198 Statutes, is amended to read:

199 719.108 Rents and assessments; liability; lien and
200 priority; interest; collection; cooperative ownership.-

201 (6) Within 10 business ~~15~~ days after receiving a written or
202 electronic request for an estoppel certificate from a unit owner
203 or the unit owner's designee, or a unit mortgagee or the unit

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204 mortgagee's designee, the association shall issue the estoppel
205 certificate. Each association shall designate on its website a
206 person or entity with a street or e-mail address for receipt of
207 a request for an estoppel certificate issued pursuant to this
208 section. The estoppel certificate must be provided by hand
209 delivery, regular mail, or e-mail to the requestor on the date
210 of issuance of the estoppel certificate.

211 (a) The estoppel certificate must contain all of the
212 following information and must be substantially in the following
213 form:

214 1. Date of issuance:....

215 2. Name(s) of the unit owner(s) reflected in the books and
216 records of the association:....

217 3. Unit designation and address:....

218 4. Parking or garage space number, if any:....

```
219      5. Storage locker number, if any:....
```

220 6. Attorney's name and contact information if the account
221 is delinquent and has been turned over to an attorney for
222 collection. No fee may be charged for this information.

223 7. Fee for the preparation and delivery of the estoppel
224 certificate:....

```
225      8. Name of the requestor:....
```

226 9. Assessment information and other information:

ASSESSMENT INFORMATION:

229 a. The regular periodic assessment levied against the unit
230 is \$.... per ...(insert frequency of payment)....

231 b. The regular periodic assessment is paid through
232 ...(insert date paid through)....

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233 c. The next installment of the regular periodic assessment
 234 is due ... (insert due date) ... in the amount of \$....
 235 d. An itemized list of all assessments, special
 236 assessments, and other moneys owed by the unit owner on the date
 237 of issuance to the association for a specific unit is provided.
 238 e. An itemized list of any additional assessments, special
 239 assessments, and other moneys that are scheduled to become due
 240 for each day after the date of issuance for the effective period
 241 of the estoppel certificate is provided. In calculating the
 242 amounts that are scheduled to become due, the association may
 243 assume that any delinquent amounts will remain delinquent during
 244 the effective period of the estoppel certificate.
 245
 246 OTHER INFORMATION:
 247 f. Is there a capital contribution fee, resale fee,
 248 transfer fee, or other fee due? ... (Yes) ... (No) ... If yes,
 249 specify the type and amount of the fee.
 250 g. What is the amount, if any, of an association
 251 application fee?
 252 h. Is there a credit balance on the current account?
 253 ... (Yes) ... (No) ...
 254 i. Is there any violation of rule or regulation noticed to
 255 the unit owner in the association official records? ... (Yes) ...
 256 ... (No) ...
 257 j. Do the rules and regulations of the association
 258 applicable to the unit require approval by the board of
 259 directors of the association for the transfer of the unit?
 260 ... Yes ... (No) ... If yes, has the board approved the
 261 transfer of the unit? ... (Yes) ... (No) ...

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262 k. Do rules or regulations applicable to the unit provide
 263 for a right of first refusal in favor of the members or
 264 association? ... (Yes) ... (No) ... If yes, include applicable
 265 rules or regulations.
 266 l. Provide a list of utilities provided to the unit which
 267 are included in the assessments paid to the association.
 268 m. Provide a list of all recreational or land leases to the
 269 association affecting the unit.
 270 n. Provide a list of, and contact information for, all
 271 other associations of which the unit is a member.
 272 o. Provide a description of any litigation or
 273 administrative proceedings in which the association is a party.
 274 p. Provide contact information for all insurance maintained
 275 by the association.
 276 g. Provide the signature of an officer or authorized agent
 277 of the association.
 278
 279 The association, at its option, may include additional
 280 information in the estoppel certificate.
 281 (b) An estoppel certificate that is hand delivered or sent
 282 by electronic means has a 30-day effective period. An estoppel
 283 certificate that is sent by regular mail has a 35-day effective
 284 period. If additional information or a mistake related to the
 285 estoppel certificate becomes known to the association within the
 286 effective period, an amended estoppel certificate may be
 287 delivered and becomes effective if a sale or refinancing of the
 288 unit has not been completed during the effective period. A fee
 289 may not be charged for an amended estoppel certificate. An
 290 amended estoppel certificate must be delivered on the date of

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291 issuance, and a new 30-day or 35-day effective period begins on
 292 such date.

293 (c) An association waives the right to collect any moneys
 294 owed in excess of the amounts specified in the estoppel
 295 certificate from any person who in good faith relies upon the
 296 estoppel certificate and from the person's successors and
 297 assigns.

298 (d) If an association receives a request for an estoppel
 299 certificate from a unit owner or the unit owner's designee, or a
 300 unit mortgagee or the unit mortgagee's designee, and fails to
 301 deliver the estoppel certificate within 10 business days, a fee
 302 may not be charged for the preparation and delivery of that
 303 estoppel certificate.

304 (e) A summary proceeding pursuant to s. 51.011 may be
 305 brought to compel compliance with this subsection, and in any
 306 such action the prevailing party is entitled to recover
 307 reasonable attorney fees.

308 (f) Notwithstanding any limitation on transfer fees
 309 contained in s. 719.106(1)(i), an association or its authorized
 310 agent may charge a reasonable fee for the preparation and
 311 delivery of an estoppel certificate, which may not exceed \$200
 312 if, on the date the certificate is issued, no delinquent amounts
 313 are owed to the association for the applicable unit. If an
 314 estoppel certificate is requested on an expedited basis and
 315 delivered within 3 business days after the request, the
 316 association may charge an additional fee of \$100. If a
 317 delinquent amount is owed to the association for the applicable
 318 unit, an additional fee for the estoppel certificate may not
 319 exceed \$200.

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320 (g) If estoppel certificates for multiple units owned by
 321 the same owner are simultaneously requested from the same
 322 association and there are no past due monetary obligations owed
 323 to the association, the statement of moneys due for those units
 324 may be delivered in one or more estoppel certificates, and, even
 325 though the fee for each unit shall be computed as set forth in
 326 paragraph (f), the total fee that the association may charge for
 327 the preparation and delivery of the estoppel certificates may
 328 not exceed, in the aggregate:

329 1. For 25 or fewer units, \$750.

330 2. For 26 to 50 units, \$1,000.

331 3. For 51 to 100 units, \$1,500.

332 4. For more than 100 units, \$2,500.

333 (h) The authority to charge a fee for the preparation and
 334 delivery of the estoppel certificate must be established by a
 335 written resolution adopted by the board or provided by a written
 336 management, bookkeeping, or maintenance contract and is payable
 337 upon the preparation of the certificate. If the certificate is
 338 requested in conjunction with the sale or mortgage of a parcel
 339 but the closing does not occur and no later than 30 days after
 340 the closing date for which the certificate was sought the
 341 preparer receives a written request, accompanied by reasonable
 342 documentation, that the sale did not occur from a payor that is
 343 not the parcel owner, the fee shall be refunded to that payor
 344 within 30 days after receipt of the request. The refund is the
 345 obligation of the parcel owner, and the association may collect
 346 it from that owner in the same manner as an assessment as
 347 provided in this section. The right to reimbursement may not be
 348 waived or modified by any contract or agreement. The prevailing

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349 ~~party in any action brought to enforce a right of reimbursement~~
 350 ~~shall be awarded damages and all applicable attorney fees and~~
 351 ~~costs by a unit owner or mortgagee, the association shall~~
 352 ~~provide a certificate stating all assessments and other moneys~~
 353 ~~owed to the association by the unit owner with respect to the~~
 354 ~~cooperative parcel. Any person other than the unit owner who~~
 355 ~~relies upon such certificate shall be protected thereby.~~
 356 ~~Notwithstanding any limitation on transfer fees contained in s.~~
 357 ~~719.106(1)(i), the association or its authorized agent may~~
 358 ~~charge a reasonable fee for the preparation of the certificate.~~
 359 Section 3. Section 720.30851, Florida Statutes, is amended
 360 to read:
 361 720.30851 Estoppel certificates.—Within 10 business ~~15~~ days
 362 after receiving a written or electronic ~~the date on which a~~
 363 request for an estoppel certificate from a parcel owner or the
 364 parcel owner's designee, or a parcel mortgagee or the parcel
 365 mortgagee's designee, the association shall issue the estoppel
 366 certificate. Each association shall designate on its website a
 367 person or entity with a street or e-mail address for receipt of
 368 a request for an estoppel certificate issued pursuant to this
 369 section. The estoppel certificate must be provided by hand
 370 delivery, regular mail, or e-mail to the requestor on the date
 371 of issuance of the estoppel certificate.
 372 (1) The estoppel certificate must contain all of the
 373 following information and must be substantially in the following
 374 form:
 375 (a) Date of issuance:....
 376 (b) Name(s) of the parcel owner(s) reflected in the books
 377 and records of the association:....

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

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378 (c) Parcel designation and address:....
 379 (d) Parking or garage space number, if any:....
 380 (e) Storage locker number, if any:....
 381 (f) Attorney's name and contact information if the account
 382 is delinquent and has been turned over to an attorney for
 383 collection. No fee may be charged for this information.
 384 (g) Fee for the preparation and delivery of the estoppel
 385 certificate:....
 386 (h) Name of the requestor:....
 387 (i) Assessment information and other information:
 388
 389 ASSESSMENT INFORMATION:
 390 1. The regular periodic assessment levied against the
 391 parcel is \$.... per ...(insert frequency of payment)....
 392 2. The regular periodic assessment is paid through
 393 ...(insert date paid through)....
 394 3. The next installment of the regular periodic assessment
 395 is due ...(insert due date)... in the amount of \$....
 396 4. An itemized list of all assessments, special
 397 assessments, and other moneys owed on the date of issuance to
 398 the association by the parcel owner for a specific parcel is
 399 provided.
 400 5. An itemized list of any additional assessments, special
 401 assessments, and other moneys that are scheduled to become due
 402 for each day after the date of issuance for the effective period
 403 of the estoppel certificate is provided. In calculating the
 404 amounts that are scheduled to become due, the association may
 405 assume that any delinquent amounts will remain delinquent during
 406 the effective period of the estoppel certificate.

Page 14 of 18

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

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OTHER INFORMATION:

6. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ... (Yes) ... (No) If yes, specify the type and amount of the fee.

7. What is the amount, if any, of an association application fee?

8. Is there a credit balance on the current account? ... (Yes) ... (No)

9. Is there any violation of rule or regulation noticed to the parcel owner in the association official records? ... (Yes) ... (No)

10. Do the rules and regulations of the association applicable to the parcel require approval by the board of directors of the association for the transfer of the parcel? ... (Yes) ... (No) If yes, has the board approved the transfer of the parcel? ... (Yes) ... (No)

11. Do rules or regulations applicable to the parcel provide for a right of first refusal in favor of the members or association? ... (Yes) ... (No) If yes, include applicable rules or regulations.

12. Provide a list of utilities provided to the parcel which are included in the assessments paid to the association.

13. Provide a list of all recreational or land leases to the association affecting the parcel.

14. Provide a list of, and contact information for, all other associations of which the parcel is a member.

15. Provide a description of any litigation or administrative proceedings in which the association is a party.

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16. Provide contact information for all insurance maintained by the association.

17. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(2) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the parcel has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(3) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(4) If an association receives a request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery

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465 ~~of that estoppel certificate for an estoppel certificate is~~
 466 ~~received from a parcel owner or mortgagee, or his or her~~
 467 ~~designee, the association shall provide a certificate signed by~~
 468 ~~an officer or authorized agent of the association stating all~~
 469 ~~assessments and other moneys owed to the association by the~~
 470 ~~parcel owner or mortgagee with respect to the parcel. An~~
 471 ~~association may charge a fee for the preparation of such~~
 472 ~~certificate, and the amount of such fee must be stated on the~~
 473 ~~certificate.~~

474 ~~(1) Any person other than a parcel owner who relies upon a~~
 475 ~~certificate receives the benefits and protection thereof.~~

476 (5)(2) A summary proceeding pursuant to s. 51.011 may be
 477 brought to compel compliance with this section, and the
 478 prevailing party is entitled to recover reasonable attorney
 479 attorney's fees.

480 (6) An association or its authorized agent may charge a
 481 reasonable fee for the preparation and delivery of an estoppel
 482 certificate, which may not exceed \$200 if on the date the
 483 certificate is issued, no delinquent amounts are owed to the
 484 association for the applicable parcel. If an estoppel
 485 certificate is requested on an expedited basis and delivered
 486 within 3 business days after the request, the association may
 487 charge an additional fee of \$100. If a delinquent amount is owed
 488 to the association for the applicable parcel, an additional fee
 489 for the estoppel certificate may not exceed \$200.

490 (7) If estoppel certificates for multiple parcels owned by
 491 the same owner are simultaneously requested from the same
 492 association and there are no past due monetary obligations owed
 493 to the association, the statement of moneys due for those

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494 parcels may be delivered in one or more estoppel certificates,
 495 and, even though the fee for each parcel shall be computed as
 496 set forth in subsection (6), the total fee that the association
 497 may charge for the preparation and delivery of the estoppel
 498 certificates may not exceed, in the aggregate:

499 (a) For 25 or fewer parcels, \$750.

500 (b) For 26 to 50 parcels, \$1,000.

501 (c) For 51 to 100 parcels, \$1,500.

502 (d) For more than 100 parcels, \$2,500.

503 (8)(3) The authority to charge a fee for the preparation
 504 and delivery of the estoppel certificate must ~~shall~~ be
 505 established by a written resolution adopted by the board or
 506 provided by a written management, bookkeeping, or maintenance
 507 contract and is payable upon the preparation of the certificate.
 508 If the certificate is requested in conjunction with the sale or
 509 mortgage of a parcel but the closing does not occur and no later
 510 than 30 days after the closing date for which the certificate
 511 was sought the preparer receives a written request, accompanied
 512 by reasonable documentation, that the sale did not occur from a
 513 payor that is not the parcel owner, the fee shall be refunded to
 514 that payor within 30 days after receipt of the request. The
 515 refund is the obligation of the parcel owner, and the
 516 association may collect it from that owner in the same manner as
 517 an assessment as provided in this section. The right to
 518 reimbursement may not be waived or modified by any contract or
 519 agreement. The prevailing party in any action brought to enforce
 520 a right of reimbursement shall be awarded damages and all
 521 applicable attorney fees and costs.

522 Section 4. This act shall take effect July 1, 2017.

"Agenda Request - SB 398.pdf" Not Found!!!

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/17

Meeting Date

398

Bill Number (if applicable)

~~537600~~ 724766

Amendment Barcode (if applicable)

Topic SB 398 Estoppel

Name Mark Anderson

Job Title _____

Address 106 South Monroe St.
Street

Phone 813-205-0654

Tallahassee FL 32301
City State Zip

Email Mark@consultanderson.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CEOMC

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)

3/29/17

Meeting Date

398

Bill Number (if applicable)

537800

Amendment Barcode (if applicable)

Topic Estoppel Certificates

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Street

Phone 727.421.6902

St. Petersburg

City

FL

State

33731

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing FIRST SERVICE Residential and Community Associations Institute

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

3-29-17
Meeting Date

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

398
Bill Number (if applicable)

537 800
Amendment Barcode (if applicable)

Topic _____

Name Richard Pinsky

Job Title _____

Address 106 E. College Ave #1200

Phone _____

Street

Tallahassee

FL

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Cyber Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/29/17

Meeting Date

398

Bill Number (if applicable)

Topic Estoppel PROCESS REFORM

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVE

Street

Phone 224-5081

TALLAHASSEE

City

FL

State

32301

Zip

Email daniel@smithbryan.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AGENTS SECTION - FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/17

Meeting Date

398

Bill Number (if applicable)

Topic Esloppet CERTificates

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Street

Phone 727.421.6902

St. Petersburg FL 33731

City

State

Zip

Email travis@moore-relations.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Associations Institute & First Service Residential

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)

3/29

Meeting Date

398

Bill Number (if applicable)

Topic Estoppel Certificates

Amendment Barcode (if applicable)

Name Greg Blank

Job Title Attorney

Address 119 S. Monroe Street, Ste 200

Phone _____

Street

TLH

City

FL

State

32301

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ATFS, LLC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

398

Meeting Date _____

Bill Number (if applicable) _____

Topic Estoppel

Amendment Barcode (if applicable) _____

Name Sean Stafford

Job Title _____

Address 115 E. Park Ave

Phone 727-5000

Street

City

State

Zip

Tallahassee FL 32301

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.29.17

Meeting Date

398

Bill Number (if applicable)

Topic ESTOPPEL CERTIFICATES

Amendment Barcode (if applicable)

Name TREY GOLDMAN

Job Title LEGISLATIVE COUNSEL

Address 200 S. MONROE ST

Phone 850/224-1400

Street

TALLAHASSEE FL 32301

City

State

Zip

Email trevg@floridarealtors.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA REALTORS

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

3-29-17

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

JB 338

Meeting Date

Bill Number (if applicable)

Topic

Estoppel Fees

Amendment Barcode (if applicable)

Name

KARE Hebrank

Job Title

Address

113 EAST COLLEGE AVE

Phone

564-7824

Street

Tallahassee

FL

32301

Email

khebrank@wilsonmgmt.com

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

Com

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

Representing

Florida Home Builders Assoc.

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3.29

Meeting Date

398

Bill Number (if applicable)

Topic stoppel certificates

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist

Address 101 E. College Ave #502
 Street Tallahassee City FL State 32303 Zip

Phone 222-9075

Email akalifeh@capcityconsult.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Old Republic Title

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/29/17

Meeting Date

5A39F

Bill Number (if applicable)

Topic

estoppel certificates

Amendment Barcode (if applicable)

Name

Ron Book

Job Title

Address

104 W. Jefferson

Street

TLH

City

State

Zip

Phone

850-224-3427

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

First Service Residence

Appearing at request of Chair:

☒

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/29/17

Meeting Date

398

Bill Number (if applicable)

Bill 95 Amended

Amendment Barcode (if applicable)

Topic Estoppel Certificates

Name Danielle Scoggins

Job Title Sr. Public Policy Representative

Address 200 S. Manroe Street

Phone _____

Street

Tall.

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 954

INTRODUCER: Senators Passidomo and Braynon

SUBJECT: Canvassing of Vote-by-mail Ballots

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	Favorable
2.	Davis	Cibula	JU	Favorable
3.	Fox	Phelps	RC	Favorable

I. Summary:

SB 954 creates a statutory affidavit “cure” process to remedy and count a vote-by-mail ballot where the ballot signature submitted by the voter does not match the signature on file in the registration book or precinct register. This new process is similar to the process for curing a vote-by-mail ballot with *no signature*, adopted by the Legislature in 2013.

In order to count a *mismatched* signature ballot, the bill requires the voter to submit:

- A signed affidavit attesting to his or her eligibility along with the fact that he or she requested and returned a vote-by-mail ballot, and acknowledging that committing voter fraud or voting multiple ballots is a third degree felony; and
- A copy of the same type of current and valid picture identification required at the polls.

The bill more effectively implements an *ad hoc* procedure that a federal district court judge recently mandated for counting mismatched-signature ballots during the 2016 election cycle. That same court stayed proceedings on a permanent injunction until May of 2017, ostensibly to give the Legislature an opportunity to address this issue during the upcoming legislative session.

The bill takes effect upon becoming a law.

II. Present Situation:

In 2013, at the urging of the state supervisors of elections, the Legislature changed the law to allow a voter who returned a vote-by-mail ballot *without a signature* on the Voter’s Certificate (on the back of the mailing envelope) to correct or “cure” the defect by submitting a sworn affidavit along with corroborating identification.¹

¹ Ch. 2013-57, § 15, Laws of Fla. (codified at § 101.68, F.S.) Previously, the practice had been that a ballot was deemed “cast” when a voter took the final step that enabled the ballot to be counted.

For the 2014 election cycle, county canvassing boards cured *missing* vote-by-mail ballot signatures by confirming the validity of the voter identification submitted and comparing the voter's signature on the cure affidavit with the registration signature on file in the registration books or precinct register. If the voter ID was valid and the signatures matched, the canvassing board counted the ballot; otherwise, the board rejected the ballot and notified the voter of the reason, *post-election*.² The notification included a card for the voter to update his or her signature for the next election. It is important to note that a matching voter signature was an essential component of the cure process for determining the validity of the ballot.³

In 2016, shortly before the general election, U.S. District Judge Mark Walker ruled that the state's failure to provide a process for curing vote-by-mail ballots with *mismatched* signatures was unconstitutional in light of the State's statutory procedure for correcting *missing* signatures.⁴ The federal court issued a temporary injunction directing the state to offer the same process for curing both types of signature deficiencies, notwithstanding that Florida law *requires a matching signature on the cure affidavit* in order for a ballot to count.⁵

As a result, the only mismatched-signature ballots that canvassing boards should have remedied under the judge's order were those where the voter returned an affidavit with a *matching* signature, perhaps because the voter:

- Hurriedly wrote his or her signature on the original Voter's Certificate or signed on an uneven surface, but was more precise in signing the cure affidavit; or
- Recalled using a different signature in the past, and signed the cure affidavit with that prior signature.⁶

The judge's order did not provide relief to voters who submitted the *same* mismatched signature on both the Voter's Certificate *and* cure affidavit, perhaps resulting from:

- The voter forgetting that he or she had registered using a different signature; or
- The voter's signature deteriorating or changing *over time* as the result of the natural aging process or a specific health-related event (i.e., stroke, blindness, paralysis, and dementia).

² There was and is no statutory requirement that the supervisors notify voters who submit missing ballot signatures. The idea was that third parties (political parties and other groups) who follow vote-by-mail ballot returns on a daily basis would handle that responsibility.

³ "The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate **or on the absentee ballot affidavit as provided in subsection (4)** [the cure affidavit] with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that absentee ballot." (emphasis added) Section 101.68(1)(c)1., F.S. (2014).

⁴ *Fla. Democratic Party v. Detzner*, 2016 U.S. Dist. LEXIS 143620, Case No. 4:16cv607-MW/CAS (N.D. Fla., Oct. 16, 2016). The court opined, "It is illogical, irrational, and patently bizarre for the State of Florida to withhold the opportunity to cure from mismatched-signature voters while providing that same opportunity to no-signature voters. And in doing so, the State of Florida has categorically disenfranchised thousands of voters arguably for no reason other than they have poor handwriting or their handwriting has changed over time." *Id.* at 22.

⁵ The State chose not to defend the statute on substantive grounds, leaving the judge only the one-sided Petitioner's brief/argument and Florida statutory law as sources of information from which to construct the opinion.

⁶ A person may use different signatures at various stages of life, especially at a younger age when the person is seeking to establish his or her own identity.

The federal court stayed the case with a permanent injunction until Friday, May 5, 2017, the last day of the regular session and scheduled a status conference for the week of May 15, 2017.⁷

III. Effect of Proposed Changes:

SB 954 creates a process for a voter to cure a vote-by-mail ballot with a *non-matching* signature. The voter must submit a signed “cure” affidavit along with a copy of a valid picture ID. This is similar to the process the Legislature authorized in 2013 for fixing vote-by-mail ballots that contained *no signature*, a process which is maintained and expanded upon in the current bill.

The cure process for both types of defective ballots begins when a Supervisor of Elections receives a vote-by-mail ballot that contains *no signature* or that contains a signature that *does not match* the voter’s signature in the registration book or precinct register. The supervisor must immediately notify the voter⁸ and provide an opportunity to cure the defect by submission of a signed cure affidavit and a copy of a proper ID no later than 5:00 p.m. on the day before the election — the current deadline for correcting a ballot with no signature.⁹

The decision tree in Section VII, Related Issues graphically details the process for canvassing vote-by-mail ballots with missing or mismatched signatures. Key points from the diagram are discussed below.

Mismatched-Signature Ballots

A voter may cure a mismatched signature on a vote-by mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, which is now categorized as Tier 1 identification, such as a Florida driver’s license or passport,¹⁰ if the signature on the cure affidavit does not match the voter’s signature on file; or
- Either Tier 1 identification, such as picture identification that is accepted at the polls or one of the lesser forms of identification currently authorized in law for curing

⁷ *Fla. Dem. Party, et al. v. Detzner*, No. 4:16cv607-MW/CAS (N.D. Fla, Dec. 12, 2016) (order staying case).

⁸ Current law does not specifically task the supervisor with this responsibility, as the 2013 authorizing legislation envisioned notification by campaigns, parties, and interested third-party groups that track vote-by-mail ballots on a daily basis. This position is no longer viable given the judge’s temporary injunction in *Fla. Dem. Party* case directing the supervisors to provide such notice, notwithstanding that the directive may have sprung from a misunderstanding of current Florida law. See *Fla. Dem. Party v. Detzner*, No. 4:16cv607-MW/CAS at p. 28-29 (N.D. Fla., Oct. 16, 2016) (citing a notice provision historically applied only *post-election*).

⁹ The affidavit and instructions are available on the Division of Elections and all supervisors’ websites, along with all relevant contact information and mailing addresses. Section 101.68(4)(e), F.S. (re-designated as subparagraph (d) in the bill).

¹⁰ Tier 1 identification includes the following current and valid photo IDs: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or, an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality. The bill also *specifically* designates a Florida driver’s license and state-issued ID as permissible forms of photo identification, a clarification of the original 2013 legislation that incorporates the current practice and informal legal interpretation.

missing signatures with the voter's name and current residence address, which is — categorized in the bill as Tier 2¹¹ identification, such as a current utility bill, if the signature on the cure affidavit does not match the voter's signature on file.

Missing-Signature Ballots¹²

A voter may cure a missing signature on a vote-by mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, now categorized as Tier 1 identification,¹³ if the signature on the cure affidavit does not match the voter's signature on file; or
- Either Tier 1 identification, like a photo identification acceptable at the polls, or one of the lesser forms of identification currently authorized in law with the voter's name and current residence address, which is categorized in the bill as Tier 2,¹⁴ such as a current utility bill, if the signature on the cure affidavit does match the voter's signature on file.

Additional minor changes made by the bill include:

- Modifying the cure affidavit instructions to request a preference for Tier 1 identification, if available. (If the signature on the cure affidavit does not match the signature on file, the voter must have submitted a current and valid Tier 1 photo ID for the ballot to count.)
- Amending the *post-election* notification process to require that a supervisor of elections send a voter registration card to any voter whose ballot *counted* notwithstanding a non-matching signature — for purposes of updating the signature for the next election.
- Making technical, conforming, and structural changes to the statute.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Tier 2 identification includes a current utility bill, bank statement, government check, paycheck, or government document, but excluding a voter identification card.

¹² With the exception of providing an *additional* opportunity for a voter to cure a defective ballot upon submission of a cure affidavit with a *mismatched* voter signature, which would not count under current law, the process for cure remains the same.

¹³ See *supra* note 10.

¹⁴ See *supra* note 11.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

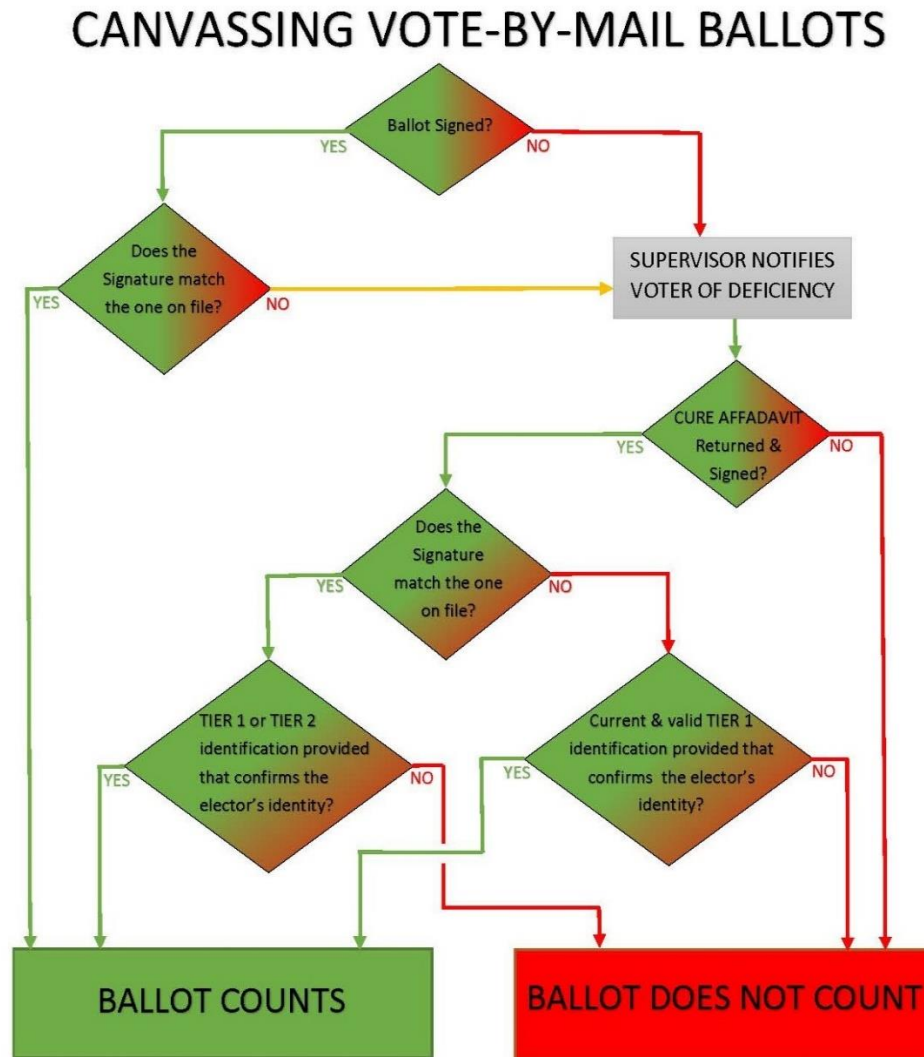
Supervisors of Elections may incur some additional costs to notify voters who submit vote-by-mail ballots with missing or mismatched signatures and do not have an e-mail address on file. Such costs are expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following decision tree outlines the canvassing board process for determining the validity of vote-by-mail ballots with missing and/or mismatched signatures:



VIII. Statutes Affected:

This bill substantially amends section 101.68, 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 Passidomo

28-00662A-17

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A bill to be entitled

An act relating to the canvassing of vote-by-mail ballots; amending s. 101.68, F.S.; deleting an obsolete date; modifying and clarifying provisions governing the canvassing of vote-by-mail ballots; authorizing use of the vote-by-mail ballot cure affidavit if an elector's signature does not match the signature in the registration books or precinct register; requiring the supervisor of elections to immediately notify an elector upon receipt of a vote-by-mail ballot with a missing or mismatched signature; revising terminology; revising the cure affidavit instructions with respect to acceptable forms of identification; specifying that a Florida driver license or Florida identification card are acceptable forms of identification for purposes of curing a vote-by-mail ballot; expanding the scope of post-election signature update requests to include electors who cured a vote-by-mail ballot with a mismatched signature; providing an effective date.

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

Section 1. Section 101.68, Florida Statutes, is amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the

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voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and may record on the elector's registration certificate that the elector has voted. ~~However, effective July 1, 2005,~~ An elector who dies after casting a vote-by-mail ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. Except as provided in subsection (4), after a vote-by-mail ballot is received by the supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.

(2) (a) The county canvassing board may begin the canvassing of vote-by-mail ballots at 7 a.m. on the 15th day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 15th day before the election. However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor of elections, deputy supervisor of elections, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots prior to the closing of the polls in that county on election day commits a felony of the third

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degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) To ensure that all vote-by-mail ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.

(c)1. The canvassing board must ~~shall~~, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot. A vote-by-mail ballot may only be counted if:

a. The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (4) must also confirm the identity of the elector; or

b. The cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before ~~prior to~~ the death of the voter, the ballot was postmarked by the United States Postal Service, date-

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stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor of elections. A ~~vote-by-mail ballot is considered illegal if the voter's certificate or vote-by-mail ballot affidavit does not include the signature of the elector, as shown by the registration records or the precinct register. However,~~

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope. ~~If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The vote-by-mail ballot affidavit, if applicable, the envelope, and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.~~

4.2. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure ~~vote-by-mail ballot~~ affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure ~~vote-by-mail ballot~~ affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that

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117 official ballots are preserved.

118 (d) The canvassing board shall record the ballot upon the
119 proper record, unless the ballot has been previously recorded by
120 the supervisor. The mailing envelopes shall be opened and the
121 secrecy envelopes shall be mixed so as to make it impossible to
122 determine which secrecy envelope came out of which signed
123 mailing envelope; however, in any county in which an electronic
124 or electromechanical voting system is used, the ballots may be
125 sorted by ballot styles and the mailing envelopes may be opened
126 and the secrecy envelopes mixed separately for each ballot
127 style. The votes on vote-by-mail ballots shall be included in
128 the total vote of the county.

129 (3) The supervisor or the chair of the county canvassing
130 board shall, after the board convenes, have custody of the vote-
131 by-mail ballots until a final proclamation is made as to the
132 total vote received by each candidate.

133 ~~(4) (a) The supervisor of elections shall, on behalf of the~~
134 ~~county canvassing board, notify each elector whose ballot was~~
135 ~~rejected as illegal and provide the specific reason the ballot~~
136 ~~was rejected. The supervisor shall mail a voter registration~~
137 ~~application to the elector to be completed indicating the~~
138 ~~elector's current signature if the elector's ballot was rejected~~
139 ~~due to a difference between the elector's signature on the~~
140 ~~voter's certificate or vote-by-mail ballot affidavit and the~~
141 ~~elector's signature in the registration books or precinct~~
142 ~~register. This section does not prohibit the supervisor from~~
143 ~~providing additional methods for updating an elector's~~
144 ~~signature.~~

145 ~~(b) Until 5 p.m. on the day before an election, The~~

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146 supervisor shall, on behalf of the county canvassing board,
147 immediately notify ~~allow~~ an elector who has returned a vote-by-
148 mail ballot that does not include the elector's signature or
149 contains a signature that does not match the elector's signature
150 in the registration books or precinct register. The supervisor
151 shall allow such an elector to complete and submit an affidavit
152 in order to cure the ~~unsigned~~ vote-by-mail ballot until 5 p.m.
153 on the day before the election.

154 ~~(b) (c) The elector shall provide identification to the~~
155 ~~supervisor and must complete a~~ cure ~~vote-by-mail ballot~~
156 affidavit in substantially the following form:

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

158 I,, am a qualified voter in this election and
159 registered voter of County, Florida. I do solemnly swear or
160 affirm that I requested and returned the vote-by-mail ballot and
161 that I have not and will not vote more than one ballot in this
162 election. I understand that if I commit or attempt any fraud in
163 connection with voting, vote a fraudulent ballot, or vote more
164 than once in an election, I may be convicted of a felony of the
165 third degree and fined up to \$5,000 and imprisoned for up to 5
166 years. I understand that my failure to sign this affidavit means
167 that my vote-by-mail ballot will be invalidated.

169 ... (Voter's Signature)...

171 ... (Address)...

172 ~~(c) (d)~~ Instructions must accompany the cure ~~vote-by-mail~~
174 ~~ballot~~ affidavit in substantially the following form:

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175
176 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE
177 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR
178 BALLOT NOT TO COUNT.

179
180 1. In order to ensure that your vote-by-mail ballot will be
181 counted, your affidavit should be completed and returned as soon
182 as possible so that it can reach the supervisor of elections of
183 the county in which your precinct is located no later than 5
184 p.m. on the ~~2nd~~ day before the election.

185 2. You must sign your name on the line above (Voter's
186 Signature).

187 3. You must make a copy of one of the following forms of
188 identification:

189 a. Tier 1 identification.—Current and valid identification
190 that includes your name and photograph: Florida driver license;
191 Florida identification card issued by the Department of Highway
192 Safety and Motor Vehicles; United States passport; debit or
193 credit card; military identification; student identification;
194 retirement center identification; neighborhood association
195 identification; public assistance identification; veteran health
196 identification card issued by the United States Department of
197 Veterans Affairs; a Florida license to carry a concealed weapon
198 or firearm; or an employee identification card issued by any
199 branch, department, agency, or entity of the Federal Government,
200 the state, a county, or a municipality; or

201 b. Tier 2 identification.—ONLY IF YOU DO NOT HAVE A TIER 1
202 FORM OF IDENTIFICATION, identification that shows your name and
203 current residence address: current utility bill, bank statement,

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204 government check, paycheck, or government document (excluding
205 voter identification card).

206 4. Place the envelope bearing the affidavit into a mailing
207 envelope addressed to the supervisor. Insert a copy of your
208 identification in the mailing envelope. Mail, deliver, or have
209 delivered the completed affidavit along with the copy of your
210 identification to your county supervisor of elections. Be sure
211 there is sufficient postage if mailed and that the supervisor's
212 address is correct.

213 5. Alternatively, you may fax or e-mail your completed
214 affidavit and a copy of your identification to the supervisor of
215 elections. If e-mailing, please provide these documents as
216 attachments.

217 (d) ~~(e)~~ The department and each supervisor shall include the
218 affidavit and instructions on their respective websites. The
219 supervisor must include his or her office's mailing address, e-
220 mail address, and fax number on the page containing the
221 affidavit instructions; the department's instruction page must
222 include the office mailing addresses, e-mail addresses, and fax
223 numbers of all supervisors of elections or provide a conspicuous
224 link to such addresses.

225 (e) ~~(f)~~ The supervisor shall attach each affidavit received
226 to the appropriate vote-by-mail ballot mailing envelope.

227 (f) After all election results on the ballot have been
228 certified, the supervisor shall, on behalf of the county
229 canvassing board, notify each elector whose ballot has been
230 rejected as illegal and provide the specific reason the ballot
231 was rejected. In addition, the supervisor shall mail a voter
232 registration application to the elector to be completed

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233 indicating the elector's current signature if the signature on
234 the voter's certificate or cure affidavit did not match the
235 elector's signature in the registration books or precinct
236 register. This section does not prohibit the supervisor from
237 providing additional methods for updating an elector's
238 signature.

239 Section 2. This act shall take effect upon becoming a law.



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

March 23, 2017

The Honorable Lizbeth Benacquisto, Chair
Senate Committee on Rules
Florida Senate
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

Senate Bill 954, Canvassing of Vote-by-Mail Ballots, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Kathleen C. Passidomo

Cc: John Phelps, Staff Director
Cynthia Futch, Committee Assistant

REPLY TO:

- ☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- ☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29

Meeting Date

954

Bill Number (if applicable)

Topic Vote by mail ballots

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative advocate

Address 540 Beverly Court
Street

Phone 772 204 1792

Tallahassee FL 32301
City State Zip

Email lwfadvocacy@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing League of Women Voters 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
APPEARANCE RECORD

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

3/29/17
Meeting Date

9541
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name ANN WEEKS

Job Title N/A

Address 3303 SONGOLD LN
Street

Phone (301) 691-2685

LAKELAND FL 33811
City State Zip

Email Donaire37@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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

SB 0954
Bill Number (if applicable)

Topic Rules

Amendment Barcode (if applicable) _____

Name Diana Bishop

Job Title _____

Address 540 Beverly Court

Phone _____

Street

Tallahassee FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of The Villages

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)

3/29/17
Meeting Date

SB 954
Bill Number (if applicable)

Topic _____ Amendment Barcode (if applicable) _____

Name Peter Butzin (But seen)

Job Title _____

Address 1628 Woodgate Way Phone 850-524-9946
Street
City TLH State FL Zip 32308
City State Zip

Email pbutzu@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

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)

3/29/17
Meeting Date

954
Bill Number (if applicable)

Topic Vote by mail

Amendment Barcode (if applicable)

Name Ben Wilcox

Job Title _____

Address 1719 Old Fort Dr.
Street
Tall. FL 32301
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Common Cause 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
APPEARANCE RECORD

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

3/29/17

Meeting Date

SB 954

Bill Number (if applicable)

Topic Caucassing of Voter-by-Mail Ballots

Amendment Barcode (if applicable)

Name Linda Howard

Job Title _____

Address 1931 Mallery St

Street

Phone _____

Tallahassee

City

FL

State

32308

Zip

Email Lschaden@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing LWV

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 Rules

BILL: CS/SB 440

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Gibson and others

SUBJECT: Notaries Public

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon	MS	Fav/CS
2.	Harmsen	McKay	CM	Favorable
3.	Ryon	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 440 expands the list of forms of identification that a notary public may rely on in notarizing a signature on a document to include a veteran health identification card issued by the U.S. Department of Veterans Affairs.

II. Present Situation:

Notaries Public

A notary public is a public officer appointed and commissioned by the Governor whose function is to administer oaths or affirmations; to take acknowledgements; to attest to the trueness of photocopies of certain documents; and to perform other duties specified by Florida law.¹

Chapter 117, F.S., provides requirements and guidelines for notaries and authorizes the Governor to appoint as many notaries as necessary. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English.² The application for appointment must include a \$25 fee, a \$10 commission

¹ Florida Executive Office of the Governor, Notary Section, *Governor's Reference Manual for Notaries Public; State of Florida*, 6 (December 13, 2016), available at: http://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf (last visited Mar. 1, 2017).

² Section 117.01(1), F.S.

fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.³

Once appointed, a notary serves a four-year term.⁴ During the term of office, a notary must post and maintain a \$7,500 bond payable to any individual harmed as a result of a notary's breach of duty. The bond must be approved and filed with the Department of State and executed by a surety company that is authorized to transact business within the state. If a surety company pays an individual harmed by the notary for breach of duty, the company must notify the Governor of the payment and the underlying circumstances.⁵ No person may be automatically reappointed as a notary. The application process must be completed regardless of whether an applicant has previously served as a notary.⁶

A notary is authorized by law to perform six functions:

- Administer oaths or affirmations;⁷
- Take acknowledgements of deeds and other instruments of writing for record;⁸
- Attest to photocopies of certain documents;⁹
- Solemnize marriage;¹⁰
- Verify vehicle identification numbers;¹¹ and
- Certify the contents of a safe-deposit box.¹²

When notarizing a signature a notary either takes an acknowledgement¹³ from or administers an oath¹⁴ or affirmation¹⁵ to the document signer. A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence that, the person whose signature is to be notarized is the individual described in and who is executing the instrument.¹⁶

"Satisfactory evidence" means the absence of any information, evidence, or other circumstances that would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims, and may be any one of the following:¹⁷

³ Section 117.01(2), F.S.

⁴ Section 117.01(1), F.S.

⁵ Section 117.01(8), F.S.

⁶ Section 117.01(6), F.S.

⁷ Section 117.03, F.S.

⁸ Section 117.04, F.S.

⁹ Section 117.05(12)(a), F.S.

¹⁰ Section 117.045, F.S.

¹¹ Section 319.23(3)(a)2., F.S.

¹² Section 655.94(1), F.S.

¹³ An acknowledgement is a formal declaration before an authorized official by a person signing an instrument that such execution is his or her free act and deed. See Kelle Clarke, *Notary Essentials: The Difference Between Acknowledgments and Jurats* (Jan. 25, 2016), National Notary Association, available at: <https://www.nationalnotary.org/notary-bulletin/blog/2015/04/key-differences-acknowledgment-jurat-certificates> (last visited Mar. 1, 2017).

¹⁴ An oath is any form of attestation or pledge by which a person signifies that he or she is bound in conscience and out of a sense of responsibility to a Supreme Being to the truthfulness for some statement. Willfully swearing to untrue statements constitutes perjury. *Id.*

¹⁵ An affirmation is a solemn, formal declaration under the penalty of perjury that certain statements are true.

¹⁶ Section 117.05(5), F.S.

¹⁷ Section 117.05(5)(b), F.S.

- The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:
 - That the person whose signature is to be notarized is the person named in the document;
 - That the person whose signature is to be notarized is personally known to the witnesses;
 - That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;
 - That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified below; and
 - That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or
- Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:
 - A Florida ID card or driver license issued by the public agency authorized to issue driver licenses;
 - A passport issued by the U.S. Department of State;
 - A passport issued by a foreign government if the document is stamped by the U.S. Bureau of Citizenship and Immigration Services;
 - A driver license or an ID card issued by a public agency authorized to issue driver licenses in a state other than Florida, a territory of the U.S., Canada or Mexico;
 - An ID card issued by any branch of the U.S. armed forces;
 - An inmate ID card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in its custody;
 - An inmate ID card issued by the U.S. Department of Justice, Bureau of Prisons, for an inmate who is in its custody;
 - A sworn, written statement from a sworn law enforcement officer that the forms of ID for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or
 - An ID card issued by the U.S. Bureau of Citizenship and Immigration Services.

When notarizing a signature, a notary public must complete a notarial certificate.¹⁸ Among other required elements, a notary must specify on the notarial certificate the specific type of identification the notary public relied upon in identifying the signer, based either on personal knowledge or the satisfactory evidence specified in s. 117.05(5), F.S.¹⁹

Veteran Health Identification Card

The Veteran Health Identification Card (VHIC) is issued by the U.S. Department of Veterans Affairs (USDVA) to veterans who are enrolled in the USDVA health care system for identification and check-in at USDVA appointments.²⁰ In order to receive a VHIC, the veteran must apply for enrollment in the USDVA health care system and provide a primary and

¹⁸ A notarial certificate is a written statement made by the notary public certifying specific facts of the notarial act performed.

¹⁹ Section 117.05(4), F.S.

²⁰ U.S. Department of Veterans Affairs, *Health Benefits: Veterans Health Identification Card*, available at <http://www.va.gov/healthbenefits/vhic/index.asp> (last visited Mar. 1, 2017).

secondary form of identification.²¹ Once the veteran's enrollment is verified, he or she must have their picture taken at the local USDVA medical center for inclusion on the VHIC.²²

III. Effect of Proposed Changes:

The bill amends s. 117.05, F.S., to expand the list of forms of identification that a notary public may rely on in notarizing a signature on a document to include a veteran health identification card issued by the U.S. Department of Veterans Affairs.

The bill takes effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²¹ *Id.* Primary identification options include: a state-issued driver's license, an unexpired U.S. passport or foreign passport with Form I-94 or Form I-94 A; a U.S. military card; a permanent resident card or alien registration receipt card; a picture school ID; or a federal, state, or local issued photo ID. Secondary identification options include: a social security card; an original or certified birth certificate or other official form of documentation of birth; a voter registration card; a U.S. citizen ID card or Native American tribal document; an employment authorization document issued by the U.S. Department of Homeland Security; or a Canadian driver's license.

²² *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 117.05 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.)

CS by Military and Veterans Affairs, Space, and Domestic Security on February 21, 2017:

The CS corrects a typo in the title and places the Veterans Health Identification Card in its own subparagraph.

B. Amendments:

None.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senators Gibson and Torres

583-01929-17

2017440c1

A bill to be entitled

An act relating to notaries public; amending s. 117.05, F.S.; expanding the list of forms of identification which a notary public may rely on in notarizing a signature on a document to include a veteran health identification card; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 117.05, Florida Statutes, is amended to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying.

(b) For the purposes of this subsection, "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person whose signature is to be notarized is not the person he or she claims to be and any one of the following:

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583-01929-17

2017440c1

1. The sworn written statement of one credible witness personally known to the notary public or the sworn written statement of two credible witnesses whose identities are proven to the notary public upon the presentation of satisfactory evidence that each of the following is true:

a. That the person whose signature is to be notarized is the person named in the document;

b. That the person whose signature is to be notarized is personally known to the witnesses;

c. That it is the reasonable belief of the witnesses that the circumstances of the person whose signature is to be notarized are such that it would be very difficult or impossible for that person to obtain another acceptable form of identification;

d. That it is the reasonable belief of the witnesses that the person whose signature is to be notarized does not possess any of the identification documents specified in subparagraph 2.; and

e. That the witnesses do not have a financial interest in nor are parties to the underlying transaction; or

2. Reasonable reliance on the presentation to the notary public of any one of the following forms of identification, if the document is current or has been issued within the past 5 years and bears a serial or other identifying number:

a. A Florida identification card or driver license issued by the public agency authorized to issue driver licenses;

b. A passport issued by the Department of State of the United States;

c. A passport issued by a foreign government if the

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

583-01929-17

2017440c1

document is stamped by the United States Bureau of Citizenship and Immigration Services;

d. A driver license or an identification card issued by a public agency authorized to issue driver licenses in a state other than Florida, a territory of the United States, or Canada or Mexico;

e. An identification card issued by any branch of the armed forces of the United States;

f. A veteran health identification card issued by the United States Department of Veterans Affairs;

g.~~f.~~ An inmate identification card issued on or after January 1, 1991, by the Florida Department of Corrections for an inmate who is in the custody of the department;

h.~~g.~~ An inmate identification card issued by the United States Department of Justice, Bureau of Prisons, for an inmate who is in the custody of the department;

i.~~h.~~ A sworn, written statement from a sworn law enforcement officer that the forms of identification for an inmate in an institution of confinement were confiscated upon confinement and that the person named in the document is the person whose signature is to be notarized; or

j.~~i.~~ An identification card issued by the United States Bureau of Citizenship and Immigration Services.

Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and
Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

SENATOR AUDREY GIBSON
6th District

March 6, 2017

Senator Lizbeth Benacquisto, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Benacquisto:

I respectfully request that SB 440, Notaries Public, be placed on the next committee agenda.

SB 440, expands the list of forms of identification which a notary public may rely on in notarizing a signature on a document to include a veteran health identification card issued by the U.S. Department of Veterans Affairs. This bill passed unanimously in the first and second committees.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
District 6

REPLY TO:

- ☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

A handwritten checkmark in black ink.

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 Rules

BILL: SR 574

INTRODUCER: Senator Rader

SUBJECT: United Nations Security Council Resolution 2334

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SR 574 proclaims the Senate's opposition to United Nations Security Council Resolution 2334, adopted December 23, 2016. Resolution 2334 claims in contravention of longstanding U.S. policy that "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."

The United States, as a member of the Security Council, abstained from voting on Resolution 2334.

Among the bases for opposing the Resolution of the Security Council, the Senate resolution states that:

- The passage of Resolution 2334 undermines the long-standing position of the U.S. to oppose and veto Security Council resolutions that attempt to impose solutions that are one-sided and anti-Israel;
- The passage of Resolution 2334 undermines the prospect of Israelis and Palestinians to resume productive, direct, bilateral negotiations;
- Future measures to impose an agreement or parameters for an agreement will set back the peace process and harm the security of Israel.

The Senate resolution further directs the Secretary of State to dispatch copies of this memorial to the President of the United States, the President and Secretary of the U.S. Senate, the Speaker and Clerk for the U.S. House of Representatives, and the Israeli Embassy in Washington, D.C.

Legislative resolutions have no force of law. Rather, a legislative resolution is a request, or a formal petition to the U.S. Congress to act on a particular subject.

II. Present Situation:

United Nations Security Council

The United Nations Security Council, established in the United Nations Charter, is permanently headquartered at the United Nations Headquarters in New York City.¹ The Security Council is composed of 15 members, five of which are permanent and 10 non-permanent. The General Assembly of the UN elects the 10 non-permanent members to serve on a -year term.

The five permanent members are:

- The United States
- China
- France
- Russian Federation
- The United Kingdom

The 10 non-permanent members are:

- Bolivia
- Egypt
- Ethiopia
- Italy
- Japan
- Kazakhstan
- Senegal
- Sweden
- Ukraine
- Uruguay²

Only members of the Security Council may vote on resolutions.³ A permanent member may cast a negative vote or a veto.⁴

Functions and powers of the Security Council are:

- To maintain international peace and security in accordance with the principles and purposes of the UN;
- To investigate any dispute or situation which might lead to international friction;
- To recommend methods of adjusting disputes or terms of settlement;
- To formulate plans for establishing a system to regulate armaments;
- To determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;

¹ United Nations Security Council, What is the Security Council, <http://www.un.org/en/sc/about/> (last visited Mar. 10, 2017).

² United Nations Security Council, Current Members, <http://www.un.org/en/sc/members/index.shtml> (last visited Mar. 10, 2017).

³ *Id.*

⁴ United Nations Security Council, About the Repertoire, <http://www.un.org/en/sc/about/faq.shtml> (last visited Mar. 10, 2017).

- To call on members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
- To take military action against an aggressor;
- To recommend the admission of new members;
- To exercise trusteeship functions of the UN in strategic areas; and
- To recommend to the general assembly the appointment of the Secretary-General; and together with the assembly, to elect the judges of the International Court of Justice.⁵

All members of the UN are expected to accept and carry out the decisions of the Security Council, in accordance with the present Charter.⁶

United Nations Security Council Resolution 2334

On December 23, 2016, the United Nations Security Council adopted UN Security Council Resolution 2334. The Resolution claims that areas Israel began to occupy in 1967 are Palestinian territory and that Israeli settlements in those areas, including East Jerusalem, have no legal validity.

Resolution 2334, provides, in part:

The Security Council,

Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions,

Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace,

Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard,

Underlines that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations,

Stresses that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution,

⁵ United Nations Security Council, Functions and Powers, <http://www.un.org/en/sc/about/functions.shtml> (last visited Mar. 10, 2017).

⁶ *Id.*

Urges in this regard the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967; and *underscores* in this regard the importance of the ongoing efforts to advance the Arab Peace Initiative, the initiative of France for the convening of an international peace conference, the recent efforts of the Quartet, as well as the efforts of Egypt and the Russian Federation ...⁷

Fourteen countries voted to adopt the resolution, with the United States abstaining. The representative of the United States stated that abstaining from the vote followed the long-standing position of the U.S. that the Israeli settlements undermined Israel's security and eroded prospects for peace and stability.⁸

III. Effect of Proposed Changes:

SR 574 proclaims the Senate's opposition to the United Nations Security Council Resolution 2334, adopted December 23, 2016.

The key provisions of the Senate resolution state:

- The passage of Resolution 2334 undermines the long-standing position of the U.S. to oppose and veto Security Council resolutions that attempt to impose solutions that are one-sided and anti-Israel.
- The passage of Resolution 2334 undermines the prospect of Israelis and Palestinians resuming productive, direct, bilateral negotiations.
- Future measures to impose an agreement or parameters for an agreement will set back the peace process and harm the security of Israel.
- The U.S. should oppose and veto future one-sided, anti-Israel Security Council resolutions that seek to impose solutions to final-status issues.

The bill further directs the Secretary of State to dispatch copies of this memorial to the President of the United States, the President and Secretary of the U.S. Senate, the Speaker and Clerk for the U.S. House of Representatives, and the Israeli Embassy in Washington, D.C.

Resolutions are aspirational, in that they have no force of law. A resolution is a request, or a formal petition to the U.S. Congress to act on a particular subject. Legislative resolutions are not subject to the Governor's veto power and are not presented to the Governor for review.

⁷ United Nations Security Council Resolution 2334 (2016), <http://www.un.org/webcast/pdfs/SRES2334-2016.pdf>.

⁸ United Nations, *Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms: 14 Delegations in Favour of Resolution 2334 (2016) as United States Abstains* (Dec. 23 2016), <https://www.un.org/press/en/2016/sc12657.doc.htm>.

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

As resolutions are aspirational in nature, and a request of Congress, they do not create a mandate on a municipality or a county.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Rader

29-00622-17

2017574__

Senate Resolution

A resolution opposing United Nations Security Council Resolution 2334 and requesting its repeal or fundamental alteration.

WHEREAS, the United States has long supported a negotiated settlement leading to a sustainable two-state solution with the democratic, Jewish state of Israel and a demilitarized, democratic Palestinian state living side-by-side in peace and security, and

WHEREAS, since 1993, the United States has facilitated direct, bilateral negotiations between both parties toward achieving a two-state solution and ending all outstanding claims, and

WHEREAS, it is the long-standing policy of the United States that a peaceful resolution to the Israeli-Palestinian conflict will only come through direct, bilateral negotiations between the two parties, and

WHEREAS, it was the long-standing position of the United States to oppose and, if necessary, veto United Nations Security Council resolutions dictating additional binding parameters on the peace process, and

WHEREAS, it was also the long-standing position of the United States to oppose and, if necessary, veto one-sided or anti-Israel United Nations Security Council resolutions, and

WHEREAS, the United States has stood in the minority internationally over successive administrations in defending Israel in international forums, including vetoing one-sided resolutions in 1995, 1997, 2001, 2002, 2003, 2004, 2006, and 2011 before the United Nations Security Council, and

WHEREAS, the United States recently signed a new memorandum of understanding with the Israeli government regarding security

29-00622-17

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assistance, consistent with long-standing support for Israel among successive administrations and Congresses and representing an important United States commitment toward Israel's qualitative military edge, and

WHEREAS, on November 29, 2016, the United States House of Representatives unanimously passed House Concurrent Resolution 165, expressing and reaffirming long-standing United States policy in support of a direct, bilaterally negotiated settlement of the Israeli-Palestinian conflict and in opposition to United Nations Security Council resolutions that impose a solution to the conflict, and

WHEREAS, on December 23, 2016, the United States Permanent Representative to the United Nations disregarded House Concurrent Resolution 165 and departed from long-standing United States policy by abstaining and permitting United Nations Security Council Resolution 2334 to be adopted under Chapter VI of the United Nations Charter, and

WHEREAS, the United States' abstention on United Nations Security Council Resolution 2334 contradicts the Oslo Accords and its associated process that is predicated on resolving the Israeli-Palestinian conflict between the parties through direct, bilateral negotiations, and

WHEREAS, United Nations Security Council Resolution 2334 claims that "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace," and

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WHEREAS, by referring to the "4 June 1967 lines" as the basis for negotiations, United Nations Security Council Resolution 2334 effectively states that the Jewish Quarter of the Old City of Jerusalem and the Western Wall, Judaism's holiest site, are "occupied territory," thereby equating these sites with outposts in the West Bank which the Israeli government has deemed illegal, and

WHEREAS, passage of United Nations Security Council Resolution 2334 effectively legitimizes efforts by the Palestinian Authority to impose its own solution through international organizations and unjustified boycotts or divestment campaigns against Israel by calling "upon all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967," and will require the United States and Israel to take effective action to counteract the resolution's potential harmful impacts, and

WHEREAS, United Nations Security Council Resolution 2334 did not directly call upon Palestinian leadership to fulfill their obligations toward negotiations or mention that part of the eventual Palestinian state is currently controlled by Hamas, a designated terrorist organization, and

WHEREAS, United Nations Security Council Resolution 2334 sought to impose or unduly influence solutions to final-status issues and is biased against Israel, NOW, THEREFORE,

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

That the Florida Senate finds that:

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(1) The passage of United Nations Security Council Resolution 2334 undermined the long-standing position of the United States to oppose and veto United Nations Security Council resolutions that seek to impose solutions to final-status issues or are one-sided and anti-Israel, reversing decades of bipartisan agreement.

(2) The passage of United Nations Security Council Resolution 2334 undermines the prospect of Israelis and Palestinians resuming productive, direct, bilateral negotiations.

(3) The passage of United Nations Security Council Resolution 2334 contributes to the politically motivated acts of boycotting, divesting from, and sanctioning Israel and represents a concerted effort to extract concessions from Israel outside of direct, bilateral negotiations between the Israelis and Palestinians, which must be actively rejected.

(4) Any future measures taken by any organization, including the United Nations Security Council, to impose an agreement or parameters for an agreement will set back the peace process, harm the security of Israel, contradict the enduring bipartisan consensus on strengthening the United States-Israel relationship, and weaken support for such organizations.

(5) A durable and sustainable peace agreement between Israel and the Palestinians is only possible with direct, bilateral negotiations between the parties resulting in a Jewish, democratic state living next to a demilitarized Palestinian state in peace and security.

(6) The United States government should work to facilitate serious, direct, unconditional negotiations between the parties

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toward a sustainable peace agreement.

(7) The United States government should oppose and veto future one-sided, anti-Israel United Nations Security Council resolutions that seek to impose solutions to final-status issues.

BE IT FURTHER RESOLVED that the Florida Senate opposes and requests the repeal of United Nations Security Council Resolution 2334 or the fundamental alteration of the resolution so that it:

(1) Is no longer one-sided and anti-Israel.

(2) Authorizes all final-status issues toward a two-state solution to be resolved through direct, bilateral negotiations between the parties involved.

BE IT FURTHER RESOLVED that the Secretary of State is directed to dispatch copies of this memorial to the President of the United States, the President and Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, and the Israeli Embassy in Washington, D.C., for transmission to the proper authorities of the State of Israel as a tangible token of the sentiments expressed herein.

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 Rules

BILL: SJR 882

INTRODUCER: Senator Bean

SUBJECT: Election of Secretary of State/Membership of Cabinet

DATE: March 28, 2017

REVISED: 3/28/17

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Carlton	Ulrich	EE	Favorable
2. Carlton	Phelps	RC	Favorable

I. Summary:

SJR 882 makes the Secretary of State a statewide elected office as of June 1, 2019, and makes the Secretary a member of the Florida Cabinet. The Governor will appoint a person to serve as the Secretary of State until January 3, 2023. That appointment is subject to confirmation by the Senate. Beginning in 2022, and every four years thereafter, the Secretary of State will be elected concurrently with the other members of the Florida Cabinet.

The joint resolution specifically directs the Legislature to enact implementing legislation by June 1, 2019.

If passed by a three-fifths vote of each house of the Legislature, the proposal will be voted on at the general election in November 2018; sixty percent of those voting on the measure is required for approval.

II. Present Situation:

A joint resolution is the only authorized method by which the Legislature may propose amendments to the State Constitution. If passed, the proposed amendment would appear on a statewide ballot for voter approval or rejection. It must pass each house by a three-fifths vote of the membership. A joint resolution is also used for redistricting.¹

Changes to the Florida Constitution can be proposed by a joint resolution of the Legislature, constitutional revision commission, citizens' initiative process, or taxation and budget commission.² If the proposed amendment is approved by vote of at least sixty percent of the electors voting on the measure, it will become effective as an amendment on the first Tuesday

¹ *The Florida Senate, Glossary*, <http://www.flsenate.gov/Reference/Glossary#resolution> (last visited February 11, 2016).

² FLA. CONST. art. XI.

after the first Monday in January following the election, or on such other date as may be specified in the amendment.³

Secretary of State

The Secretary of State (“Secretary”) is the state’s chief of elections, chief cultural officer and head of the Department of State.⁴ The Department consists of the Office of the Secretary and the Divisions of Administrative Services, Corporations, Cultural Affairs, Elections, Historical Resources, and Library and Information Services.

Since 2003, the position of Florida Secretary of State has been an *appointed, non-Cabinet* post.

Prior to that time, the Secretary was an *elected Cabinet* position — one of six serving members in addition to the Governor. The 2003 change was the result of a 1998 amendment to the Florida Constitution that restructured the Cabinet from 6 to 3 officers⁵ (plus the governor), as well as making other governmental operations changes⁶; the amendment was one of several proposed by the Constitution Revision Commission (“CRC”).

III. Effect of Proposed Changes:

SJR 882 makes the Secretary of State a statewide elected office and member of the Florida Cabinet. If passed by a three-fifths vote of the Legislature, SJR 882 would be placed on the ballot in 2018. If passed by more than 60% of the voters in the 2018 election, the Governor is required to appoint the Secretary for a term beginning June 1, 2019. The Governor’s appointment is subject to confirmation by the Florida Senate. SJR 882 requires the person appointed to serve as Secretary to meet the same qualifications⁷ that apply to the other members of the Florida Cabinet. This process maintains the current election cycle for all members of the Florida Cabinet and allows the Secretary to be installed on the Florida Cabinet in an expeditious and reasonable manner and without the costs of having to conduct a statewide special election. Then, beginning with the 2022 general election, the office of Secretary of State will be filled by election concurrently with the other members of the Florida Cabinet every four years. As is the case with all members of the Florida Cabinet, the Secretary will be subject to the eight-year term limits applicable to other members of the Cabinet pursuant to Art. IV, s. 4, of the Florida Constitution.

SJR 882 requires the Legislature to enact implementing legislation that includes any conforming changes to the Florida Statutes made necessary by the reorganization of the Florida Cabinet.

³ FLA. CONST. art. XI, s. 5.

⁴ See <http://dos.myflorida.com/about-the-department/> (last visited on February 11, 2016).

⁵ Florida’s Attorney General, Chief Financial Officer, and the Commissioner of Agriculture.

⁶ Constitution Revision Commission Amendment 8 (1998), *Restructuring the State Cabinet* (available at Florida Secretary of State’s web site at: <http://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-4.pdf> (last accessed January 27, 2016).

⁷ Each cabinet member must be an elector not less than 30 years of age and must have resided in the state for the preceding 7 years. FLA. CONST. art. IV, s. 5(b).

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the cost to advertise constitutional amendments for the 2016 primary and general election cycle was \$117.56 per word. Using 2016 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the *2018 general election could be \$96,987.00*, at a minimum. This cost estimate is contingent on multiple amendments needing advertising, as there is an inverse relationship between the price per word and the length of the advertisements. If no other amendments needed to be advertised, the price per word would be significantly higher. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. Total expenses related to constitutional amendment advertising for the 2018 election cycle are likely to be significant, as the 2018 ballot will include amendments placed there by the Constitutional Revision Commission (when the Commission last met in 1998, 13 amendments were placed on the ballot). Amendments can also be placed on the ballot via the initiative petition process, or by a joint resolution of the Florida Legislature, but so far, no amendments have yet made it to the 2018 ballot.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution substantially amends Article IV of the Florida Constitution and creates an implementation schedule in Article XII.

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 Bean

4-00028A-17

2017882__

Senate Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution to provide for the election of the Secretary of State and his or her inclusion as a member of the Cabinet.

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

That the following amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV

EXECUTIVE

SECTION 3. Succession to office of governor; acting governor.—

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during the governor's physical or mental incapacity, the lieutenant governor shall act as governor. Further succession as acting governor shall be prescribed by law. Incapacity to serve as governor may be determined by the supreme court upon due notice after docketing of a written suggestion thereof by four ~~three~~ cabinet members, and in such case restoration of capacity shall be similarly determined after docketing of written suggestion thereof by the governor, the

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legislature, or four ~~three~~ cabinet members. Incapacity to serve as governor may also be established by certificate filed with the custodian of state records by the governor declaring incapacity for physical reasons to serve as governor, and in such case restoration of capacity shall be similarly established.

SECTION 4. Cabinet.—

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, ~~and~~ a commissioner of agriculture, and a secretary of state. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, ~~and~~ shall settle and approve accounts against the state, and shall keep all state funds and

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62 securities.

63 (d) The commissioner of agriculture shall have supervision
64 of matters pertaining to agriculture except as otherwise
65 provided by law.

66 (e) The secretary of state shall keep the records of the
67 official acts of the legislative and executive departments and
68 perform the functions conferred by this constitution upon the
69 custodian of state records.

70 (f) ~~(e)~~ The governor as chair, the chief financial officer,
71 and the attorney general shall constitute the state board of
72 administration, which shall succeed to all the power, control,
73 and authority of the state board of administration established
74 pursuant to Article IX, Section 16 of the Constitution of 1885,
75 and which shall continue as a body at least for the life of
76 Article XII, Section 9(c).

77 (g) ~~(f)~~ The governor as chair, the chief financial officer,
78 the attorney general, ~~and the commissioner of agriculture,~~ and
79 the secretary of state shall constitute the trustees of the
80 internal improvement trust fund and the land acquisition trust
81 fund as provided by law.

82 (h) ~~(g)~~ The governor as chair, the chief financial officer,
83 the attorney general, ~~and the commissioner of agriculture,~~ and
84 the secretary of state shall constitute the agency head of the
85 Department of Law Enforcement.

ARTICLE XII

SCHEDULE

Cabinet reorganization.-

86 (a) The amendments to Sections 3 and 4 of Article IV
87 relating to the inclusion of the secretary of state as a member
88
89
90

Page 3 of 4

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

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91 of the cabinet shall take effect June 1, 2019. For the term
92 beginning June 1, 2019, and continuing through January 3, 2023,
93 the secretary of state shall be appointed by the governor,
94 subject to confirmation by the senate. The secretary of state
95 must be an elector of at least 30 years of age who has resided
96 in the state for the preceding seven years at the time of the
97 governor's appointment. Beginning with the 2022 statewide
98 general election and every four years thereafter, the office of
99 secretary of state shall be filled by election in conformance
100 with Section 5(a), Article IV.

101 (b) By June 1, 2019, the legislature shall enact
102 implementing legislation that includes any conforming changes to
103 the Florida Statutes necessitated by the reorganization of the
104 cabinet.

105 BE IT FURTHER RESOLVED that the following statement be
106 placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE IV, SECTIONS 3 AND 4

ARTICLE XII

MEMBERSHIP OF CABINET; ELECTION OF SECRETARY OF STATE.-

111 Revises the membership of the Cabinet, effective June 1, 2019,
112 to include the Secretary of State, whom the Governor shall
113 appoint, subject to Senate confirmation, for a term ending
114 January 3, 2023; and thereafter provides for the statewide
115 election of the secretary, beginning in 2022. The Legislature
116 shall implement the amendment by law. Currently, the secretary
117 is appointed by and serves at the pleasure of the Governor and
118 is not a Cabinet member.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 8, 2017

I respectfully request that **Senate Joint Resolution # 882**, relating to Election of Secretary of State/Membership of Cabinet, 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)

29 Mar 2017
Meeting Date

SB 882
Bill Number (if applicable)

Topic Secretary of State

Amendment Barcode (if applicable)

Name Sandra Mortham

Job Title _____

Address 6675 Weeping Willow Way
Street
Tallahassee FL 32311
City State Zip

Phone 251-2283

Email smorthem@aol.com

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 Rules

BILL: CS/CS/SB 1062

INTRODUCER: Rule Committee; Governmental Oversight and Accountability Committee; and Senators Powell and Bracy

SUBJECT: Public Records/Protective Injunction Petitions

DATE: March 29, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Fav/CS
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1062 creates a new public records exemption. The bill makes a petition for injunction and its contents exempt from disclosure if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

This bill applies to all types of injunctions for protection, including injunctions against domestic violence,¹ repeat violence,² dating violence,³ sexual violence,⁴ stalking, and cyberstalking.⁵

The bill requires petitions for a protective injunction that are exempt under this bill to be removed from publicly available websites. If a petition is placed on a website, and later dismissed on or after July 1, 2017, which is the effective date of the bill, the webmaster with the clerk of the court or county recorder is responsible for removing the petition. If the petition is placed on the website before July 1, 2017, the respondent named in the petition must first request removal in writing.

¹ Section 741.30(1), F.S.

² Section 784.046(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 784.0485, F.S.

The bill requires a two-thirds vote by both chambers for passage.

The bill includes a statement of public necessity.

This public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁶ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.⁷

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.⁸ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁹ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹⁰

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.¹¹ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

⁶ FLA. CONST., art. I, s. 24(a).

⁷ *Id.*

⁸ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S.

Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁹ Public records laws are found throughout the Florida Statutes.

¹⁰ Section 119.01(1), F.S.

¹¹ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”¹² A violation of the Public Records Act may result in civil or criminal liability.¹³

The Legislature may create an exemption to public records requirements.¹⁴ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁵ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁶ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁷

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁸ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²¹ The OGSR also requires specified questions to be considered during the review process.²² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹³ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹⁸ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁹ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(a), F.S. The specified questions are:

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

The OGSR process does not apply to public records exemptions that are required by federal law or which apply solely to the Legislature or the State Court System.²³

Injunctions

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence,²⁴ repeat violence,²⁵ dating violence²⁶ sexual violence,²⁷ stalking, and cyberstalking.²⁸

Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.²⁹

Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.³⁰

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.³¹ The existence of a dating relationship is determined based on the following:

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement; and
- The frequency and type of interaction must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

Sexual violence is any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.³²

²³ Section 119.15(2), F.S.

²⁴ Section 741.30(1), F.S.

²⁵ Section 784.046(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 784.0485(1), F.S.

²⁹ Section 741.28(2), F.S.

³⁰ Section 784.046(1)(b), F.S.

³¹ Section 784.046(1)(d), F.S.

³² Section 784.046(1)(c), F.S.

Stalking is defined as a crime committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.³³ Cyberstalking means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.³⁴ Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person.³⁵

A form for a petition for injunction against domestic violence is provided in Florida law.³⁶ A similar form for a petition for injunction for protection against the other types of violence noted above is provided in sections 784.046(4)(b) and 784.0485(3)(b), F.S.

Upon the filing of a petition for a protective injunction, the court must hold a hearing at the earliest possible time.³⁷ If an immediate and present danger of domestic violence appears to exist, the court may grant a temporary injunction ex parte prior to the full hearing.³⁸

Florida Family Law Rules of Procedure

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.³⁹ The main types of cases governed by the Florida Family Law Rules of Procedure are matters arising from dissolution of marriage, annulment, support including child support, paternity, adoption, and injunctions for protection.⁴⁰ Rule 12.004(a), Florida Family Law Rules of Procedure, authorizes a judge hearing a family law case to access and review files of any related case. However, parties, judges, and court personnel are prohibited from disclosing confidential information and documents contained in related case files unless disclosure complies with state and federal law.⁴¹

A petitioner for a domestic violence injunction may request that his or her address be kept confidential and exempt from public records disclosure pursuant to statute,⁴² and the address is then considered a confidential court record.⁴³

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.⁴⁴ A family violence indicator is a notation in the FPLS that has been placed on a record when a state has reasonable evidence of domestic violence or

³³ Section 784.048(2), F.S.

³⁴ Section 784.048(1)(d), F.S.

³⁵ Section 784.048(3), F.S.

³⁶ Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

³⁷ Sections 741.30(4) and 784.046(5), F.S.

³⁸ Section 741.30(5)(a), F.S.

³⁹ RULE 12.012, FLA. FAM. L. R. P.

⁴⁰ RULE 12.010(a)(1), FLA. FAM. L. R. P.

⁴¹ RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

⁴² Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

⁴³ RULE 12.007(b), FLA. FAM. L. R. P.

⁴⁴ The Federal Office of Child Support Enforcement administers the program. More at <http://www.acf.hhs.gov/programs/css/fpls> (Last visited Feb. 8, 2016).

child abuse.⁴⁵ In parent locator cases, a state court may override a family violence indicator to release information from the FPLS.⁴⁶ The state clerk of the court, however, must ensure the protection of records of open cases relating to family violence. All court records in these proceedings are confidential and not available for public inspection until the court issues a final judgment.⁴⁷

III. Effect of Proposed Changes:

Section 1 of the bill provides that injunctions for protection are exempt from public disclosure pursuant to s. 119.07(1), F.S., and Art. I s. 24(a) of the State Constitution⁴⁸ if the court does not issue an injunction for protection for any of the following reasons:

- Failure to state a claim,
- Lack of jurisdiction; or
- Insufficiency of the petition.

The exemption from public disclosure applies to the following types of injunctions for protection: domestic violence,⁴⁹ repeat violence,⁵⁰ dating violence,⁵¹ sexual violence,⁵² stalking and cyberstalking.⁵³

The bill requires petitions for a protective injunction to be removed from publicly available websites. If a petition is placed on a website, and later dismissed on or after the effective date of the bill, the webmaster with the clerk of the court or county recorder must remove the petition. If the petition is placed on the website prior to the effective date of the bill, it is the responsibility of the person named in the petition to request removal. The request must be in writing, signed, and include the case name and number, document heading, and page number. The person requesting removal must deliver the request by mail, fax, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

This public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill includes a statement of public necessity. The public necessity statement provides that a petition for injunction and its contents are exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

⁴⁵ RULE 12.650(b)(4), FLA. FAM. L. R. P.

⁴⁶ 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

⁴⁷ RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

⁴⁸ Section 110.07(1), F.S., provides that public records must be made available to the public for inspection or copying.

⁴⁹ Section 741.30(1), F.S.

⁵⁰ Section 784.046(2), F.S.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Section 784.0485(1), F.S.

The public necessity statement asserted to justify the exemption is that the records may be defamatory to the person named in the petition, and may cause unwarranted damage to his or her reputation. Further, the only way to protect the reputation of the person named in the petition is by removing the petition and its contents.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires the exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement appears to support the public policy for the exemption, and is no broader than the stated purpose of the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may preserve the reputation of a person named in a petition for injunction that is made exempt. Protecting a person's reputation may prevent negative financial consequences from being named as a respondent in a petition for a protective injunction.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill's effective date is July 1. Most public records exemptions have an effective date of October 1, which gives agencies time to learn and prepare for public records exemptions after the laws are published.⁵⁴

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0714, Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on March 29, 2017:

The CS replaces references in the bill from “which” to “that” on lines 24, 33, and 49 of the bill.

CS by Governmental Oversight and Accountability on March 22, 2017:

The CS provides that petitions that are dismissed after July 1, 2017 are automatically removed from public access.

The CS makes petitions exempt rather than confidential and exempt.

- B. Amendments:

None.

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

⁵⁴ *Manual for Drafting Legislation, Sixth Edition*, Office of Bill Drafting Service, The Florida Senate, p. 66.



340068

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (k) is added to subsection (1) of
section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed
to exempt from s. 119.07(1) a public record that was made a part
of a court file and that is not specifically closed by order of
court, except:



340068

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

Section 2. The Legislature finds that it is a public necessity that a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at



340068

an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of such individual. The Legislature further finds that removing such a record from public disclosure is the sole means of protecting the reputation of such an individual.

Section 3. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s.
119.0714, F.S.; providing an exemption from public
records requirements for petitions, and the contents
thereof, for certain protective injunctions that are
dismissed in certain circumstances; providing a
statement of public necessity; providing an effective
date.

By the Committee on Governmental Oversight and Accountability;
and Senators Powell and Bracy

585-02713-17

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A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for petitions, and the contents thereof, for injunctions for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which are dismissed in certain circumstances; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 3

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

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2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

Section 2. The Legislature finds that it is a public necessity that a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of such individual. The Legislature further finds that removing

Page 2 of 3

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

585-02713-17

20171062c1

59 such a record from public disclosure is the sole means of
60 protecting the reputation of such an individual.

61 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request


To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 22, 2017

I respectfully request that **Senate Bill #1062** relating to Public Records/ Protective Injunctions, be placed on the:

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



Senator Bobby Powell
Florida Senate, District 30

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 Rules

BILL: CS/CS/SB 1052

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Simmons

SUBJECT: Justifiable Use of Force

DATE: March 30, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1052 addresses an inconsistency in law caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person's dwelling, residence, or vehicle. The bill also minimizes the circumstances in which a person might be required to retreat within or from a dwelling, residence, or vehicle before using deadly force in self-defense.

The relevant part of s. 776.013(3), F.S., which is inconsistent with other statutes states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force. As a result of the inconsistency, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force uniformly state—the right to use force or threaten to use force begins when a person "reasonably believes" that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

The bill revises s. 776.013(3), F.S., to delete the word "attacked," which makes the subsection more consistent with the other statutory provisions governing the right to use defensive force.

Existing s. 776.013(3), F.S., also includes cross-references to other statutes that restrict a defender from using deadly force outside of a dwelling, residence, or vehicle. The restrictions apply to a person who is engaged in criminal activity. As a result of the incorporated restrictions, a person in a dwelling, residence, or vehicle who is engaged in criminal activity might have a duty to flee from the dwelling, residence, or vehicle before he or she may lawfully use deadly

force in self-defense. The bill provides that the criminal activity that might trigger a defender's duty to flee from a dwelling, residence, or vehicle does not include nonviolent misdemeanors.

II. Present Situation:

Common Law Duty to Retreat

Before the Legislature enacted the "Stand Your Ground" law in 2005, a person's rights to use deadly force in self-defense were substantially defined by court-created common law. Under this common law, a person acting in self-defense outside his or her home or workplace had a "duty to use every reasonable means to avoid the danger, including retreat, prior to using deadly force."¹

Castle Doctrine Exception to the Duty to Retreat

The Castle Doctrine was a common law exception to the duty to retreat before using deadly force in self-defense. This doctrine predated the SYG law. Under the doctrine, when a person was in his or her "castle," the person had no duty to retreat before using deadly force against an intruder. And person's castle was limited to his or her home and workplace.² The castle doctrine has been explained by the courts as:

the proposition that a person's dwelling house is a castle of defense for himself and his family, and an assault on it with intent to injure him or any lawful inmate of it may justify the use of force as protection, and even deadly force if there exist reasonable and factual grounds to believe that unless so used, a felony would be committed.³

The essential policy behind the castle doctrine is that a person in his or her home or "castle" has satisfied his or her duty to retreat "to the wall."⁴ In *Weiland v. State*, the policy for the doctrine was explained as follows:

It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. More than 200 years ago it was said by Lord Chief Justice Hale: In case a man "is assailed in his own house, he need not flee as far as he can, as in other cases of se defendendo [self-defense], for he hath the protection of his house to excuse him from flying, as that would be to give up the protection of his house to his adversary by flight." *Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home The rule is the same whether the attack proceeds from some other occupant or from an intruder.*⁵

¹ *State v. James*, 867 So. 2d 414, 416 (Fla. 3d DCA 2003); see also *Weiland v. State*, 732 So. 2d 1044, 1049 (Fla. 1999)

² *James*, 867 So. 2d at 416-17.

³ *Weiland*, 732 So. 2d at note 5 (citing *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

⁴ *James*, 867 So. 2d at 416.

⁵ *Weiland*, 732 So. 2d at 1049-50 (emphasis original).

Stand Your Ground law

In 2005, the Legislature enacted into law chapter 2005-27, Laws of Fla., commonly known as the “Stand Your Ground” (SYG) law. The law expanded the common law Castle Doctrine and generally abrogated the common law duty to retreat on the part of the defender outside the home. These changes were incorporated into chapter 776, F.S., which governs the justifiable use of force.

The Expanded Castle Doctrine and Home Protection

The SYG law expanded the concept of the Castle Doctrine in two main ways. First, the law extended the concept of a person’s “castle” to include a dwelling, residence, or occupied vehicle.⁶ As a result, a person who acts in self-defense in this expanded castle generally has no duty to retreat before acting in self-defense.

Second, the SYG law created a presumption that a person within a “castle” has a reasonable fear of imminent peril of death or great bodily harm if two conditions are met.⁷ First, the intruder must have entered or be in the process of unlawfully and forcibly entering the dwelling, residence, or occupied vehicle or be attempting to forcibly remove a person. Second, the defender must know or had reason to believe that an unlawful and forcible entry had occurred or was occurring.⁸

Defense of Self or Others

The 2005 changes to the self-defense law also generally eliminated the duty to retreat before using force outside of a person’s dwelling, residence, or occupied vehicle. When acting in self-defense or in defense of others, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes the force is necessary to defend himself or herself or another against an imminent use of unlawful force.⁹ The person may use deadly force, if the person reasonably believes the force is necessary to prevent imminent death or great bodily harm to himself or herself. However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.¹⁰

⁶ Section 776.013(5), F.S., defines a dwelling as a temporary or permanent building or conveyance of any kind, including an attached porch with or without a roof, mobile or immobile, including a tent, provided that it is designed for nighttime lodging. A residence is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. A vehicle is a conveyance of any kind, whether or not motorized provided that it is designed to transport people or property.

⁷ Conversely, s. 776.013(4), F.S., presumes that a person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle intends to commit an unlawful act involving force or violence.

⁸ Section 776.013(1) and (2), F.S. The presumption does not apply if the person against whom defensive force is used or threatened has the right to be in or is a lawful resident of the location and against whom there is no injunction for protection; the person sought to be removed is in the lawful custody or guardianship of the person against whom the defensive force is used or threatened; the person who uses or threatens to use defensive force is committing a crime or using the location to further a criminal act; or the person against whom defensive force is used or threatened is a law enforcement officer entering the premises pursuant to an official duty and who identifies him or herself as a law enforcement officer. Section 776.013(2), F.S.

⁹ Section 776.012(1), F.S.

¹⁰ Section 776.012(2), F.S.

Defense of Property

When acting in defense of property, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes that the force is necessary to stop a trespasser's entry on personal or real property other than a dwelling.¹¹ A person may use deadly force, if the person reasonably believes deadly force is needed to prevent a forcible felony.¹² However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.¹³

Stand Your Ground Law in other States

At least 22 states have a version of the Stand Your Ground law. These laws provide that a defender does not have a duty to retreat from an attacker in any place in which the defender is lawfully present.¹⁴ These states having SYG laws include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.¹⁵ Nine of these states have adopted laws with specific language providing that a person may stand his or her ground.¹⁶

2014 Changes to Laws Governing the Justifiable Use of Force

In 2014, the Legislature revised chapter 776, F.S., which governs the justifiable use of force and includes the SYG law.¹⁷ The main change to the chapter was to clarify that a person who can lawfully use force in self-defense may also threaten to use force in self-defense. Further, the changes provided that a person who lawfully threatens to use force in self-defense retains all the rights and immunities under the SYG law.

However, the changes to s. 776.013(3), F.S., which authorize a person to threaten to use defensive force in his or her dwelling, residence, or vehicle may contain two drafting errors. One of these errors could cause the statute to be read to require that a person be attacked before he or

¹¹ Section 776.031(1), F.S.

¹² A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

¹³ Section 776.031(2), F.S.

¹⁴ *Self-defense and "Stand Your Ground,"* National Conference of State Legislatures (Aug. 30, 2013).

<http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx> (last visited Jan. 10, 2017).

¹⁵ Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18, s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

¹⁶ States including Stand Your Ground language in self-defense laws are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C)).

¹⁷ Chapter 2014-195, Laws of Fla.

she has the right to use defensive force. The problematic revisions to the 2014 legislation are shown below:

(3) A person ~~who is not engaged in an unlawful activity and~~ who is attacked in his or her dwelling, residence, or vehicle in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use ~~meet force with~~ force, including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2) ~~reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.~~

A requirement that a person be attacked before he or she has the right to use or threaten to use force in self-defense is inconsistent with other provisions of chapter 776, F.S. These other provisions state that the right to use force or threaten to use force in self-defense begins when a person “reasonably believes” that using or threatening to use force is necessary to prevent or terminate another person’s use of unlawful force.¹⁸

The other potential error made by the 2014 changes to the SYG law may in some cases require a person to retreat from his or her castle before using deadly force in self-defense. At common law, however, one was not required to retreat from his or her castle because a castle is a place of sanctuary and one inside the castle had already retreated to “the wall.” This potential duty to retreat from a castle was created by the insertion of cross-references in s. 776.013(3), F.S., the home protection statute, to statutes that address self-defense outside of a dwelling, residence, or vehicle.¹⁹

These cross-referenced statutes provide that outside of a “castle” a person must have a reasonable fear that deadly force is necessary to prevent imminent death, great bodily harm, or the commission of a forcible felony before deadly force is allowed. The person has the right to stand his or her ground if he or she is not “engaged in criminal activity.”

In contrast, inside a dwelling, residence, or vehicle a person is presumed to have a reasonable fear sufficient to justify deadly defensive force when an intruder unlawfully and forcibly enters or is entering.²⁰ However, the defender inside the castle loses the benefit of the presumption he or she is engaged in criminal activity.²¹

Accordingly, the cross-references in s. 776.031(3), F.S., to statutes relating to self-defense outside a castle may require a defender who is engaged in any criminal activity inside a castle to flee from the castle before he or she may lawfully use deadly force in self-defense.²² The type of

¹⁸ See ss. 776.012, 776.013(1) and 4, and 776.031, F.S.

¹⁹ *But see State ex rel. Florida Industrial Com. v. Willis*, 124 So. 2d 48, 51 (Fla. 1st DCA 1960) (stating that “a statute should not be construed to bring about an unreasonable or absurd result”).

²⁰ Section 776.013(1), F.S.

²¹ Section 776.013(2)(b), F.S.

²² Chapter 776, F.S., does not define “criminal activity.” As a result, a person who is engaged in minor criminal conduct or criminal acts that have no relationship to a violent confrontation may have a duty to retreat before using deadly force in self-defense that others in the same situation would not have.

criminal activity that might trigger the duty to retreat is not defined in chapter 776, F.S. As a result, a person who is engaged in a minor criminal act or a criminal act that has no relationship to a deadly threat might have a duty to retreat before using deadly force in self-defense that others in the same situation would not have.

III. Effect of Proposed Changes:

This bill addresses an inconsistency in the self-defense laws which was caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person's dwelling, residence, or vehicle. The bill also minimizes the circumstances in which a person might be required flee from a dwelling, residence, or vehicle before using deadly force in self-defense.

The relevant part of s. 776.013(3), F.S., which is inconsistent with other statutes states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force. As a result of the inconsistency, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force uniformly state—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.²³

The bill revises s. 776.013(3), F.S., to delete the word "attacked," which makes the subsection more consistent with the other statutory provisions governing the right to use defensive force.

Existing s. 776.013(3), F.S., also includes cross-references to other statutes that restrict a defender from using deadly force outside of a dwelling, residence, or vehicle. The restrictions state that "A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be."²⁴

As a result of the incorporated restrictions, a person in a dwelling, residence, or vehicle who is engaged in criminal activity might have a duty to retreat within or flee from the dwelling, residence, or vehicle before he or she may lawfully use deadly force in self-defense. More specifically, this duty to retreat is described in the common law for circumstances outside a home as a duty to use "every reasonable means within his or her power to avoid the danger, including retreat."²⁵

²³ Section 776.013(1), F.S. (stating that a "person is presumed to have held a *reasonable fear* of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another"); s. 776.012, F.S., (stating the right to use defensive force begins when a person "*reasonably believes* that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force" or when the person "*reasonably believes* that using or threatening to use such force is necessary to prevent imminent death or great bodily harm"); s. 776.031, F.S. (stating that the right to use force begins when a person "*reasonably believes* that such conduct is necessary to" defend property or when the person "*reasonably believes* that such conduct is necessary to prevent the imminent commission of a forcible felony").

²⁴ Sections 776.012(2) and 776.031(2), F.S.

²⁵ *Weiland*, 732 So. 2d 1044, 1049 (Fla. 1999).

The bill provides that the criminal activity that might trigger a defender's duty to flee from a dwelling, residence, or vehicle does not include nonviolent misdemeanors.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The changes made by the bill minimize the risk that s. 776.013(3), F.S., can be read out of context with the other provisions of chapter 776, F.S., and used as the basis for arresting a person who lawfully uses force in self-defense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.013, 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/CS by Rules on March 29, 2017:

The CS/CS adds a provision to the underlying bill which provides that the criminal activity that might trigger a defender's duty to flee from a dwelling, residence, or vehicle does not include nonviolent misdemeanors.

CS by Judiciary on March 22, 2017:

The CS replaces the substance of the original bill with an amendment to s. 776.013, F.S., to delete the word "attacked."

- B. **Amendments:**

None.



270372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2017	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete line 19
and insert:
or (2), except that the condition imposed in those subsections,
which requires that the person using or threatening to use
deadly force not be engaged in a criminal activity, does not
apply to nonviolent misdemeanors.

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

And the title is amended as follows:



270372

12 Between lines 5 and 6
13 insert:
14 providing applicability;

By the Committee on Judiciary; and Senator Simmons

590-02727-17

20171052c1

1 A bill to be entitled
2 An act relating to justifiable use of force; amending
3 s. 776.013, F.S.; deleting a requirement that a person
4 first be attacked in his or her dwelling, residence,
5 or vehicle before using or threatening to use force;
6 providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (3) of section 776.013, Florida
11 Statutes, is amended to read:
12 776.013 Home protection; use or threatened use of deadly
13 force; presumption of fear of death or great bodily harm.—
14 (3) A person who is ~~attacked~~ in his or her dwelling,
15 residence, or vehicle has no duty to retreat and has the right
16 to stand his or her ground and use or threaten to use force,
17 including deadly force, if he or she uses or threatens to use
18 force in accordance with s. 776.012(1) or (2) or s. 776.031(1)
19 or (2).
20 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 23, 2017

I respectfully request that **Senate Bill 1052**, relating to Justifiable Use of Force, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/17
Meeting Date

1052
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ANN WEEKS

Job Title N/A

Address 3303 SONG BLVD LA
Street

Phone (301)641-2685

LAUREL
City

FL
State

33811
Zip

Email donaine37@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LWV FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29
Meeting Date

1052
Bill Number (if applicable)

Topic Use of Force

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title legislative advocate

Address 540 Beverly Ct
Street

Phone 772 204 1792

Tallahassee FL 32301
City State Zip

Email lwvfvadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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
APPEARANCE RECORD

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

3-29-17

Meeting Date

1052

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name KATE BETSKO

Job Title PRESIDENT League of Women Voters of Citrus City

Address 19 LIVINGSTONE DAISY CT

Phone 352-382-0032

Street

HOMOSASSA

FL

34446

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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
APPEARANCE RECORD

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

3/29/17
Meeting Date

SB 1052
Bill Number (if applicable)

Topic gun safety

Amendment Barcode (if applicable)

Name Peter Butzin (But seen)

Job Title _____

Address 1628 Woodgote Way
Street
TLH FL 32308
City State Zip

Phone 850-524-9846

Email pbutzin@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

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)

3/29/17

Meeting Date

SB 1052

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Linda Howard

Job Title _____

Address 931 Mallory Sq
Street
Tallahassee, FL 32308
City State Zip

Phone 850-216-2108

Email Lshaden@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/17

Meeting Date

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

SB 1052

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Dr. Sue Easton

Job Title Professor

Address 2527 Fletch Ct

Phone 407-328-1549

Lake Mary FL 32746
City State Zip

Email sueeaston@juno.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

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)

March 29, 2017

Meeting Date

CS/SB 1052

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Ave.

Phone 352-338-7370

Street

Gainesville

Florida

32601

Email scotts@pdo8.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

March 29, 2017

Meeting Date

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

SB-1052

*Bill Number (if applicable)*Topic Glitch Bill / Castle Doctrine*Amendment Barcode (if applicable)*Name Marion Hammer

Job Title _____

Address P.O. Box 1387*Street*Phone 850-222-9518Tallahassee*City*Florida*State*32302*Zip*

Email _____

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing National Rifle Association & Unified Sportsmen of FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate
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 Rules

BILL: CS/CS/SB 416

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Montford and others

SUBJECT: Use of Animals in Proceedings Involving Minors

DATE: March 28, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Farach	Cibula	JU	Fav/CS
2. Cellon	Hrdlicka	CJ	Fav/CS
3. Farach	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 416 allows a court to permit a victim or witness to testify with the assistance of a facility dog in a proceeding involving a sexual offense or in a dependency proceeding. A victim or witness may be eligible to use a facility dog if he or she has an intellectual disability or if he or she was a minor when a victim of or witness to a sexual offense.

II. Present Situation:

Service animals are defined by the Americans with Disabilities Act as miniature horses or dogs that are “individually trained to do work or perform tasks for people with disabilities.”¹ Service animals are different from therapy dogs and other emotional support animals in the sense that emotional support animals are not trained for specific tasks and help people through companionship.²

Studies of human-dog interactions demonstrate physiological effects in subjects like lower blood pressure when touching or petting a dog.³ For children, having a dog present helps lower heart

¹ U.S. Department of Justice, *ADA 2010 Revised Requirements: Service Animals* (July 11, 2012), https://www.ada.gov/service_animals_2010.pdf (last visited March 9, 2017).

² U.S. Department of Justice, *Frequently Asked Questions about Service Animals and the ADA* (July 20, 2015) https://www.ada.gov/regs2010/service_animal_ga.html (last visited March 9, 2017).

³ Julia K. Vormbrock and John M. Grossberg, JOURNAL OF BEHAVIORAL MEDICINE, *Cardiovascular effects of human-pet dog interactions* (October 11, 1988).

rate in stressful situations, like testifying in a courtroom full of adults.⁴ Several court systems around the country acknowledge the benefit of therapy dogs in courts and offer services to help connect susceptible victims with dogs.⁵

In this state, courts are authorized by s. 92.55, F.S., to allow certain victims or witnesses to testify with the assistance of a service or therapy animal during dependency proceedings or proceedings involving a sexual offense. A victim or witness who may be eligible to use a service or therapy animal must have been a minor at the time he or she was a victim or witness or have an intellectual disability.

Section 92.55, F.S., allows a person to seek the assistance of a therapy or service animal by filing a motion with the court. When deciding whether to allow the use of the animal the court, among other things, must consider the age of the child victim or witness and the rights of the parties to the case.

In practice in the Second, Fifth, and Ninth Judicial Circuits, the use of an animal therapy team must be approved by the presiding judge, magistrate, or hearing officer. These circuits also require an introduction between the child and animal therapy team prior to entering the court chambers and the presence of a third party to oversee the child.⁶ Dogs must be properly groomed, vaccinated, and wear a vest or some other article signifying that they are therapy animals. Therapy animals must be accompanied by handlers at all times.

Florida, Arizona, Arkansas, Hawaii, Illinois, and Oklahoma may be the only states to have statutes allowing therapy animals to accompany minors or vulnerable witnesses when testifying.⁷

In addition to allowing the use of service or therapy animals, the Florida Statutes provide other protections to victims and witnesses who either are or were underage at the time of the offense or have an intellectual disability. For example, a court may order the videotaping of testimony of a victim or witness in lieu of testimony in open court.⁸ Similarly, a court may order the testimony

⁴ Erika Friedmann et al., JOURNAL OF NERVOUS AND MENTAL DISEASE, *Social Interaction and Blood Pressure: Influence of Animal Companions* (August 1983).

⁵ Second Judicial Circuit, *Courthouse Therapy Dogs*, available at <http://2ndcircuit.leoncountyfl.gov/petTherapy.php>; (last visited March 9, 2017).

⁶ Second Judicial Circuit Court of Florida, *Procedures for Animal Therapy in the Case Specific Dependency Court Events*, Revised September 30, 2014, available at http://2ndcircuit.leoncountyfl.gov/pet/documentation/Animal_Therapy_Procedures.pdf; Fifth Judicial Circuit Court of Florida, *Fifth Judicial Circuit Therapy Dog Program*, available at <http://www.circuit5.org/c5/programs-services/therapy-dog-program/>; Ninth Judicial Circuit Court of Florida, Administrative Order Establishing a Certified Therapy Dog Program (K-9th Circuit Program), Orange County, AO No. 2014-26 (October 27, 2014), available at <http://www.ninthcircuit.org/sites/default/files/2014-26%20-%20Order%20Governing%20Certified%20Therapy%20Dog%20Program%20K-9th%20Orange.pdf> (all websites last visited March 9, 2017).

⁷ John Emsinger, Michigan State University, Animal Center, *Cases and Statutes on the use of Dogs by Witnesses while Testifying in Criminal Proceedings*, last updated June 2016, available at <https://www.animallaw.info/article/recent-cases-use-facility-dogs-witnesses-while-testifying>; (last visited March 9, 2017).

⁸ Section 92.53, F.S.

of a victim or witness to be taken by means of closed-circuit television and shown inside the courtroom.^{9,10}

III. Effect of Proposed Changes:

Under the bill, a court may authorize the use of a facility dog to assist a victim or witness who must testify in a proceeding involving a sexual offense or in a dependency proceeding. The bill also expands the class of victims and witnesses who may use the assistance of an animal in giving testimony to include those having an intellectual disability.

Under current law, only a service or therapy animal may assist witnesses or victims who are required to testify. The bill removes references to “service animals” from current statute, and includes “facility dogs” as animals that may assist in relevant proceedings. As used in a courtroom, therapy animals and facility dogs fulfill the same purpose. This purpose is protecting the victim or witness from severe emotional or mental harm, which might occur while testifying in the presence of the defendant.

The difference between a service or therapy animal and a facility dog appears to be in their qualifications. Under current law, a service or therapy animal must be evaluated and registered according to national standards. Under the bill, a therapy animal or facility dog must be trained and evaluated according to industry standards.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁹ Section 92.54, F.S.

¹⁰ Section 92.55(1), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will not result in additional costs to the government, as the bill does not require the use of facility dogs in judicial proceedings. Additionally, the bill does not require courts to train or pay for the use of therapy animals or facility dogs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 92.55, 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/CS by Criminal Justice on March 13, 2017:

The committee substitute corrects a scrivener's error.

CS by Judiciary on February 21, 2017:

The committee substitute deletes references in current law to service animals. Also, the committee substitute provides definitions for the terms "facility dog" and "therapy animal."

B. Amendments:

None.

By the Committees on Criminal Justice; and Judiciary; and
Senators Montford and Book

591-02375-17

2017416c2

A bill to be entitled

An act relating to use of animals in proceedings involving minors; amending s. 92.55, F.S.; specifying that the court may allow the use of therapy animals or facility dogs in certain proceedings; allowing certain animals to be used when taking the testimony of a person who has an intellectual disability; removing the requirement that certain animals be registered; defining terms; providing an effective date.

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

Section 1. Section 92.55, Florida Statutes, is amended to read:

92.55 Judicial or other proceedings involving victim or witness under ~~the age of~~ 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of ~~registered service or~~ therapy animals or facility dogs.—

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

(a) "Sexual offense victim or witness" means a person who was under the age of 18 when he or she was the victim of or a witness to a sexual offense.

(b) "Sexual offense" means any offense specified in s. 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I).

(2) Upon motion of any party, upon motion of a parent, guardian, attorney, guardian ad litem, or other advocate appointed by the court under s. 914.17 for a victim or witness under the age of 18, a person who has an intellectual

591-02375-17

2017416c2

disability, or a sexual offense victim or witness, or upon its own motion, the court may enter any order necessary to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court. Such orders must relate to the taking of testimony and include, but are not limited to:

(a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.

(b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.

(c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

(3) In ruling upon the motion, the court shall consider:

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant;

(b) The age of the person who has an intellectual disability, the functional capacity of such person, the nature of the offenses or act, the relationship of the person to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the person as a consequence of the defendant's presence, and any other fact that the court deems relevant; or

(c) The age of the sexual offense victim or witness when the sexual offense occurred, the relationship of the sexual

591-02375-17

2017416c2

offense victim or witness to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the sexual offense victim or witness as a consequence of the defendant's presence, and any other fact that the court deems relevant.

(4) In addition to such other relief provided by law, the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding. The court shall enter any order necessary to protect the rights of all parties, including the defendant in any criminal action.

(5) The court may set any other conditions it finds just and appropriate when taking the testimony of a ~~child~~ victim or witness under 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness, including the use of a ~~service or~~ therapy animal or facility dog that has been evaluated and registered according to national standards, in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.

(a) When deciding whether to allow permit a child victim or witness under 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness to testify with the assistance of a ~~registered service or~~ therapy animal, or facility dog, the court shall consider the age of the ~~child~~

591-02375-17

2017416c2

victim or witness under 18 years of age, the age of the sexual offense victim or witness at the time the sexual offense occurred, the interests of the ~~child~~ victim or witness under 18 years of age or the sexual offense victim or witness, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the ~~child~~ victim or witness under 18 years of age, a person who has an intellectual disability, or a sexual offense victim or witness.

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

1. "Facility dog" means a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings.

2. "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Pre-K - 12
Education
Health Policy
Rules

SENATOR BILL MONTFORD

3rd District

March 22, 2017

Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules
402 Senate Office Building
Tallahassee Florida 32399-1100

Dear Senator Benacquisto:

I respectfully request that CS/CS/SB 416, a bill relating to the Use of Animals in Proceedings be placed on the agenda for a hearing before the next Rules Committee Meeting.

Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
Senate District 3

MD/WM

Cc: John Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- ☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/17
Meeting Date

SB 416
Bill Number (if applicable)

Topic Dogs In Court

Amendment Barcode (if applicable)

Name CHUCK MITCHELL

Job Title Program Manager, Florida Courthouse Therapy Dogs

Address 3890 TAN HOUSE RD. Phone 850-566-6100
Street

TALLAHASSEE FL 32309
City State Zip

Email CMITCHELL90@COMCAST.NET

Speaking: ☒ For ☐ Against ☐ Information

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

Representing TMH Animal Therapy / FLA Courthouse Therapy Dogs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-29-17

Meeting Date

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

416

Bill Number (if applicable)

Topic Use of Animals in Proceeding Minors Amendment Barcode (if applicable)

Name Colleen Maelin

Job Title Constituency Services

Address 401 S. Magnolia DR

Street

Tallahassee

City

State

Phone 850-425-2600

Email Cmaelin@iamfor

Kids.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking:

☒ In Support ☐ Against

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

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/29/17

Meeting Date

416

Bill Number (if applicable)

Topic Use of Animals in Proceeding Involving Minors -

Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title Executive Director

Address 600 S. CALHOUN

Phone 850-241-3252

Street

Tallahassee

FL

32311

City

State

Zip

Email Alan.Abramowitz@calfla.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

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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)

3/29/17

Meeting Date

SB 416

Bill Number (if applicable)

Topic

Pets in Court

Amendment Barcode (if applicable)

Name

Ron Book

Job Title

Address

104 W. Jefferson

Street

Phone

850-224-3007

City

TZIT

State

Zip

Email

Ron@RLBookPA.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Lauren's Kids

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 3/29/2017 1:01:59 PM

Ends: 3/29/2017 1:52:38 PM

Length: 00:50:40

1:01:58 PM Meeting called to order by Chair Benacquisto
1:02:09 PM Roll call by Administrative Assistant Cyndi Futch
1:02:19 PM Quorum present
1:02:56 PM CS/SB 334 introduced by Chair Benacquisto
1:03:02 PM Explanation of CS/SB 334 by Senator Steube
1:03:14 PM Comments by Chair Benacquisto
1:03:20 PM Comments by Senator Bradley
1:03:33 PM Explanation of status of CS/SB 334 by Chair Benacquisto
1:03:45 PM Senator Bradley moves to adopt Substitute Amendment Barcode No. 398962
1:03:57 PM Without objection, Substitute Amendment Barcode No. 398962
1:04:03 PM Amendment Barcode No. 471646 to Substitute Amendment Barcode No. 398962 introduced by Chair Benacquisto
1:04:09 PM Explanation of Amendment Barcode No. 471646 by Senator Bradley
1:04:41 PM Comments by Chair Benacquisto
1:04:43 PM Andrew Bolin of the Florida Justice Reform Institute speaks in opposition
1:06:34 PM Comments by Chair Benacquisto
1:06:40 PM Response by Mr. Bolin
1:07:21 PM Comments by Chair Benacquisto
1:07:35 PM Amendment Barcode No. 471646 is adopted without objection
1:08:08 PM Comments by Chair Benacquisto
1:08:13 PM Gerald Wester of the American Insurance Association waives against
1:08:19 PM James Harold Thompson of CSX Transportation waives against
1:08:24 PM Liz Reynolds of the National Association of Mutual Insurance Companies waives against
1:08:28 PM Brewster Bevis of the Associated Industries of Florida waives against
1:08:32 PM Michael Carlson of the Personal Insurance Federation of Florida waives against
1:08:38 PM Tim Nungesser of NFIB waives against
1:08:54 PM Gary Guzzo of the Institute for Legal Reform speaks in opposition
1:09:25 PM Mark Delegal of the Florida Chamber speaks in opposition
1:11:08 PM Samantha Padgett of the Florida Retail Federation waives in opposition
1:11:14 PM Andrew Bolin of the Florida Justice Reform Institute waives in opposition
1:11:20 PM Senator Steube waives close
1:11:30 PM Roll call on CS/CS/SB 334 by Administrative Assistant Cyndi Futch
1:11:49 PM CS/CS/SB 334 is reported favorably
1:12:06 PM CS/SB 264 introduced by Chair Benacquisto
1:12:15 PM Explanation of CS/SB 264 by Senator Ariles
1:12:46 PM Amendment Barcode No. 811978 introduced by Chair Benacquisto
1:12:50 PM Explanation of Amendment Barcode No. 811978 by Senator Ariles
1:13:10 PM Without objection Amendment Barcode No. 811978 is adopted
1:13:12 PM Joseph Salzverg waives in support
1:13:19 PM Senator Ariles waives close
1:13:42 PM Roll call on CS/CS/SB 264 by Administrative Assistant Cyndi Futch
1:13:51 PM CS/CS/SB 264 is reported favorably
1:13:56 PM CS/CS/SB 398 introduced by Chair Benacquisto
1:14:01 PM Explanation of CS/CS/SB 398 by Senator Passidomo
1:14:59 PM Amendment Barcode No. 724766 introduced by Chair Benacquisto
1:15:19 PM Mark Anderson of CEOMC waives in support
1:15:21 PM Amendment Barcode No. 537800 to Amendment Barcode No. 724766 introduced by Chair Benacquisto
1:15:35 PM Travis Moore of First Service Residential and Community Associations Institute waives in support
1:15:42 PM Richard Pinsky of Cyber Citizens waives in support
1:15:50 PM Without objection Amendment Barcode No. 537800 is adopted
1:16:04 PM Without objection Amendment Barcode No. 724766 is adopted
1:16:17 PM David Daniel of Agents Section of the Florida Land Title Association waives in support

1:16:20 PM Travis Moore of Community Associations Institute and First Service Residential waives in support
 1:16:25 PM Grey Black of ATFS, LLC waives in support
 1:16:31 PM Sean Stafford waives in support
 1:16:34 PM Trey Goldman of Florida Realtors waives in support
 1:16:38 PM Keri Hebrank of Florida Home Builders Association waives in support
 1:16:42 PM Ashley Kalifeh of Old Republic Title waives in support
 1:16:45 PM Rob Book of First Service Residential waives in support
 1:16:48 PM Danielle Scoggins of the Florida Realtors waives in support
 1:17:01 PM Senator Passidomo waives close
 1:17:13 PM Roll call on CS/CS/CS/SB 398 by Administrative Assistant Cyndi Futch
 1:17:45 PM CS/CS/CS/SB 398 is reported favorably
 1:17:47 PM SB 954 introduced by Chair Benacquisto
 1:17:50 PM Explanation of SB 954 by Senator Passidomo
 1:18:36 PM Kelly Quintero of the League of Women Voters of Florida speaks in support
 1:19:17 PM Ann Weeks waives in support
 1:19:24 PM Diana Bishop of the League of Women Voters of the Villages waives in support
 1:19:32 PM Peter Butzin of the League of Women Voters waives in support
 1:19:40 PM Ben Wilcox of the Common Cause Florida waives in support
 1:19:47 PM Linda Howard of the LWV waives in support
 1:19:50 PM Senator Passidomo waives close
 1:19:56 PM Roll call on SB 954 by Administrative Assistant Cyndi Futch
 1:20:16 PM SB 954 is reported favorably
 1:20:23 PM CS/SB 312 introduced by Chair Benacquisto
 1:20:30 PM Explanation of CS/SB 312 by Senator Baxley
 1:20:48 PM (Vice Chair Thurston takes the chair)
 1:21:03 PM Seth Miller of Innocence Project of Florida waives in support
 1:21:14 PM Chief of Police Stephan Dembinsky of the Florida Police Chiefs Association waives in support
 1:21:25 PM Matt Dunagan, Deputy Director of the Florida Sheriff's Association waives in support
 1:21:27 PM The Honorable Stacy Scott of the Florida Public Defender Association, Inc. waives in support
 1:21:37 PM Senator Baxley closes on CS/SB 312
 1:21:56 PM Roll call on CS/SB 312 by Administrative Assistant Cyndi Futch
 1:22:27 PM CS/SB 312 is reported favorably
 1:22:30 PM (Vice Chair Thurston returns the chair)
 1:22:37 PM SB 372 introduced by Chair Benacquisto
 1:22:56 PM Explanation of SB 372 by Senator Stargel
 1:23:07 PM Lance Lozano of the Florida United Businesses Association waives in support
 1:23:13 PM Cissy Proctor, Executive Director of the Department of Economic Opportunity waives in support
 1:23:18 PM Carolyn Johnson of the Florida Chamber of Commerce waives in support
 1:23:23 PM Senator Stargel waives close
 1:23:25 PM Roll call on SB 372 by Administrative Assistant Cyndi Futch
 1:23:50 PM SB 372 is reported favorably
 1:24:04 PM CS/SB 1052 introduced by Chair Benacquisto
 1:24:12 PM Explanation of CS/SB 1052 by Senator Simmons
 1:26:07 PM Late filed Amendment Barcode No. 270372 taken up without objection
 1:26:11 PM Explanation of Amendment Barcode No. 270372 by Senator Simmons
 1:28:50 PM Without objection, Amendment Barcode No. 270372 is adopted
 1:28:53 PM Ann Weeks of LWV FL waives against
 1:28:58 PM Kelly Quintero of the League of Women Voters of Florida waives against
 1:29:01 PM Kate Betsko of the League of Women Voters of Florida waives against
 1:29:05 PM Peter Butzin of the League of Women Voters waives against
 1:29:12 PM Linda Howard waives against
 1:29:17 PM Dr. Sue Easton of the League of Women Voters waives against
 1:29:20 PM Honorable Stacy Scott of the Florida Public Defender Association speaks in support
 1:30:03 PM Marion Hammer of the National Rifle Association & Unified Sportsmen of Florida waives in support
 1:30:13 PM Senator Simmons waives close
 1:30:23 PM Roll call on CS/CS/SB 1052 by Administrative Assistant Cyndi Futch
 1:30:47 PM CS/CS/SB 1052 is reported favorably
 1:31:07 PM CS/SB 148 introduced by Chair Benacquisto
 1:31:14 PM Explanation of CS/SB 148 by Senator Garcia
 1:31:39 PM Diana Padgett of the Florida School Nutrition Association waives in support
 1:31:52 PM Senator Garcia waives close
 1:31:55 PM Roll call on CS/SB 148 by Administrative Assistant Cyndi Futch

1:32:08 PM CS/SB 148 is reported favorably
 1:32:28 PM CS/SB 440 introduced by Chair Benacquisto
 1:32:38 PM Explanation of CS/SB 440 by Senator Gibson
 1:33:09 PM Senator Gibson waives close
 1:33:14 PM Roll call on CS/SB 440 by Administrative Assistant Cyndi Futch
 1:33:25 PM CS/SB 440 is reported favorably
 1:33:48 PM CS/SB 396 introduced by Chair Benacquisto
 1:33:55 PM Explanation of CS/SB 396 by Senator Bean
 1:35:58 PM Emily Dovydaitis of University of Central Florida's Student Government speaks in support
 1:37:08 PM Comments by Vice Chair Thurston
 1:37:25 PM Senator Bean waives close
 1:37:29 PM Roll call on CS/SB 396 by Administrative Assistant Cyndi Futch
 1:37:41 PM CS/SB 396 is reported favorably
 1:38:12 PM SJR 882 introduced by Chair Benacquisto
 1:38:18 PM Explanation of SJR 882 by Senator Bean
 1:40:19 PM Sandra Mortham waives in support
 1:40:32 PM Senator Bean closes on SJR 882
 1:40:35 PM Roll call on SJR 882 by Administrative Assistant Cyndi Futch
 1:40:58 PM SJR 882 is reported favorably
 1:41:15 PM CS/SB 1062 is introduced by Chair Benacquisto
 1:41:19 PM Explanation of CS/SB 1062 by Senator Powell
 1:42:10 PM Amendment Barcode No. 340068 introduced by Chair Benacquisto
 1:42:49 PM Explanation of Amendment Barcode No. 340068 by Senator Powell
 1:42:55 PM Amendment Barcode No. 340068 is adopted without objection
 1:43:04 PM Senator Powell waives close
 1:43:08 PM Roll call on CS/CS/SB 1062 by Administrative Assistant Cyndi Futch
 1:43:25 PM CS/CS/SB 1062 reported favorably
 1:43:40 PM SR 574 introduced by Chair Benacquisto
 1:43:51 PM Explanation of SR 574 by Senator Rader
 1:45:25 PM Comments by Chair Benacquisto
 1:45:28 PM Senator Rader waives close
 1:45:33 PM Roll call on SR 574 by Administrative Assistant Cyndi Futch
 1:45:56 PM SR 574 is reported favorably
 1:46:10 PM Intro of CS/CS/SB 416 by Chair Benacquisto
 1:46:18 PM Explanation of CS/CS/SB 416 by Senator Montford
 1:47:11 PM Chuck Mitchell on behalf of Tallahassee Memorial Hospital Animal Therapy / Florida Courthouse Therapy Dogs speaks in support
 1:47:28 PM Senator Montford introduces therapy dogs
 1:47:55 PM Colleen Mackin of the Children's Campaign waives in support
 1:48:55 PM Alan Abramaowitz of the Guardian Ad Litem Program speaks in support
 1:49:25 PM Ron Book of Lauren's Kids speaks in support
 1:51:12 PM Comments by Senator Book
 1:51:35 PM Comments by Chair Benacquisto
 1:51:47 PM Senator Montford waives close
 1:51:52 PM Roll call on CS/CS/SB 416 by Administrative Assistant Cyndi Futch
 1:52:19 PM CS/CS/SB 416 is reported favorably
 1:52:29 PM Comments by Chair
 1:52:35 PM Vice Chair Thurston moves to adjourn
 1:52:37 PM Without objection, meeting is adjourned